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Federal Register

Friday
January 17, 1986

Selected Subjects

CONTINUED INSIDE

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Federal Register
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Friday, January 17, 1986

Presidential Documents

Title 3—

The President

Proclamation 5430 of January 15, 1986

National Sanctity of Human Life Day, 1986

By the President of the United States of America

A Proclamation

America was founded with a ringing affirmation of the transcendence of human rights. Our Declaration of Independence proclaims that the rights to "Life, Liberty and the pursuit of Happiness" are not a grant from the government, but a gift from the Creator; and we declared that the same Divine Providence in which the new Nation placed its "firm reliance" imposes on government a solemn duty to respect and secure these fundamental rights.

Yet, on January 22, 1973, the Supreme Court of the United States struck down our laws protecting the lives of unborn children. At that time there were those who predicted confidently that in time Americans would come to accept the Court's decision and the "new ethic" that it reflects. History has proved them wrong. Each year the terrible toll of more than a million innocent human lives has weighed more heavily on the conscience of America.

Each year remarkable advances in prenatal medicine bring ever more dramatic confirmation of what common sense told us all along—that the child in the womb is simply what each of us once was: a very young, very small, dependent, vulnerable member of the human family. When Americans demand legal protection for human life, we are simply being true to our most basic principles and convictions. We are reaffirming the self-evident truths set forth in our Declaration of Independence. Indeed, we are reaffirming the consensus of civilized humanity by recognizing that children need special safeguards and care, including appropriate legal protection, before as well as after birth.

Those who champion the right to life know the harsh pressures and the profound anguish that drive some women to consider abortion. The most moving testimony to our reverence for human life has been the generous, even heroic efforts made by so many religious and charitable organizations to help women with problem pregnancies and to facilitate the adoption of infants into families eager to give them love and care.

Those who work to restore legal protection to the unborn do so with the knowledge that they have gone to the defense of the weak, the silent, the endangered. But that is not something new. Whenever disasters have endangered human life, we Americans have always responded swiftly and selflessly.

Respect for the sanctity of human life has not died in America. Far from it. With every passing year it shines ever more brightly in the hearts of more and more of our citizens as they come to see the issue with greater clarity in all of its dimensions. As we carry this message to our courts, our legislatures, and our fellow citizens, let us never be discouraged. Let us put our trust in God, the Lord and Giver of Life, the Creator Who endowed us with our inalienable rights. May we soon rejoice in the day when reverence for human life is enshrined as surely in our laws as in our hearts.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Sunday, January 19, 1986, as National Sanctity of Human Life Day. I call upon the citizens of this blessed land to gather on that

day in homes and places of worship to give thanks for the gift of life and to reaffirm our commitment to the dignity of every human being and the sanctity of each human life.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of Jan., in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 86-1281
Filed 1-16-86; 10:58 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 17

Financing of Commercial Sales of Agricultural Commodities

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Final rule.

SUMMARY: The interim rule published at 50 FR 2949 amending the regulations applicable to the financing of agricultural exports pursuant to Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480, 83d Cong.), is adopted as a final rule. The amendment provided for the financing by Commodity Credit Corporation of ocean freight charges for the carriage of commodities purchased under the Title I, Pub. L. 480 program on foreign flag vessels. Previously only the financing of ocean freight charges for such shipments on U.S. flag vessels was authorized.

EFFECTIVE DATE: January 17, 1986.

FOR FURTHER INFORMATION CONTACT: Robert S. Simpson, Director, Pub. L. 480 Operations Division, Export Credits, Foreign Agricultural Service, Room 4549–S, U.S. Department of Agriculture, Washington, DC 20250. Telephone: (202) 447–3664.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified "not major." It has been determined that this rule will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in costs to consumers, individual industries, Federal, State or local government agencies or geographic regions; and will not have an adverse effect 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.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the rule involves foreign affairs functions of the United States and therefore neither 5 U.S.C. 553 nor any other provision of law requires publication of a notice of proposed rule making with respect to the subject matter of this rule.

Section 102 of the Agricultural Trade Development and Assistance Act of 1954, as amended, (the "Act") authorizes the Commodity Credit Corporation (CCC) to finance the sale and exportation of agricultural commodities purchased by friendly countries under the authority of Title I of the Act. This Section authorizes CCC to finance ocean freight on shipments made under Title I of the Act.

The regulations governing Title I appear at 7 CFR Part 17. Until the amendment of the regulations by the interim rule, financing any part of the ocean freight on foreign flag vessels was specifically prohibited. Although not limited by regulation, the financing of ocean freight for U.S.-flag vessels was limited, as a matter of policy, to payment of the "ocean freight differential", which is the amount determined to represent the increased freight charges incurred by participating countries for shipment on U.S. flag vessels due to the requirements of the Cargo Preference Act.

In order to accomplish the purposes of Title I of the Act, it was determined desirable to finance the ocean freight charges for shipment on foreign flag vessels in certain circumstances. For example, the importer or importing country may be experiencing a temporary period when foreign exchange is in very short supply. In such a case the U.S. Embassy may decide to recommend, for a specific year, that the U.S. Government finance the ocean freight charges for cargoes shipped on foreign flag vessels. Accordingly, the interim rule amended 7 CFR 17.9(g) so as to provide that the cost of ocean transportation on foreign flag vessels will be financed by CCC when, and to the extent, specifically provided in the applicable purchase authorization issued to the participating foreign country. In this manner, the Department of Agriculture has flexibility in determining whether and to what extent ocean freight charges on foreign flag vessels should be financed. When financing is provided, the general provisions in the regulations covering the financing of ocean freight charges would also be applicable to foreign flag vessels. In the past when the Agency for International Development has undertaken to finance the freight charges of foreign flag vessels, the procedures of AID were necessarily added to the USDA procedures. To avoid such duplicate procedures required of importing countries, banks, and carriers, it is desirable to provide for such financing solely within the Title I program. Approval of such financing is by an inter-agency body of the U.S. Government. Current policy is to grant approval only to countries experiencing severe food shortages.

Comments on the Interim Rule

A comment period was provided through March 15, 1985 on the interim rule published in the **Federal Register** (50 FR 2949).

Four comments were received. All comments were given full consideration. All letters received are on file and available for public inspection in Room 4549, South Building, 14th and Independence Avenue, SW., Washington, DC.

Comments: Commentators suggested that the USDA should clarify the type of emergency, limit the duration and geographic scope, and make clear that the financing of ocean freight will apply equally to both U.S. and foreign flag vessels.

Response: The purpose of the amendment was to authorize financing of ocean freight on foreign flag vessels to the extent necessary to accomplish the purposes of Title I of the Act. Flexibility in ocean freight financing is deemed necessary to permit reacting in a timely manner to, for example, the emergency needs of countries which can vary widely. No single definition or description of humanitarian or emergency needs is likely to be satisfactory since is could preclude action in unforeseen but critical circumstances.

For many year § 17.9(a)(1) has stated that "Ocean freight will be financed by

CCC only to the extent specifically provided for in the purchase authorization." This section provides the flexibility to finance the ocean freight for U.S. flag vessels to whatever extent deemed necessary. After adoption of the interim rule, both ocean freight differential and non-ocean freight differential portions of U.S. flag shipments to certain countries were financed in addition to freight for non-U.S. flag shipments.

List of Subjects in 7 CFR Part 17

Agricultural commodities, Exports, Finance, Maritime carriers.

Final Rule

PART 17—[AMENDED]

Accordingly, the interim rule published at 50 FR 2949 amending 7 CFR Part 17, Subpart A is adopted as a final rule.

Signed at Washington, D.C., on December 9, 1985.

Melvin E. Sims,

General Sales Manager, Foreign Agricultural Service.

[FR Doc. 86-1083 Filed 1-16-86; 8:45 am]

BILLING CODE 3410-10-M

Farm Credit Administration

12 CFR Part 611

Organization; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of Effective Date.

SUMMARY: The Farm Credit Administration (FCA) published an amended regulation dealing with the incorporation of service organizations by Farm Credit System (System) banks. The former regulation required in the Articles of Incorporation of any System service organization that the stockholders pay all valid claims of creditors in the event of a service organization's insolvency. The amended regulation allows System banks to incorporate service organizations with limited stockholder liability.

The final rule was published in the November 8, 1985 **Federal Register**, and provided that notice of the actual effective date would be subsequently published (50 FR 46417). In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of this rule was December 15, 1985.

EFFECTIVE DATE: December 15, 1985.

FOR FURTHER INFORMATION CONTACT:

Kenneth L. Peoples, Office of the General Counsel (703) 883-4024
or
Thomas J. Holland, Office of Examination and Supervision (703) 883-4452, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

(Secs. 1.13, 2.10, 4.12, 5.9, 5.12, 5.18, Pub. L. 92-181, 85 Stat. 619, 620, 621, (12 U.S.C. 2243, 2246, 2252)).

Donald E. Wilkinson,

Governor.

[FR Doc. 86-1081 Filed 1-16-86; 8:45 am]

BILLING CODE 6705-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Release Nos. 33-6617; 34-22781; IC-14890 (S7-32-85)]

Filing Fees for Certain Proxy and Information Filings Tender Offers, Mergers and Similar Transactions

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission (the "Commission") today announced the adoption of amendments to its rules relating to the imposition and collection of filing fees for certain Securities Exchange Act of 1934 acquisition and business combination transactions. The amendments relate to legislation that requires payment to the Commission of a filing fee calculated on a percentage basis of the transaction's value for tender offers and proxy and information statements involving an acquisition, merger, consolidation or sale or other dispositions of substantially all the assets of a company and certain other filings. The Commission also has adopted conforming amendments to Rule 457 under the Securities Act of 1933 and to other rules and schedules.

EFFECTIVE DATE: February 18, 1986. In the interim the fees will be collected consistent with guidance therein.

FOR FURTHER INFORMATION CONTACT:

Prior to the effective date contact Thomas Sweeney, (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. After the effective date, contact Mauri Osheroff, Deputy Chief Counsel, (202) 272-2573, Office of Chief Counsel, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today announced the adoption of new Rule 0-11 [1] under the Securities Exchange Act of 1934 ("Exchange Act") [2] and corresponding amendments to Rule 457 [3] under the Securities Act of 1933 ("Securities Act")[4] and Rules 0-9,[5] 13e-1, [6] 14a-6 [7] and 14c-5 [8] and Schedules 13E-3,[9] 13E-4,[10] and 14D-1[11] under the Exchange Act. Rule 0-11 and corresponding amendments provide guidance to persons required, as a result of amendments to the Exchange Act, to pay statutory filing fees incurred in connection with certain acquisition and business combination transactions.[12]

I. Executive Summary

In July 1985, the Commission proposed rule provisions to codify administrative practice and provide guidance as to the fee required at the time of filing certain documents in connection with tender offers, mergers and similar Exchange Act business combination transactions.[13] The fees were imposed by 1983 amendments to the Exchange Act[14] which added Sections 13(e)(3),[15]

[1] 17 CFR 240.0-11.

[2] 15 U.S.C. 78a-78kk (1982), *as amended by* Act of June 6, 1983, Pub. L. No. 98-38, 97 Stat. 205 (1983).

[3] 17 CFR 230.457.

[4] 15 U.S.C. 77a-77aa (1982).

[5] 17 CFR 240.0-9.

[6] 17 CFR 240.13e-1.

[7] 17 CFR 240.14a-6.

[8] 17 CFR 240.14c-5.

[9] 17 CFR 240.13e-100.

[10] 17 CFR 240.13e-101.

[11] 17 CFR 240.14d-100.

[12] The filings subject to the new fee are: (a) Schedule 13E-4 filed pursuant to Rule 13e-4 (17 CFR 240.13e-4); (b) Schedule 14D-1 filed pursuant to Rule 14d-3 (17 CFR 240.14d-3); (c) preliminary proxy material filed pursuant to Rule 14a-6 (17 CFR 240.14a-6) relating to a proposed acquisition, merger, consolidation or sale or other disposition of substantially all the assets of the issuer; (d) preliminary information statements filed pursuant to Rule 14c-5 (17 CFR 240.14c-5) relating to such transactions; (e) Schedule 13E-3 filed pursuant to Rule 13e-3 (17 CFR 240.13e-3) in connection with the acquisition of securities; and (f) a disclosure statement filed pursuant to Rule 13e-1. There is no fee assessed for filing a Schedule 14D-9 (17 CFR 240.14d-101).

[13] Release No. 33-6593 (July 1, 1985) [50 FR 28404].

[14] Act of June 6, 1983, Pub. L. No. 98-38, 97 Stat. 205 (1983). H.R. Rep. No. 98-106, 98th Cong., 1st Sess. 1-2, 5-6 (1983) (hereinafter H.R. Rep. No. 98-106). The Commission announced the enactment and effectiveness of this legislation in Release No. 34-19870 (June 13, 1983) [48 FR 27524].

[15] 15 U.S.C. 78m(e)(3).

and 14(g)[16] to the statute to require persons filing specified documents to pay, at the time of filing with the Commission, a fee of one-fiftieth of one percent of the value of the transaction.[17] The rule proposal included a new rule under the Exchange Act, Rule 0–11, that governs filing fees for Exchange Act business combination transactions. Also proposed were corresponding amendments to (1) Rule 457 under the Securities Act, (2) Rules 0–9 and 13e–1 and Schedules 13E–3, 13E–4 and 14D–1 under the Exchange Act, and (3) in a contemporaneous release proposing comprehensive revisions to the proxy rules and schedules,[18] Rules 14a–6 and 14c–5.

The proposals elicited four public comments[19] which generally supported the proposed rule revisions concerning filing fees for tender offers, mergers and similar transactions. Accordingly, the Commission is adopting the amendments substantially as proposed.

In addition to codifying fees established by the legislation and reflecting administrative practice thereunder, the amendments provide additional guidance on the method of valuation of the securities sought, depending on whether the securities are to be purchased for cash or other consideration. The amendments also specify: (1) That the fee is to be paid by the person making the filing, except that in the case of proxy or information statements involving two or more companies subject to the Commission's proxy or information statement rules, each person shall pay a proportionate share of such fee; (2) that where a transaction involves more than one filing requirement or the registration provisions of the Securities Act, the payment of the fee with the initial filing will offset any subsequent filing fee obligation; and (3) that any increase in consideration offered will require an additional fee to be paid.

This release discusses the operation of the Commission's business combination transaction fee rules and conforming amendments as well as modifications of the rules made in response to public comments.

II. Discussion

A. *Rule 0–11 under the Exchange Act for Filing Fees for Certain Acquisitions, Dispositions and Similar Transactions.* Rule 0–11 sets forth the basic requirements with respect to fees for all Exchange Act filings subject to the new filing fee. The rule is divided into four paragraphs, and contains the general requirements for every transaction subject to the rule. Paragraph (a)(1) sets forth the general fee requirement. Paragraph (a)(2) specifies that only one fee per transaction is required and makes explicit that: (1) Any required fee is to be reduced in an amount equal to any fee paid under section 6(b) of the Securities Act[20] or any other provision of the rule; and (2) fees required to be paid under section 6(b) of the Securities Act shall be reduced by the amount already paid under this rule. Thus, in a multi-step transaction, the fee is to be calculated with respect to each step. Where, however, any or all of the fee in connection with a step already has been paid in connection with the filing for a prior step, there is an offset provision. For example, a tender offer for any and all shares of a target company necessitates a fee related to the price of acquiring 100% of the target; if less than all shares are tendered and a subsequent merger occurs, the fee paid in connection with the initial tender offer is to be applied against the fee required in connection with the merger. The offset provision generally will not come into play in the case of a tender offer for less than all of the shares of the target followed by a merger, since the fee paid for the first step of the transaction only applies to a portion of the target's outstanding shares.

Paragraph (a)(3) of Rule 0–11 provides that an increase in the aggregate consideration offered triggers an additional filing fee based upon the amount of the increased consideration. This additional fee is applicable whether the increased consideration is the result of an increase in the amount of securities sought or an increase in the per share consideration.[21]

Paragraph (a)(4) of Rule 0–11 sets forth the method of determining the value of the securities upon which to base the filing fee. The rule provides a valuation method that generally parallels the provisions of Rule 457(e) under the Securities Act relating to the computation of the filing fee for registered exchange offers. In general, where securities are to be acquired in exchange for securities or other non-cash consideration, the value of the securities proposed to be purchased for such consideration is based upon the market value of the securities to be acquired by the filing person.

In response to concern expressed by commentators who found the proposed language confusing, the Commission has modified the language to specify the method of valuation. In determining the market value of the securities, the valuation is based upon the average of the high and low prices reported in the consolidated transaction reporting systems for exchange traded securities and national market system reported over-the-counter securites or the average of the bid and asked price for other over-the-counter securities as of a specified date within 5 business days prior to filing.[22] This formulation is consistent with the transaction reporting of prices by exchanges and the over-the-counter markets under Rule 11Aa3–1.[23]

Where there is no market for the securities being acquired by the filing person, then the book value of the securities computed as of the latest

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[16] 15 U.S.C. 78n(g).

[17] The 1983 amendments were intended to equalize fees assessed for various types of equivalent business transactions involving tender offers, mergers and consolidations, whether the transaction involves a filing under the Securities Act or the Exchange Act. Under the Securities Act, a fee of one-fiftieth of one percent is required to be paid in connection with exchange offers and proxy solicitations for mergers with securities offered as consideration. Yet, prior to the amendments, no fees were required under the Exchange Act in connection with cash tender offers while fees of $125 and $1,000 were assessed in connection with proxies for the sale of assets and cash merger proxies, respectively. *See* H.R. Rep. No. 98–106, *supra* at 5.

[18] Release No. 34–22195 (July 1, 1985) [50 FR 29409].

[19] The comments included two letters from public corporations, one from the Association of the Bar of the City of New York and one telephone call from an individual. A memorandum of the telephonic comment as well as the comment letters are available for public inspection and copying in the Commission's Public Reference Room (*See* File No. S7–32–85).

[20] Section 6(b) of the Securities Act requires at the time of filing the registration statement a fee of one-fiftieth of one percent of the maximum aggregate offering price but in no case a fee of less than $100. The Commission also is adopting a corresponding amendment to Rule 457 under the Securities Act that adds paragraph (b) to provide that any required fee is to be reduced in an amount equal to any fee paid under sections 13(e) and 14(g) of the Exchange Act. Thus, if the entire fee is paid pursuant to section 13(e) or 14(g) of the Exchange Act, no fee, including the $100 minimum fee under section 6(b) of the Securities Act, need be paid with the Securities Act registration statement.

[21] This provision is consistent with existing interpretations of Rule 457 (a) and (e), whereby an increase in the consideration offered by means of an increase in the exchange ratio and therefore the number of securities to be offered would necessitate an additional filing fee. If the increase in consideration involves cash rather than additional securities, however, the proposed Exchange Act fee treatment would differ from that of the Securities Act because section 6(b) of the Securities Act ties the fee to the securities, not to the value of the cash portion of an offer.

[22] A similar change is reflected in the amendment to Rule 457 concerning the method of determining the market value of securities. The Commission has determined, in view of the rapid pace of current securities markets, that the 5 business day period provides the appropriate measure for the fee calculation by more closely matching the fee calculation to market conditions.

[23] 17 CFR 240.11Aa3–1.

practicable date prior to the date of filing is used to value the securities. If, however, the acquired person is in bankruptcy or receivership or has an accumulated capital deficit, one-third of the principal amount, par value or stated value of the securities is used.

Finally, paragraph (a)(5) requires that filings subject to the rule which are not required to contain a table showing the calculation of the filing fee be accompanied by a transmittal letter giving the equivalent information. As noted below, the Commission also is adopting amendments that add a fee-calculation table to the facing pages of Schedules 13E–3, 13E–4 and 14D–1. The transmittal letter requirement thus only applies to other filings.

Paragraphs (b) through (d) of Rule 0–11 relate to specific Exchange Act filings and carry over the valuation method and other relevant fee provisions contained in Rule 457 under the Securities Act. Under Rule 0–11(b), a fee of one-fiftieth of one percent of the value of the securities proposed to be acquired is to be paid when a statement required pursuant to section 13(e)(1) of the Exchange Act is filed.[24] Paragraphs (b)(1) and (2) specify the method of valuation of the securities sought. Where the securities are to be purchased for cash, the securities are to be valued at the cash price to be paid for the securities. Where the payment for the securities includes consideration other than cash, the rule provides that the value of the securities to be received by the acquiring person, determined in accordance with paragraph (a)(4) of the rule, is used as the basis for calculating the fee.

Rule 0–11(c) governs the calculation of the fee required when a preliminary proxy statement pursuant to Rule 14a–6 or preliminary information statement pursuant to Rule 14c–5 is filed concerning an acquisition, merger, consolidation or proposed sale or other disposition of substantially all the assets of the company.[25] As required by the legislation, the calculation of the fee varies depending upon the nature of the transaction. In the case of an acquisition, merger or consolidation, the fee payable is one-fiftieth of one percent of any proposed cash payment, or the value of securities or other property proposed to be transferred to security holders.[26] In the case of a filing relating to a proposed sale or other disposition of substantially all the assets of an issuer, the rule provides that the one-fiftieth of one percent fee be based upon the aggregate of any proposed cash payment and the value of the securities or other property proposed to be received by the issuer upon such sale or disposition. Where the issuer is not to receive consideration for such disposition, *e.g.*in a spin-off or liquidation, the fee is based on the value of the securities and other property distributed to security holders.

Rule 0–11(c) (1) and (2) applies to proxy or information statements involving a vote on certain matters. This includes any proxy or information statements involving a vote which indirectly serves as the equivalent of a vote on one of the matters specified. For example, if a proxy statement is filed in connection with a vote to approve the authorization of additional securities that are to be used to acquire another specified company, and the registrant's shareholders will not have a separate opportunity to vote upon the transaction, the vote to authorize the securities also is a vote with respect to the acquisition. The fee called for by Rule 0–11 therefore is required.[27]

Rule 0–11(c)(1)(ii) reflects the adoption as proposed of an exception from the percentage-based fee for mergers, consolidations or similar transactions for which the sole purpose is to change the company's domicile. In such transactions the fee assessed would be $125. As the proposing release noted, in determining whether a business combination transaction falls within the exception, the Commission shall apply the same interpretation of such provision as is applied to a similar provision in Rule 145(a)(2) under the Securities Act.[28]

Paragraph (4) of Rule 0–11(c) exempts from the fee requirement any proxy statement filed by a company registered under the Investment Company Act of 1940,[29] as provided by section 14(g) of the Exchange Act. Accordingly, an investment company filing a proxy statement which would otherwise come within this rule should continue to pay the fee currently required.[30]

Finally, Rule 0–11(d) sets forth the fee assessed for tender offer filings on Schedule 14D–1. A filing fee of one-fiftieth of one percent of the amount of cash or the value of securities or other property proposed to be offered by the bidder must accompany the initial Schedule 14D–1 filing. The same calculation methodology and valuation criteria set forth in Rule 0–11(b) and (c) generally apply to Schedule 14D–1 filings.[31]

B. *Corresponding Amendments.* In addition to adopting new Rule 0–11 relating to the Exchange Act fee requirement for cash tender offers and the proxy and information statements involving certain business combinations, the Commission is adopting corresponding amendments: (1) to amend Rule 0–9 [32] to require that the fee called for by Rule 0–11 be paid by cash, certified check or the equivalent; [33] (2) to reflect new Rule 0–11 in Rule 13e–1,[34]

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[24] These statements include a statement concerning the purchase of securities by the issuer required by Rule 13e–1, a Rule 13e–3 transaction statement (Schedule 13E–3) and a Rule 13e–4 issuer tender offer statement (Schedule 13E–4).

[25] The word "registrant" used in paragraph (c) of the rule has the same meaning it would if the Commission's proposed proxy rule revisions are adopted, *i.e.*, the issuer of the securities in respect of which proxies are to be solicited (or an information statement furnished). *See* Release No. 33–6592 (July 1, 1985) [50 FR 29409]. The proposed proxy rule revisions included amendments to Rules 14a–6 and 14c–5 which refer specifically to proposed Rule 0–11. As noted above, these conforming amendments are being adopted as part of this rulemaking action.

[26] When the consideration does not consist entirely of cash, its value is determined by reference to the value of the securities or property being received by the acquiring person.

[27] This is consistent with the Commission's position on disclosure in such proxy statements, which is reflected in Note A to Schedule 14A, 17 CFR 240.14a–101, as proposed to be amended (Release No. 33–6582).

[28] 17 CFR 230.145(a)(2). Rule 145(a)(2) excepts from the rule's application to mergers and consolidations a statutory merger or consolidation or similar plan in which securities of such corporation or other person held by such security holders will become or be exchanged for securities of any other person if the sole purpose of the transaction is to change an issuer's domicile solely within the United States. Under the Commission's interpretations of Rule 145(a)(2), the exception generally has been inapplicable to a transaction involving the formation of a holding company or a reorganization under a different type of statute within the same state.

[29] 15 U.S.C. 80a–1—80a–64, *as amended by* Act of October 21, 1980, Pub. L. No. 96–477, 94 Stat. 2275 (1980).

[30] *See* Rule 20a–1 (17 CFR 270.20a–1).

[31] When the transaction is an unsolicited exchange offer for securities for which there is no market, and the fee is to be based upon the book value of the securities to be received by the bidder, the bidder may not be in a position to require the target to compute its book value as of the latest practicable date. In this event, the staff will not object if the bidder calculates the fee based upon the book value of the securities as of the most recent date for which such information is publicly available.

[32] Rule 0–9 specifies the method of payment of Exchange Act fees, and states that all such fees should be paid in accordance with 17 CFR 202.3a.

[33] This is consistent with the treatment of such fees under the Securities Act, which are not permitted to be paid by personal check.

[34] Paragraph (b) of Rule 13e–1 as amended provides that the initial statement is to be accompanied by a fee payable to the Commission in accordance with Rule 0–11.

Rule 14a–6 [35] and Rule 14c–5; [36] (3) to add to the facing pages of Schedules 13E–3, 13E–4 and 14D–1 a table showing the calculation of the filing fee similar to that required on Securities Act registration statement forms; [37] (4) to reflect in instruction number 2 of the Special Instructions for Complying with Schedule 14D–1 that a filing fee is required to be filed in accordance with Rule 0–11; and (5) to amend rule 457, as noted above, to be consistent with the new for structure and to update the language on calculating the market value of securities to be consistent with that in Rule 0–11.

III. Regulatory Flexibility Act Consideration

Pursuant to section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Chairman of the Commission has certified that the rules regarding Exchange Act filing fees for certain acquisitions and business combination transactions will not have a significant impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

IV. Statutory Basis and Text of Amendments Authority

The amendments to the Commission's rules and forms are being adopted by the Commission pursuant to sections 6, 7 and 19(a) of the Securities Act of 1933 and sections 12, 13, 14 and 23(a) of the Securities Exchange Act of 1934. As required by section 23(a) of the Exchange Act, the Commission has considered specifically the impact that the rulemaking actions in revising 17 CFR Parts 230 and 240 taken pursuant to the various provisions of the Exchange Act would have on competition, and has concluded that they would impose no significant burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

List of Subjects in 17 CFR Parts 230 and 240

Reporting and recordkeeping requirements, Securities.

Text of Amendments

In according with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read, in part, as follows: (Citations before * * * indicate general rulemaking authority).

Authority: Sec. 19(a), 48 Stat. 85, as amended, 15 U.S.C. 77s. * * * § 230.457 also issued under sections 6 and 7, 15 U.S.C. 77f and 77g.

2. By redesignating paragraphs (b)–(m) as paragraphs (c)-(n); by amending the reference to "(e) (1) or (2)" in redesignated paragraph (f)(3) to read "paragraph (f) (1) or (2)"; and by adding a new paragraph (b) to § 230.457 and revising the paragraphs redesignated (c), (f)(1), (g)(3) (in the second sentence of paragraph (g)), and (h) to read as follows:

§ 230.457 Computation of fee.

* * * * *

(b) A required fee shall be reduced in an amount equal to any fee paid with respect to such transaction pursuant to sections 13(e) and 14(g) of the Securities Exchange Act of 1934 or any applicable provision of this section; the fee requirements under sections 13(e) and 14(g) shall be reduced in an amount equal to the fee paid the Commission with respect to a transaction under this section. No part of a filing fee is refundable.

(c) Where securities are to be offered at prices computed upon the basis of fluctuating market prices, the registration fee is to be calculated upon the basis of the price of securities of the same class, as follows: either the average of the high and low prices reported in the consolidated reporting system (for exchange traded securities and last sale reported over-the-counter securities) or the average of the bid and asked price (for other over-the-counter securities) as of a specified date within 5 business days prior to the date of filing the registration statement.

* * * * *

(f) * * *

(1) Upon the basis of the market value of the securities to be received by the registrant or canceled in the exchange or transaction as established by the price of securities of the same class, as determined in accordance with paragraph (c) of this section.

* * * * *

(g) * * * (3) the price of securities of the same class, as determined in accordance with paragraph (c) of this section. * * *

(h) Where securities are to be offered to employees pursuant to an employee stock purchase, savings, or similar plan, the aggregate offering price and the amount of the registration fee shall be computed only with respect to the aggregate contributions of employees, except that if employees may choose the medium in which the employer's contributions are to be invested the aggregate offering price shall include the employer's contributions. Where stock is to be offered to employees pursuant to an employee stock option plan, the aggregate offering price and the amount of the fee shall be computed upon the basis of the price at which the option may be exercised or, if such price is not known, upon the basis of the price of securities of the same class, as determined in accordance with paragraph (c) of this section. Where securities are to be offered to employees pursuant to a bonus plan or similar noncontributory plan, the aggregate offering price and amount of the fee shall be computed on the basis of the price of securities of the same class, as determined in accordance with paragraph (c) of this section. If there is no market for the securities to be offered, the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used.

* * * * *

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

3. The authority citation for Part 240 continues to read as follows: (Citations before * * * indicate general rulemaking authority).

Authority: Sec. 23, 48 Stat. 901, as amended, 15 U.S.C. 78w. * * * §§ 240.0–9, 0–11, 13e–1, 13e–100, 13e–101 and 14d–100 also issued under Sections 12, 13 and 14, 15 U.S.C. 781, 78m and 78n.

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[35] Paragraph (i) of Rule 14a–6 as amended provides that for proxy material involving acquisitions, mergers, spin-offs, consolidations or proposed sales or other dispositions of substantially all the assets of the company, a fee established in accordance with Rule 0–11 shall be paid.

[36] New paragraph (f) of Rule 14c–5 provides that at the time of filing the preliminary information statement, the registrant shall pay to the Commission a fee of $125, no part of which shall be refunded, except, however, when filing a preliminary information statement regarding an acquisition, merger, spinoff, consolidation or proposed sale or other disposition of substantially all the assets of the company the registrant shall pay a fee established in accordance with Rule 0–11.

[37] The table calls for the amount of the fee and the value of the securities used in its computation. Where a filing fee is not required to accompany the Schedule being filed, the table requires the identification of the document with which the fee has been filed and the date of its filing. This information is necessary to assist the Commission's Office of Applications and Reports Services in processing the filing. In this regard, Rule 0–11(a)(5) requires that a filing not calling for a fee calculation table (i.e., a Rule 13e–1 disclosure statement or a proxy or information statement) be accompanied by a letter of transmittal with the equivalent information.

4. By revising § 240.0–9 to read as follows:

§ 240.0–9 Payment of fees.

All payment of fees except those required by § 240.0–11 of this chapter shall be made in cash, certified check, personal check, or by United States postal money order, bank cashier's check or bank money order payable to the Securities and Exchange Commission, omitting the name or title of any official of the Commission. Payment of fees required by § 240.0–11 shall be made in the same manner except that payment by personal check shall not be permitted. Payment of fees required by this section shall be made in accordance with the directions set forth in § 202.3a of this chapter.

5. By adding § 240.0–11 to read as follows:

§ 240.0–11 Filing fees for certain acquisitions, dispositions and similar transactions.

(a) *General.* (1) At the time of filing a disclosure document described in paragraphs (b) through (d) of this section relating to certain acquisitions, dispositions, business combinations, consolidations or similar transactions, the person filing the specified document shall pay a fee payable to the Commission to be calculated as set forth in paragraphs (b) through (d) of this section.

(2) Only one fee per transaction is required to be paid. A required fee shall be reduced in an amount equal to any fee paid with respect to such transaction pursuant to either Section 6(b) of the Securities Act of 1933 or any applicable provision of this rule; the fee requirements under Section 6(b) shall be reduced in an amount equal to the fee paid the Commission with respect to a transaction under this regulation. No part of a filing fee is refundable.

(3) If at any time after the initial payment the aggregate consideration offered is increased, an additional filing fee based upon such increase shall be paid with the required amended filing.

(4) When the fee is based upon the market value of securities, such market value shall be established by either the average of the high and low prices reported in the consolidated reporting system (for exchange traded securities and last sale reported over-the-counter securities) or the average of the bid and asked price (for other over-the-counter securities) as of a specified date within 5 business days prior to the date of the filing. If there is no market for the securities, the value shall be based upon the book value of the securities computed as of the latest practicable date prior to the date of the filing, unless the issuer of the securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of the securities shall be used.

(5) If the filing requiring the payment of the fees does not require a facing sheet showing the calculation of the fee, the filing shall be accompanied by a letter of transmittal stating the amount of the filing fee and how it was determined, as well as the amount offset by a previous filing and the identification of such filing, if applicable.

(b) *Section 13(e)(1) Filings.* At the time of filing such statement as the Commission may require pursuant to section 13(e)(1) of the Exchange Act, a fee of one-fiftieth of one percent of the value of the securities proposed to be acquired by the acquiring person. The value of the securities proposed to be acquired shall be determined as follows:

(1) The value of the securities to be acquired solely for cash shall be the amount of cash to be paid for them:

(2) The value of the securities to be acquired with securities or other non-cash consideration, whether or not in combination with a cash payment for the same securities, shall be based upon the market value of the securities to be received by the acquiring person as established in accordance with paragraph (a)(4) of this section.

(c) *Proxy and information statement filings.* At the time of filing a preliminary proxy statement pursuant to Rule 14a–6(a) or preliminary information statement pursuant to Rule 14c–5(a) that concerns a merger, consolidation, acquisition of a company, or proposed sale or other disposition of substantially all the assets of the registrant (including a liquidation), the following fee:

(1) For preliminary material involving a vote upon a merger, consolidation or acquisition of a company, a fee of one-fiftieth of one percent of the proposed cash payment or of the value of the securities and other property to be transferred to security holders in the transaction. The fee is payable whether the registrant is acquiring another company or being acquired.

(i) The value of securities or other property to be transferred to security holders, whether or not in combination with a cash payment for the same securities, shall be based upon the market value of the securities to be received by the acquiring person as established in accordance with paragraph (a)(4) of this section.

(ii) Notwithstanding the above, where the acquisition, merger or consolidation is for the sole purpose of changing the registrant's domicile, the filing fee shall be $125.

(2) For preliminary material involving a vote upon a proposed sale or other disposition of substantially all the assets of the registrant, a fee of one-fiftieth of one percent of the aggregate of the cash and the value of the securities (other than its own) and other property to be received by the registrant. In the case of a disposition in which the registrant will not receive any property, such as at liquidation or spin-off, the fee shall be one-fiftieth of one percent of the aggregate of the cash and the value of the securities and other property to be distributed to security holders.

(i) The value of the securities to be received (or distributed in the case of a spin-off or liquidation) shall be based upon the market value of such securities as established in accordance with paragraph (a)(4) of this section.

(ii) The value of other property shall be a bona fide estimate of the fair market value of such property.

(3) Where two or more companies are involved in the transaction, each shall pay a proportionate share of such fee, determined by the persons involved.

(4) Notwithstanding the above, the fee required by this paragraph (c) shall not be payable for a proxy statement filed by a company registered under the Investment Company Act of 1940.

(d) *Schedule 14D–1 filings.* At the time of filing a Schedule 14D–1, a fee of one-fiftieth of one percent of the aggregate of the cash or of the value of the securities or other property offered by the bidder. Where the bidder is offering securities or other non-cash consideration for some or all of the securities to be acquired, whether or not in combination with a cash payment for the same securities, the value of the consideration to be offered for such securities shall be based upon the market value of the securities to be received by the bidder as established in accordance with paragraph (a)(4) of this section.

6. By redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) to § 240.13e–1 to read as follows:

§ 240.13e–1 Purchase of securities by issuer thereof.

* * * * *

(b) The initial statement shall be accompanied by a fee payable to the Commission as required by § 240.0–11.

* * * * *

7. By adding the "Calculation of Filing Fee" schedule to § 240.13e–100 before the heading "Instruction" to read as follows:

§ 240.13e-100 Schedule 13E-3 [§ 240.13e-3], Rule 13e-3 transaction statement pursuant to section 13(e) of the Securities Exchange Act of 1934 and rule 13e-3 [§ 240.13e-3] thereunder.

* * * * *

CALCULATION OF FILING FEE

Transaction valuation*	Amount of filing fee

* Set forth the amount on which the filing fee is calculated and state how it was determined.

[ ] Check box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: _____
Form or Registration No.: _____
Filing Party: _____
Date Filed: _____

* * * * *

8. By adding the "Calculation of Filing Fee" schedule to § 240.13e-101 before the italic heading "Instructions" to read as follows:

§ 240.13e-101 Schedule 13E-4. Tender offer statement pursuant to section 13(e)(1) of the Securities Exchange Act of 1934 and § 240.13e-4 thereunder.

* * * * *

CALCULATION OF FILING FEE

Transaction valuation*	Amount of filing fee

*Set forth the amount on which the filing fee is calculated and state how it was determined.

[ ] Check box if any part of the fee is offset as provided by Rule 0.11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: _____
Form or Registration No.: _____
Filing Party: _____
Date Filed: _____

* * * * *

9. By revising paragraph (i) of § 240.14a-6 to read as follows:

§ 240.14a-6 Material required to be filed.

* * * * *

(i) *Fees.* At the time of filing the preliminary proxy solicitation material, the persons upon whose behalf the solicitation is made, other than companies registered under the Investment Company Act of 1940, or where an application or declaration under the Public Utility Holding Company Act of 1935 is involved, shall pay the Commission the following applicable fee: (1) For preliminary proxy material which solicits proxies for election of directors or other business for which a stockholder vote is necessary, but apparently no controversy is involved, a fee of $125; (2) for proxy material where a contest as set forth in Rule 14a-11 is involved, a fee of $500 from each party to the controversy; and (3) for proxy material involving acquisitions, mergers, spin-offs, consolidations or proposed sales or other dispositions of substantially all the assets of the company, a fee established in accordance with Rule 0-11, (§ 240.0-11 of this chapter), shall be paid. No refund shall be given.

10. By revising the section heading and adding new paragraph (f) to § 240.14c-5 to read as follows:

§ 240.14c-5 Filing requirements.

* * * * *

(f) *Fees.* At the time of filing the preliminary information statement the registrant shall pay to the Commission a fee of $125, no part of which shall be refunded, except, however, when filing a preliminary information statement regarding an acquisition, merger, spin-off, consolidation or proposed sale or other disposition of substantially all the assets of the company, the registrant shall pay the Commission a fee established in accordance with Rule 0-11, (§ 240.0-11 of this chapter).

11. By adding the "Calculation of Filing Fee" schedule before the first "Note" and revising Instruction 2 to the Special Instruction for complying with Schedule 14D-1 of § 240.14d-100 to read as follows:

§ 240.14d-100 Schedule 14D-1. Tender offer statement pursuant to section 14(d)(1) of the Securities Exchange Act of 1934.

* * * * *

CALCULATION OF FILING FEE

Transaction valuation*	Amount of filing fee

*Set forth the amount on which the filing fee is calculated and state how it was determined.

[ ] Check box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: _____
Form or Registration No.: _____
Filing Party: _____
Date Filed: _____

* * * * *

Special Instructions for Complying With Schedule 14D-1

* * * * *

Instructions. * * *

2. This statement shall be accompanied by a fee payable to the Commission as required by § 240.0-11.

* * * * *

By the Commission.

John Wheeler,

Secretary.

January 9, 1986.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the amendments to rules pertaining to the imposition and collection of Securities Exchange Act filing fees for certain acquisition and business combination transactions will not, if promulgated, have a significant economic impact on a substantial number of small entities. The filing fees are to be assessed on a percentage basis, at a rate established by legislation that is already applicable to the affected transactions; in addition, these fees are to be paid only by persons already required to file certain documents in connection with acquisitions, mergers, consolidations and other transactions, and hence impose no new reporting or recordkeeping requirements.

John S.R. Shad.

January 9, 1986.

[FR Doc. 86-1122 Filed 1-16-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 84C-0298]

Poly(Hydroxyethyl Methacrylate)-Dye Copolymers; Listing of Color Additives for Coloring Contact Lenses; Confirmation of Effective Date

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of December 9, 1985, for the regulation that provides for the safe use in coloring contact lenses of the

colored polymer reaction products formed by chemically bonding certain dyes, used singly or in combination, with poly(hydroxyethyl methacrylate). This action responds to a petition filed by Coopervision, Inc.

DATE: Effective date confirmed: December 9, 1985.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a final rule published in the **Federal Register** of November 6, 1985 (50 FR 45991), FDA amended the color additive regulations to provide for the safe use of colored polymeric reaction products formed by chemically bonding C.I. Reactive Red 11, C.I. Reactive Yellow 86, and C.I. Reactive Blue 163 with poly(hydroxyethyl methacrylate) to produce tinted contact lenses.

In the final rule, FDA gave interested persons until December 6, 1985, to file objections. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule published in the **Federal Register** of November 6, 1985, for colored polymeric reaction products between poly(hydroxyethyl methacrylate) and C.I. Reactive Red 11, C.I. Reactive Yellow 86, and C.I. Reactive Blue 163 should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the November 6, 1985, final rule. Accordingly, the amendments promulgated thereby became effective December 9, 1985.

Dated: January 13, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-1051 Filed 1-16-86; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 442

[Docket No. 85N-0301]

Antibiotic Drugs; Ceftazidime Pentahydrate for Injection

Correction

In the issue of Tuesday, December 31, 1985, on page 53308 in the second column, a correction to FR Doc. 85-28039 appeared. The fourth correction should have read: "4. 'Loss of drying' should read 'loss on drying' in the following places: . . ."

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8071]

Income Tax; Reserve for Certain Guaranteed Debt Obligations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the treatment of reserves for certain guaranteed debt obligations. Changes in the applicable tax law were made by the Act of November 2, 1966. The regulations provide the public with the guidance needed to comply with that Act and affect taxpayers who have a reserve for guaranteed debt obligations or intend to set up such a reserve.

DATES: The amendments are generally effective for taxable years ending after October 21, 1965.

FOR FURTHER INFORMATION CONTACT: Bruce H. Jurist of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:LR:T (202-566-3238, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On July 11, 1980, proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 166(f) of the Internal Revenue Code of 1954 were published in the **Federal Register** (45 FR 46815). The amendments were proposed to conform the regulations to changes made by the Act of November 2, 1966 (Pub. L. 89-722, 80 Stat. 1151) (the Act), which added section 166(g) to the Internal Revenue Code of 1954. Section 166(g) was redesignated as section 166(f) by section 605 of the Tax Reform Act of 1976 (90 Stat. 1575). No public hearing was requested and accordingly none was held. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Discussion

Section 166(f)(1) provides that a taxpayer who is a dealer in property may take an income tax deduction for reasonable additions to a reserve for bad debts which may arise from the dealer's contingent liability as a guarantor, endorser, or indemnitor of debt obligations arising out of the sale by the dealer of real property or tangible personal property (including related services) in the ordinary course of the dealer's trade or business.

Section 166(f)(2) makes section 166(f)(1) the exclusive section under which a deduction is allowable for an addition to a reserve for guaranteed debt obligations.

Section 166(f)(3) provides that a taxpayer shall establish an opening balance for a reserve for section 166(f)(1)(A) guaranteed obligations as if the taxpayer had maintained the reserve in prior years.

To prevent a doubling up of deductions in the period of transition from the specific charge-off method of treating these obligations to the new method, sections 81 and 166(f)(1)(B) mandate an addition to or a deduction from income based upon a required annual adjustment to the suspense account.

In addition, section 1(c) of the Act allows taxpayers a grace period in which to adopt such a reserve method without obtaining the permission of the Service. This Treasury decision extends that grace period until April 17, 1986.

Nothing in the new law or these regulations would affect the longstanding principle that additions to a reserve for bad debts previously deducted in computing taxable income must be included in taxable income when and to the extent that the reserve is no longer necessary.

Public Comments

The sole comment received requested that § 1.166-10(d) be made prospective and apply only to returns filed after July 10, 1980, because a literal reading of § 1.166-10(d) as set forth in the notice of proposed rulemaking seemed to require the filing of amended returns for any open year in which the taxpayer claimed deductions for additions to reserves for guaranteed debt obligations. Therefore, the Treasury

decision makes it clear that the filing requirement set forth in § 1.166–10(d) applies only to returns filed after April 17, 1986.

Special Analyses

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. Although a notice of proposed rulemaking soliciting public comments was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal author of these proposed regulations is Bruce H. Jurist 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 on matters of both substance and style.

List of Subjects

26 CFR 1.61–1—1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

26 CFR Part 602

OMB control numbers under the Paperwork Reduction Act.

Proposed Amendments to the Regulations

Accordingly 26 CFR Part 1 and Part 602 are amended as follows:

Income Tax Regulations

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.166–10 also issued under 26 U.S.C. 166(f).

Par. 2. Section 1.166–1 is amended by adding a new paragraph (b)(4) to read as follows:

§ 1.166–1 Bad debts.

* * * * *

(b) *Manner of selection method.* * * *

(4) Nothwithstanding paragraphs (b)(1), (2), and (3) of this section, a dealer in property currently employing the accrual method of accounting and currently maintaining a reserve for bad debts under section 166(c) (which may have included guaranteed debt obligations described in section 166(f)(1)(A)) may establish a reserve for section 166(f)(1)(A) guaranteed debt obligations for a taxable year ending after October 21, 1965 under section 166(f) and § 1.166–10 by filing on or before April 17, 1986 an amended return indicating that such a reserve has been established. The establishment of such a reserve will not be considered a change in method of accounting for purposes of section 446(e). However, an election by a taxpayer to establish a reserve for bad debts under section 166(c) shall be treated as a change in method of accounting. See also § 1.166–4, relating to reserve for bad debts, and § 1.166–10, relating to reserve for guaranteed debt obligations.

* * * * *

Par. 3. Paragraph (a) of § 1.166—4 is amended by adding at the end thereof the following:

§ 1.166–4 Reserve for bad debts.

(a) *Allowance of deduction.* * * *

This paragraph applies both to bad debts owed to the taxpayer and to bad debts arising out of section 166(f)(1)(A) guaranteed debt obligations. If a reserve is maintained for bad debts arising out of section 166(f)(1)(A) guaranteed debt obligations, then a separate reserve must also be maintained for all other debt obligations of the taxpayer in the same trade or business, if any. A taxpayer may not maintain a reserve for bad debts arising out of section 166(f)(1)(A) guaranteed debt obligations if with respect to direct debt obligations in the same trade or business the taxpayer takes deductions when the debts become worthless in whole or in part rather than maintaining a reserve for such obligations. See § 1.166–10 for rules concerning section 166(f)(1)(A) guaranteed debt obligations.

* * * * *

Par. 4. The following new sections § 1.166–10 is added immediately after § 1.166–9:

§ 1.166–10 Reserve for guaranteed debt obligations.

(a) *Definitions.* The following provisions apply for purposes of this section and section 166(f):

(1) *Dealer in property.* A dealer in property is a person who regularly sells property in the ordinary course of the person's trade or business.

(2) *Guaranteed debt obligation.* A guaranteed debt obligation is a legal duty of one person as a guarantor, endorser or indemnitor of a second person to pay a third person. It does not include duties based solely on moral or good public relations considerations that are not legally binding. A guaranteed debt obligation typically arises where a seller receives in payment for property or services the debt obligation of a purchaser and sells that obligation to a third party with recourse. However, a guaranteed debt obligation also may arise out of a sale in respect of which there is no direct debtor-creditor relationship between the debtor purchaser and the seller. For example, it arises where a purchaser borrows money from a third party to make payment to the seller and the seller guarantees the payment of the purchaser's debt. Generally, debt obligations which are sold without recourse do not result in any obligation of the seller as a guarantor, endorser, or indemnitor. However, there are certain without-recourse transactions which may give rise to a seller's liability as a guarantor or indemnitor. For example, such a liability may arise where a holder of a debt obligation holds money or other property of a seller which the holder may apply, without seeking permission of the seller, against any uncollectible debt obligations transferred to the holder by the seller without recourse, or where the seller is under a legal obligation to reacquire the real or tangible personal property from the holder of the debt obligation who repossessed property in satisfaction of the debt obligations.

(3) *Real or tangible personal property.* Real or tangible personal property generally does not include other forms of property, such as securities. However, if the sale of other property is related to the sale of actual real or tangible personal property, the other property will be considered to be real or tangible personal property. In order for the sale of other property to be related, it must be—

(i) Incidental to the sale of the actual real or tangible personal property; and

(ii) Made under an agreement, entered into at the same time as the sale of actual real or tangible personal

property, between the dealer in that property and the customer with respect to that property.

The other property may be charged for as a part of, or in addition to, the sales price of the actual real or tangible personal property. If the value of the other property is not greater than 20 percent of the total sales price, including the value of all related services other than financing services, the sale of the other property is related to the sale of actual real or tangible personal property.

(4) *Related services.* In the case of a sale of both property and services a determination must be made as to whether the services are related to the property. Related services include only those services which are—

(i) Incidental to the sale of the real or tangible personal property; and

(ii) To be performed under an agreement, entered into at the same time as the sale of the property, between the dealer in property and the customer with respect to the property.

Delivery, financing installation. maintenance, repair, or instructional services generally qualify as related services. The services may be charged for as a part of, or in addition to, the sales price of the property. Where the value of all services other than financing services is not greater than 20 percent of the total of the sales price of the property, including the value of all the services other than financing services, all of the services are considered to be incidental to the sale of the property. Where the value of the services is greater than 20 percent, the determination as to whether a service is a related service in a particular case is to be made on the basis of all relevant facts and circumstances.

(5) *Examples.* The following examples apply to paragraph (a)(4) of this section:

Example (1). A. a dealer in television sets sells a television set to B, his customer. If at the time of the sale A, for a separate charge which is added to the sales price of the set and which is not greater than 20 percent of the total sales price, provides a 3-year service contract on only that television set, the service contract is a related service agreement. However, if A does not sell the service contract to B contemporaneously with the sale of the television set, as would be the case if the service agreement were entered into after the sale of the set were completed, or if the service contract includes services for a television set in addition to the one then sold by A to B, the service contract is not an agreement for a related service.

Example (2). C, an automobile dealer, at the time of the sale by C of an automobile to D, agrees to made available to D driving instructions furnished by the M driving school, the cost of which is included in the sale price of the automobile and is not greater than 20 percent of the total sales price. C also agrees to pay M for the driving instructions furnished to D. Since C's agreement with D to make available driving instructions is incidental to the sale of the automobile, is made contemporaneously with the sale, and is charged for as part of the sales price of the automobile, it is an agreement for a related service. In contrast, however, because M's agreement with C is not an agreement between the dealer in property and the customer, M's agreement with C to provide driving instructions to C's customers is not an agreement for a related service.

(b) *Incorporation of section 166(c) rules.* A reserve for section 166(f)(1)(A) guaranteed debt obligations must be established and maintained under the rules applicable to the reserve for bad debts under section 166(c) (with the exception of the statement requirement under § 1.166–4 (c)). For example, the rules in § 1.166–4(b), relating to what constitutes a reasonable addition to a reserve for bad debts and to correction of errors in prior estimates, apply to a reserve for section 166(f)(1)(A) guaranteed debt obligations as well.

(c) *Special requirements.* Any reserve for section 166(f)(1)(A) guaranteed debt obligations must be established and maintained separately from any reserve for other debt obligations. In addition, a taxpayer who charges off direct debts when they become worthless in whole or in part rather than maintaining a reserve for such obligations may not maintain a reserve for section 166(f)(1)(A) guaranteed debt obligations in the same trade or business.

(d) *Requirement of statement.* A taxpayer who uses the reserve method of treating section 166(f)(1)(A) guaranteed debt obligations must attach to his return for each taxable year, returns for which are filed after April 17, 1986, and for each trade or business for which the reserve is maintained a statement showing—

(1) The total amount of these obligations at the beginning of the taxable year;

(2) The total amount of these obligations incurred during the taxable year;

(3) The amount of the initial balance of the suspense account, if any, established with respect to these obligations;

(4) The balance of the suspense account, if any, at the beginning of the taxable year,

(5) The adjustment, if any, to that account;

(6) The adjusted balance, if any, at the close of the taxable year;

(7) The reconciliation of the beginning and closing balances of the reserve for these obligations and the computation of the addition to the reserve; and

(8) The taxable year for which the reserve for these obligations was established.

Example. For 1977, A, a dealer in automobiles who uses the calendar year as the taxable year, adopts in accordance with this section the reserve method of treating section 166(f)(1)(A) guaranteed debt obligations. A's first year in business as an automobile dealer is 1973. For 1972, 1973, 1974, 1975, and 1976, A's records disclose the following information with respect to these obligations:

Year	Obligations outstanding at close of year	Gross losses from these obligations	Recoveries from these obligations	Net losses from these obligations
1972	$0	$0	$0	$0
1973	780,000	9,700	1,000	8,700
1974	795,000	8,900	1,050	7,850
1975	850,000	8,850	850	8,000
1976	820,000	8,300	1,400	7,900
Total	3,245,000	36,750	4,300	32,450

The opening balance for 1977 of A's reserve for these obligations is $8,200, determined as follows:

$$\$8{,}200 = \$820{,}000 \times \frac{\$32{,}450}{\$3{,}245{,}000}$$

(3) *More appropriate balance.* A taxpayer may select a balance other than the one produced under paragraph (e)(1) of this section if it is more appropriate, based upon the taxpayer's actual experience, and in the event the taxpayer's return is examined, if the balance is approved by the district director.

(e) *Computation of opening balance*— (1) *In general.* The opening balance of a reserve for section 166(f)(1)(A) guaranteed debt obligations established for the first taxable year for which a taxpayer maintains such a reserve shall be determined as if the taxpayer had maintained such a reserve for the taxable years preceding that taxable year. The amount of the opening balance may be determined under the following formula:

$$OB = CG \times \frac{SNL}{SG}$$

where—

OB = the opening balance at the beginning of the first taxable year

CG = the amount of these obligations at the close of the last preceding taxable year
SG = the sum of the amounts of these obligations at the close of the five preceding taxable years
SNL = the sum of the amounts of net losses arising from these obligations for the five preceding taxable years

(2) *Example.* The following example applies to paragraph (e)(1) of this section.

(4) *No losses in the five preceding taxable years.* If a taxpayer is in the taxpayer's first taxable year of a particular trade or business, or if the taxpayer has no losses arising from section 166(f)(1)(A) guaranteed debt obligations in a particular trade or business for any other reason in the five preceding taxable years, then the taxpayer's opening balance is zero for that particular trade or business.

(5) *Where reserve method was used before October 22, 1965.* If for a taxable year ending before October 22, 1965, the taxpayer maintained a reserve for bad debts under section 166(c) which included guaranteed debt obligations described in section 166(f)(1)(A), and if the taxpayer is allowed a deduction referred to in paragraph (g)(2) of this section on account of those obligations, the amount of the opening balance of the reserve for section 166(f)(1)(A) guaranteed debt obligations for the taxpayer's first taxable year ending after October 21, 1965, shall be an amount equal to that portion of the section 166(c) reserve at the close of the last taxable year which is attributable to those debt obligations. The amount of the balance of the section 166(c) reserve for the taxable year shall be reduced by the amount of the opening balance of the reserve for those guaranteed debt obligations.

(f) *Suspense account*—(1) *Zero opening balance cases.* No suspense account shall be maintained if the opening balance of the reserve for section 166(f)(1)(A) guaranteed debt obligations under section 166(f)(3) is zero

(2) *Example.* The following example applies to section 166(f)(4)(B), relating to adjustments to the suspense account:

Example. In 1977, A, an individual who operates an appliance store and uses the calendar year as the taxable year, adopts the reserve method of treating section 166(f)(1)(A) guaranteed debt obligations. The initial balance of A's suspense account is $8,200. At the close of 1977, 1978, 1979, and 1980, the balance of A's reserve for these obligations is $8,400, $8,250, $8,150, and $8,175, respectively, after making the addition to the reserve for each year. The adjustments under section 166(f)(4)(B) to the suspense account at the close of each of the years involved are as follows:

(1) Taxable year	1977	1978	1979	1980
(2) Closing reserve account balance	$8,400	$8,250	$8,150	$8,175
(3) Opening suspense account balance	8,200	8,200	8,200	8,150
(4) Line (2) less line (3)	200	50	(50	25
(5) Adjustment to suspense account balance	0	0	(50	25
(6) Closing suspense account balance (line 3 plus line 5)	8,200	8,200	8,150	8,175

(g) *Effective date*—(1) *In general.* This section is generally effective for taxable years ending after October 21, 1965.

(2) *Transitional rule.* Section 2(b) of the Act of November 2, 1966 (Pub. L. 89-722, 80 Stat. 1151) allows additions to section 166(c) bad debt reserves in earlier taxable years on account of section 166(f)(1)(A) guaranteed debt obligations to be deducted for those earlier taxable years. Paragraphs (c), (d), (e), and (f) of this section do not apply in determining whether a deduction is allowed under section 2(b) of the Act. See Rev. Rul. 68-313 (1968-1C.B. 75) for rules relating to that deduction.

Par. 5. Paragraph (a)(1)(ii) of § 1.381(c)(4)-1 is amended by inserting a new sentence between the second and third sentences. The new sentence reads as follows:

§ 1.381(c)(4)-1 Method of accounting.

(a) *Carryover requirement*—(1) *General rule.** * *

(ii) * * * The acquiring corporation shall also take into its accounts the dollar balance of that account of the distributor or transferor corporation which represents a suspense account established by the distributor or transferor corporation under section 166(f)(4) in taxable years ending on or before the date of distribution or transfer.* * *

OMB Control Numbers Under the Paperwork Reduction Act (26 CFR Part 602)

PART 602—[AMENDED]

Par. 6. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 7. Section 602.101(c) is amended by inserting in the appropriate places in the table "§ 1.661-1 (b)(4) . . . 1545-0123" and "§ 1.166-10 . . . 1545-0123."

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: October 16, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 86-1132 Filed 1-16-86; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

[Docket Nos. T-014-T-017]

South Carolina, North Carolina, Indiana and Virginia State Plans: Approval of Revised Compliance Staffing Benchmarks

AGENCY: Department of Labor, Occupational Safety and Health Administration (OSHA).

ACTION: Approval of Revised Compliance Staffing Benchmarks.

SUMMARY: This document amends Subparts C, I, Z and EE of 29 CFR Part 1952 to reflect the Assistant Secretary's decision to approve revised compliance staffing requirements for the South Carolina, North Carolina, Indiana and Virginia State plans, respectively.

EFFECTIVE DATE: January 17, 1986.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs,

Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3637, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523–8148.

SUPPLEMENTARY INFORMATION:

Background

Section 18 of the Occupational Safety and Health Act of 1970 (the "Act", 29 U.S.C. 651 et seq.) provides that States which desire to assume responsibility for the development and enforcement of occupational safety and health standards may do so by submitting, and obtaining Federal approval of, a State plan. Section 18(c) of the Act sets forth the statutory criteria for plan approval and among these criteria is the requirement that the State's plan provide satisfactory assurances that the State agency or agencies responsible for implementing the plan have ". . . the qualified personnel necessary for the enforcement of . . . standards," 29 U.S.C. 667(c)(4).

A 1978 decision of the U.S. Court of Appeals for the District of Columbia and the resultant implementing order issued by the U.S. District Court for the District of Columbia (*AFL–CIO* v. *Marshall*, C.A. No. 74–406) interpreted this provision of the Act to require States operating approved State plans to have sufficient compliance personnel necessary to assure a "fully effective" enforcement effort. The Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) was directed to establish "fully effective" compliance levels, or benchmarks, for each State Plan.

In 1980, OSHA issued a *Report to the Court* containing these benchmarks and establishing the compliance staffing requirements for Indiana, North Carolina, South Carolina and Virginia, among others. Attainment of the 1980 benchmark levels or subsequent revision thereto is a prerequisite for State plan final approval consideration under Section 18(e) of the Act.

Both the 1978 Court Order and the 1980 *Report to the Court* explicitly contemplate subsequent revision to the benchmarks in light of more current data, including State-specific information, and other relevant considerations. In August 1983 OSHA together with State plan representatives initiated a comprehensive review and revision of the 1980 benchmarks. The States of Indiana, North Carolina, South Carolina and Virginia participated in this benchmark revision process and have proposed to the Assistant Secretary revised compliance staffing levels for a "fully effective" program responsive to the occupational safety and health needs of each State. (A complete discussion of both the 1980 benchmarks and the present revision process is set forth in the June 13, 1985 **Federal Register** (50 FR 24884) on the Kentucky occupational safety and health plan.)

Benchmarks for Indiana, North Carolina, South Carolina and Virginia

In 1980, OSHA submitted a Report to the Court containing the benchmarks and requiring Indiana to allocate 81 safety compliance officers and 140 industrial hygienists to conduct inspections under the plan; North Carolina to allocate 83 safety compliance officers and 119 industrial hygienists; South Carolina to allocate 39 safety compliance and 60 industrial hygienists; and Virginia to allocate 51 safety compliance officers and 74 industrial hygienists.

Pursuant to the initiative begun in August 1983 by the State plan designees as a group with OSHA, and in accord with the formula and general principles established by that group for individual State revision of the benchmarks, each of the four States reassessed the staffing necessary for a "fully effective" occupational safety and health program in the State. In September 1984 the four States, in conjunction with OSHA, completed a review of the components and requirements of the 1980 compliance staffing benchmarks established for each of the States. This reassessment resulted in proposals to OSHA of revised compliance staffing benchmarks of 47 safety and 23 health compliance officers for Indiana; 50 safety and 27 health compliance officers for North Carolina; 17 safety and 12 health compliance officers for South Carolina; and 38 safety and 21 health compliance officers for Virginia.

History of the Present Proceedings

On January 16, 1985, the Occupational Safety and Health Administration published notice in the **Federal Register** of its proposal to approve revised compliance staffing benchmarks for Indiana (50 FR 2446), North Carolina (50 FR 2473), South Carolina (50 FR 2475), and Virginia (50 FR 2489). A detailed description of the methodology and State-specific information used to develop the revised compliance staffing levels for each of these States was included in the notices. In addition, OSHA submitted, as a part of the record, detailed submissions containing both narrative explanation and supporting data for the proposed revised benchmarks of Indiana (Docket No. T–014), North Carolina (Docket No. T–015), South Carolina (Docket No. T–016), and Virginia (Docket No. T–017). A summary of the benchmark revision process was also set forth in a separate **Federal Register** notice on January 16, 1985, concerning the Wyoming State plan (50 FR 2491). An informational record was established in a separate docket (Docket No. T–018) and contained background information relevant to the benchmark issue in general and the current benchmark revision process.

To assist and encourage public participation in the benchmark revision process, copies of each State's complete record were maintained in the OSHA Docket Office in Washington, D.C. Copies of Indiana's record were also maintained in the OSHA Region V office in Chicago, Illinois, and in the office of the Indiana Department of Labor in Indianapolis, Indiana; copies of North Carolina's and South Carolina's records were maintained in the OSHA Region IV office in Atlanta, Georgia, and in the offices of the North Carolina Department of Labor in Raleigh, North Carolina, and South Carolina Department of Labor in Columbia, South Carolina, respectively; and copies of Virginia's record were maintained in the OSHA Region III office in Philadelphia, Pennsylvania, and in the office of the Virginia Department of Labor and Industry in Richmond, Virginia. Summaries of the January 16 proposals, with an invitation for public comments, were published in each of the four States on or before January 26, 1985.

The January 16 proposals invited interested persons to submit, by February 20, 1985 (50 FR 6956) (subsequently extended to March 22 in response to a request from James N. Ellenberger, Department of Occupational Safety, Health and Social Security, AFL–CIO), written comments and views regarding whether the proposed revised compliance staffing levels for each of the four States should be approved. Four comments were received in response to the Indiana notice, two of which were from organized labor and two from private employers, seven comments were received in response to the North Carolina notice, five from organized labor and two from private employers; four comments were received regarding the South Carolina notice, all four of which were from organized labor; and five comments were received in response to the Virginia notice, two from organized labor and three from private employer associations.

Summary and Evaluation of Comments Received

General Comments

During this proposed rulemaking OSHA has encouraged interested members of the public to provide information regarding the proposed revised benchmarks for Indiana, North Carolina, South Carolina and Virginia. In response to the January 16, 1985 **Federal Register** notices, the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO), Margaret Seminario, Associate Director, Department of Occupational Safety, Health and Social Security (Exs. 3–4, 3–7, 3–3, and 2–5), and the United Steelworkers of America (USWA), Mary Win O'Brien, Assistant General Counsel (Exs. 3–5, 3–8, 3–4 and 2–6) submitted comments on each of these 4 States' proposed revised benchmarks as well as those proposed for 8 other States. Their comments for the most part reflected their concerns regarding the benchmark revision process generally. Thus, the comments question whether the benchmarks formula as applied in each State should have assumed a need for routine, general schedule inspections at all covered workplaces; whether the proposed staffing levels will be sufficient to respond to new hazards or future standards; and question the appropriateness of the inclusion or exclusion of various industry groups in the general inspection universes unless corresponding industries are treated identically in other States. As was specifically discussed in the **Federal Register** notice of June 13, 1985, dealing with approval of revised benchmarks for the Kentucky State plan (50 FR 24884), the concept of universal general schedule coverage has been replaced by more sophisticated inspection targeting systems which deploy enforcement resources where they are most needed, and universal coverage is as inappropriate a concept for benchmarks formulation as it is for inspection scheduling. The possible effect of new hazards for future standards cannot be ascertained with any precision, and in any case both OSHA and the States have generally been able to effectively enforce new standards with no additions to staff for that purpose. As to the need for "uniformity," OSHA believes the greatest strength of the current formula is that it takes into account actual State program needs as shown by State data and experience. OSHA has found that the formula used to derive benchmarks for Indiana, North Carolina, South Carolina, Virginia and other States involved in the 1984 revision process employs the best information and techniques currently available, properly takes into account each of the factors set forth in the District Court Order in *AFL–CIO* v. *Marshall*, and is an appropriate means of establishing fully effective benchmarks which provide proper program coverage in the context of each State's specific program needs. A more detailed discussion of the general concerns raised by the AFL–CIO and the Steelworkers can be found in the June 13, 1985, **Federal Register** notice on Kentucky.

Finally, both the AFL–CIO and the Steelworkers allege that the number of enforcement personnel now found appropriate for a fully effective program in Indiana, North Carolina, South Carolina, Virginia and other States is lower than the staffing levels allocated by the States in 1980 or projected in the benchmarks issued by OSHA during its first effort to implement the *AFL–CIO* v. *Marshall* Court Order in 1980. (It should be pointed out that the allocated health compliance staffing for Indiana, North Carolina, and South Carolina is higher now than it was in 1980.) However, the District Court Order on which the revision process has been based does not assume or require that revised benchmarks must provide a comparative increase over past levels. The adequacy of the revised benchmarks cannot be determined by whether they are greater or smaller than the 1980 benchmarks or earlier enforcement levels. Such direct numerical comparison of staffing levels is no more valid than was the direct comparison of State to Federal staffing levels under the "at least as effective" test rejected by the Court of Appeals in 1978. The objective assigned to OSHA by the Court of Appeals and District Court Order was, in sum, to measure the workload assumed by each State under its plan and to determine, using the best available information and techniques, but avoiding direct numerical comparisons, the staffing levels needed for fully effective coverage. This is precisely what has been done in the present revision process. The review of each State's illness and injury data, industrial mix, demographics, and enforcement history has been far more detailed than was the case when benchmarks were first issued in 1980. As discussed above, the concept of universal routine inspections has been replaced by far more sophisticated targeting, devoting resources to the relative minority of industries where the majority of enforcement-preventable injuries occur. These factors have resulted in the more realistic enforcement staffing requirements embodied in the revised benchmarks for Indiana, North Carolina, South Carolina and Virginia.

Indiana Benchmarks

In response to the January 16 **Federal Register** notice for Indiana, OSHA received comments from the Nuturn Corporation of Nashville, Tennessee, Rita M. Gresham, Vice President (Ex. 3–2) and the Nuturn Corporation of Nashville, Tennessee, James Murray, Vice President and General Manager (Ex. 3–3), as well as from the AFL–CIO (Ex. 3–4) and the United Steelworkers (Ex. 3–5). Robert L. McCreary, Commissioner of the Indian Department of Labor, responded to the public comments (Ex. 3–6).

The two comments received from the Nuturn Corporation, which did not specifically address the proposed benchmark revisions for Indiana, expressed general support for the Indiana State plan.

In addition to their general comments on the benchmark revision process, comments filed by the AFL–CIO and United Steelworkers also addressed specific issues relating to calculation of the benchmarks for Indiana. The unions commented that Indiana did not add any workplaces with ten or fewer employees in high hazard industries to the State's general schedule inspection universes for either safety or health. In its response the State pointed out that although it did not specifically add small establishments to its general schedule inspection universes, many of these small employers are subject to inspections resulting from employee complaints, special emphasis programs, and accident investigations. The State also devotes a significant portion of its consultation activities to small employers. It should also be noted that assumptions made in determining a State's theoretical workload for benchmark purposes are not binding on the State in terms of scheduling specific employers for enforcement visits. A State's general schedule inspection universe is not in itself a targeting system but rather a method for determining a reasonable estimate of workplaces with industrial exposures likely to produce hazards.

Both the AFL–CIO and United Steelworkers criticized the State for not adding a number of non-manufacturing industries to its initial universes for general schedule inspections for safety and health. Those criticisms pointed out that a number of non-manufacturing industries whose average lost workday case injury rates (LWCIR) exceeded the overall State rate for the private sector

were not added to the safety universe. In addition, the unions claimed that many industries with serious health hazards were not extended general schedule health coverage. The State responded that a statistical analysis had been conducted as part of a study by the Indiana Department of Labor Statistical Department to determine the State's inspection universes. In its benchmark submission the State pointed out that State program experience and inspection history indicated that the initial inspection universes for safety and health were, for the most part, accurate reflections of the workplace hazards evident in establishments within the State. The State's safety universe is based primarily upon manufacturing establishments (with more than ten employees) in Standard Industrial Classifications (SIC's) whose State-specific LWCIR exceeded the overall State private sector rate. To this initial safety universe the State added an additional 448 manufacturing establishments in SIC's whose National LWCIR exceeded the overall National rate (although the SIC groupings as a whole were below the State rate).

Indiana's initial health universe, as in other States, was based upon data from the National Occupational Health Survey (NOHS), which assessed the potency and toxicity of substances in use within the State, and that data was used to rank the top 150 manufacturing SIC's by potential health hazards that may be evident in the workplace. In health, Indiana has found that inclusion in the initial universe of many of the industries mentioned in the comments would be unnecessary. The majority of these industries are included in the safety universe (e.g. meat packing, bottled and canned soft drinks, secondary non-ferrous metals, hospitals, etc.) and will receive wall-to-wall inspection coverage by safety compliance officers cross-trained in the recognition of health hazards. Where complex hazards are identified, a health inspection would result. Moreover, in these industry groups, as in all workplaces covered by the Indiana State plan, the State will respond to employee complaints of unsafe or unhealthful conditions. OSHA concurs with the State's findings that inclusion of these industries in the initial universe is not essential for proper program coverage.

The AFL–CIO asserted that Indiana's allocation of enforcement resources to health inspections in the construction industry (10%) and the public sector (1.8%), which the State based on past experience, is inadequate. The union argued that these industries have not been adequately covered in the past but offered no data in support of its conclusion. The Indiana response noted that most of its safety compliance officers are cross-trained in the recognition of health hazards. Since the State already devotes 32% of its general schedule safety inspection resources to construction and other mobile industries and 10% of its total safety inspection time to the public sector, many of the health hazards in these particular areas are cited either by cross-trained safety inspectors or referred to industrial hygienists for further investigation. It should also be noted that although State experience showed only 1.8% of its health inspections occurring in the public sector, the State benchmark allocates one full-time health compliance officer to the public sector. OSHA finds that the percent of enforcement resources allocated to construction and public sector worksites is sufficient for fully effective program coverage in Indiana.

Both the AFL–CIO and the United Steelworkers objected to Indiana's exclusion from programmed safety inspection activity of 133 establishments which had participated in the State's "inspection-exemption through consultation" program, which the AFL–CIO mistakenly characterized as a "permanent exemption."

The benchmark calculation does not of itself create a permanent exemption for any establishment but merely reflects the State's projection of the likely amount of participation at any given time in the future given the fact that particular establishments enter and leave the exemption program. The consultative exemption is for one year. Establishments qualify for an exemption from routine inspections by participating in a comprehensive on-site safety consultation visit performed by the Indiana Department of Labor using non-benchmark personnel. The correction of all serious hazards found is mandatory, a viable safety program must be in place, and the participating establishments remain subject to State enforcement in response to complaints and accidents. Exclusion of worksites participating in such a program from Indiana's benchmark calculation is justified.

For these reasons and the reasons already stated in the *General Comments* section of this notice, OSHA believes application of the current benchmark formula for Indiana has resulted in staffing levels which result in fully effective enforcement in the State of Indiana.

North Carolina Benchmarks

In response to the January 16 **Federal Register** notice for North Carolina, OSHA received comments from the Durham County, Hospital Corporation, Bob Adams, Safety Coordinator (Ex. 3–2), the Durham County General Hospital, Fred Albert, Director of Safety/Security (Ex. 3–3), the Chauffeurs, Teamsters and Helpers Local Union No. 391, R.V. Durham, President (Ex. 3–4), the North Carolina State AFL–CIO, Christopher Scott, President (Ex. 3–5), the Amalgamated Clothing and Textile Workers Union (ACTWU), Eric Frumin, Director, Department of Occupational Safety and Health (Ex. 3–6), as well as from the AFL–CIO (Ex. 3–7) and the United Steelworkers (Ex. 3–8).

The comments received from Bob Adams of the Durham County Hospital Corporation and Fred Albert of the Durham County General Hospital expressed their view that the proposed revised staffing levels for North Carolina were sufficient to provide effective safety and health enforcement coverage within the State.

In addition to the general comments of the AFL–CIO and the United Steelworkers on the benchmark revision process, the comments filed by the AFL–CIO and ACTWU also addressed several specific issues relating to the calculation of the benchmarks for North Carolina. The AFL–CIO criticized the State for not providing general schedule safety inspection coverage to those manufacturing and non-manufacturing industries whose LWCIR is below the State average. In essence, the AFL–CIO's comment is criticizing the State for not providing universal general schedule coverage to all employers in North Carolina, which the North Carolina system does in fact provide. It should be noted that North Carolina added in 608 manufacturing and non-manufacturing establishments to its safety inspection by applying a 50-year inspection frequency to the entire category of establishments in SIC's whose LWCIR was below the overall State rate.

Both the AFL–CIO and ACTWU criticized the State for not including many textile and apparel plants (e.g., yarn mills, weaving mills, finishing plants, hosiery) in its general schedule inspection universes for safety and health. The North Carolina universes include a total of approximately 1025 textile and apparel establishments, many of which are in the industries specifically cited by the unions as having been excluded. In fact, North Carolina did not exclude any textile/

apparel industry that was either identified as having a LWCIR above the average State rate or identified by the NOHS as being one of the top 150 manufacturing SIC's as having potential health hazards. OSHA finds the State's allocation of resources to textile and apparel plants in North Carolina sufficient for "fully effective" coverage.

The AFL–CIO asserted that the State's general schedule health universe does not include many major industries with serious health hazards. The North Carolina State AFL–CIO and Teamsters' Local No. 391 also criticized North Carolina's health inspection universe, expressing the opinion that the NOHS data utilized to rank the top 150 State industries in terms of potential exposures to regulated materials was out-of-date and not reflective of actual State working conditions. The State in fact almost doubled its initial health universe with the inclusion of 643 small high hazard establishments, 152 high hazard non-manufacturing firms and 759 other establishments based upon either local history and knowledge or specific State policies. In addition, many of the industries included in the safety inspection universe receive wall-to-wall inspection coverage by safety compliance officers cross-trained in the recognition of health hazards. Where complex health hazards are identified, a health inspection would result. Moreover, in all workplaces covered by the North Carolina State plan, the State will respond to employee complaints of unsafe or unhealthful conditions. OSHA agrees with the State that inclusion of these industries in the initial health universe is not essential for proper program coverage. With regard to the criticisms expressed regarding the use of the NOHS data, the NOHS was and still is the most current available national data on industrial exposures to regulated substances and on the number of workers exposed to such health hazards in each State's industries. The NOHS data was used in developing the 1980 benchmark staffing levels for health with the concurrence of the AFL–CIO. (The June 13, 1985 Kentucky **Federal Register** notice addressed this issue in greater detail.)

The AFL–CIO criticized North Carolina's allocation of 5% of its general schedule health inspection resources to construction health inspections, which the State based on past experience, as inadequate. The union offered no data regarding its allegations of inadequate health coverage in construction. As the State already devotes 30% of its general schedule safety inspection resources to construction, many of the health hazards in the construction industry are cited either by cross-trained safety inspectors or referred to industrial hygienists for further investigation. OSHA finds that the percent of enforcement resources allocated to construction worksites is sufficient for fully effective coverage in North Carolina.

In a related criticism, both the North Carolina State AFL–CIO and Teamsters' Local No. 391 expressed the opinion that the benchmark revision process should not have taken North Carolina's inspection data and State experience into account as "there is room for improvement in the past enforcement effort in North Carolina." Again, the commenters offered no data in support of their allegations regarding the State's enforcement activities.

OSHA finds the use of State-specific inspection data appropriate and wholly consistent with the State-specific adjustment process discussed in OSHA's 1980 Report to the Court.

The AFL–CIO also objected to North Carolina's exclusion from programmed safety inspection activity of 324 establishments which had participated in the State's "inspection-exemption through consultation" program, which the AFL–CIO mistakenly characterized as a "permanent exemption." The benchmark calculation does not of itself create a permanent exemption for any establishment but merely reflects the State's projection of the likely amount of participation at any given time in the future given the fact that particular establishments enter and leave the exemption program. The maximum consultative exemption is for one year. Establishments qualify for an exemption from routine inspections by participating in a comprehensive on-site safety consultation visit performed by the North Carolina Department of Labor using non-benchmark personnel. The correction of all serious hazards found is mandatory, a viable safety program must be in place, and the participating establishments remain subject to State enforcement in response to complaints and accidents. Exclusion of worksites participating in such a program from North Carolina's benchmarks calculation is justified.

For these reasons and the reasons already stated in the *General Comments* section of this notice, OSHA believes application of the current benchmark formula for North Carolina has resulted in staffing levels which result in fully effective enforcement in the State of North Carolina.

South Carolina Benchmarks

In response to the January 16 **Federal Register** notice for South Carolina, OSHA received comments from the Amalgamated Clothing and Textile Workers Union (ACTWU), Eric Frumin, Director, Department of Occupational Safety and Health (Ex. 3–2), and the South Carolina AFL–CIO, Randy Kiser, President (Ex. 3–5), as well as from the AFL–CIO (Ex. 3–3) and the United Steelworkers (Ex. 3–4). Edgar L. McGowan, Commissioner of the South Carolina Department of Labor, responded to the public comments (Ex. 3–6).

The South Carolina AFL–CIO made the broad comment that the proposed compliance staffing levels for South Carolina were insufficient for the purpose of providing fully effective enforcement in South Carolina. The union provided no data in support of its comment and made no allegation of deficiencies in the State's current enforcement program.

In addition to the general comments of the AFL–CIO and the Steelworkers on the benchmark revision process, the comments filed by the AFL–CIO and ACTWU also addressed several specific issues relating to the calculation of the benchmarks for South Carolina. The AFL–CIO criticized the State for not extending general schedule safety inspection coverage to many non-manufacturing industries whose LWCIR exceeded the overall State rate as well as to all textile and apparel industries. ACTWU also criticized the State for not extending general schedule coverage to all textile and apparel plants. In fact, South Carolina's general schedule safety universe included all textile and apparel establishments (with more than 10 employees) whose SIC-specific LWCIR exceeded the overall State rate. In addition, South Carolina added 103 high hazard non-manufacturing establishments to its initial safety universe after analyzing LWCIR data and the Bureau of Labor Statistics' Hazard Index, which measures the severity of occupational injuries and the number of program-related injuries in each SIC.

The unions also criticized South Carolina for not including several industries with serious health hazards in its general schedule health universe. Again, ACTWU was particularly critical of the State for not including all textile and apparel establishments in its health universe. Many of the industries specifically cited by the AFL–CIO (e.g., wood products, particle board, automotive services) are included in the State's safety inspection universe and will receive wall-to-wall inspection coverage by safety compliance officers cross-trained in the recognition of health

hazards. Where complex health hazards are identified, a health inspection would result. With regard to the ACTWU criticisms, the State's general schedule health inspection universe included all textile and apparel SIC's identified as being in the top 150 manufacturing industries as having potential health hazards.

Moreover, in all workplaces covered by the South Carolina State plan the State will respond to employee complaints of unsafe or unhealthful conditions. In addition, the State response noted that assumptions made in determining a State's theoretical workload for benchmark purposes are not binding on the State in terms of scheduling specific employers for enforcement visits. A State's general schedule universe for either safety or health is not in itself a targeting system but rather a method for determining a reasonable estimate of workplaces with industrial exposures likely to produce hazards. OSHA concurs with the State's finding that inclusion of these industries in the programmed safety and health inspection universes is not essential for proper program coverage.

The AFL–CIO asserted that South Carolina's allocation of enforcement resources to health inspections in the construction industry and the public sector, which the State based on past experience, is inadequate. The union argued that these industries have not been adequately covered in the past but offered no data in support of its conclusion. Since the State already devotes 25.7% of its general schedule safety inspection resources to construction and other mobile industries, many of the health hazards in this area are cited either by cross-trained safety inspectors or referred to industrial hygienists for further investigation. The State also devotes a significant percentage of its health inspection time (6.5%) to public sector health enforcement. OSHA finds that the percent of State enforcement resources allocated to construction and public sector worksites is sufficient for fully effective program coverage in South Carolina.

The AFL–CIO also objected to South Carolina's exclusion from programmed inspection activity of 17 establishments which had participated in the State's "inspection-exemption through consultation" pilot program which the AFL–CIO mistakenly characterized as a "permanent exemption." The benchmark calculation does not of itself create a permanent exemption for any establishment but merely reflects the State's projection of the likely amount of participation at any given time in the future given the fact that particular establishments enter and leave the exemption program. The maximum consultative exemption is for one year. Establishments qualify for an exemption from routine inspections by participating in a comprehensive on-site consultation visit performed by the South Carolina Department of Labor using non-benchmark personnel. The correction of all serious hazards found is mandatory, a viable safety and health program must be in place, and the participating establishment remains subject to State enforcement in response to complaints and accidents. Exclusion of worksites participating in such a program from South Carolina's benchmark calculations is justified.

For these reasons and the reasons already stated in the *General Comments* section of this notice, OSHA believes application of the current benchmark formula for South Carolina has resulted in staffing levels which result in fully effective enforcement in the State of South Carolina.

Virginia Benchmarks

In response to the January 16 **Federal Register** notice for Virginia, OSHA received comments from the Virginia Electrical Contractors Association, Inc., Mark I. Singer, Executive Director (Ex. 2–2), the Associated General Contractors of Virginia, Inc., James F. Duckhardt, Executive Director (ex. 2–3), and the Associated General Contractors of Virginia, Inc., Lester L. Hudgins, Jr., President (Ex. 2–4), as well as from the AFL–CIO (Ex. 2–5) and the United Steelworkers (Ex. 2–6). Eva S. Tieg, Commissioner of the Virginia Department of Labor and Industry, responded to the public comments (Ex. 2–7).

The Virginia Electrical Contractors Association expressed its satisfaction with both the enforcement and consultative activities of the Virginia State plan and supported approval of the proposed revised benchmarks for Virginia. The two comments received from the Associated General Contractors of Virginia also expressed general support of the Virginia State plan and its proposed revised benchmarks.

In addition to the general comments of the AFL–CIO and the Steelworkers on the benchmark revision process, the Comments filed by the AFL–CIO also addressed specific issues relating to the calculation of the benchmarks for Virginia. The union criticized the State for not adding any workplaces with ten or fewer employees in high hazard industries to the State's general schedule inspection universes for safety and health. In its benchmarks submission, Virginia pointed out that small establishment are not as likely to have the hazards found in larger establishments and that these establishments are provided adequate safety and health coverage through complaint and accident investigations. Virginia further noted that, in terms of the health universe, the State had analyzed its inspection experience data and found no data that would justify adding any small establishments to the health inspection universe. In addition, the State devotes a significant portion of its consultation activities to small employers. It should be noted that assumptions made in determining a State's theoretical workload for benchmark purposes are not binding on the State in terms of scheduling specific employers for enforcement visits. A State's general schedule inspection universe is not in itself a targeting system but rather a method for determining a reasonable estimate of workplaces with industrial exposures likely to produce hazards.

The AFL–CIO objected to Virginia's decision to not add several non-manufacturing industries to the State's safety inspection universe even though the industries' LWCIRs exceeded the overall State rate. The union also expressed concern that many industries with serious health hazards were not included in the State's general schedule health inspection universe. In determining the non-manufacturing establishments to be added to the State's initial safety inspection universe, Virginia analyzed its establishment-specific "First Report of Injury" data and added in 24 non-manufacturing establishments in high injury SICs and 24 non-manufacturing establishments in low injury SICs, all of whose establishment-specific LWCIRs and violation experience rates exceeded the average State rates. With regard to the union's comments regarding the State's health universe, it should first be noted that most of the industries specifically cited by the AFL–CIO (e.g., bottled and canned soft drinks, wood products, boat building, automotive repair) are already included in the State's safety inspection universe and will receive wall-to-wall inspection coverage by safety compliance officers cross-trained in the recognition of health hazards. Where complex health hazards are identified, a health inspection would result. Moreover, as the State pointed out in its response, all industries not included in the general schedule inspection universes are still subject to inspections

resulting from employee complaints of unsafe or unhealthful conditions. The State submission also noted that it had added 449 establishments to the health inspection universe after evaluating the inspection history and health hazard potential of each industry. In addition, the State noted that its training/education program addresses a number of serious health hazards, including Carpal Tunnel Syndrome, nitrous oxide and ethylene oxide. OSHA concurs with the State that its programmed inspection universes provide proper program coverage in Virginia.

The AFL–CIO asserted that Virginia's allocation of enforcement resources in the construction industry and the public sector, which the State based on past experience, is inadequate. The union argued that these industries have not been adequately covered in the past but offered no data in support of its conclusion. Since the State already devotes 44.9% of its general schedule safety inspection resources to construction and other mobile industries, many of the health hazards in this industry are cited by cross-trained safety inspectors and referred to industrial hygienists for further investigation. The State's response noted that in addition to the 5.2% of health inspection time allocated in the public sector the State conducts a number of referral inspections, most of which involve demolition and asbestos removal projects. OSHA finds that the percent of enforcement resources allocated to construction and public sector worksites in Virginia is sufficient for fully effective program coverage.

The AFL–CIO also objected to Virginia's exclusion from programmed inspection activity of 70 establishments which had participated in the State's "inspection-exemption through consultation" program, which the AFL–CIO mistakenly characterized as a "permanent exemption." The benchmark calculation does not of itself create a permanent exemption for any establishment but merely reflects the State's projection of the likely amount of participation at any given time in the future given the fact that particular establishments enter and leave the exemption program. The maximum consultative exemption is for four months. Establishments qualify for an exemption from routine inspections by participating in a comprehensive on-site consultation visit performed by the Virginia Department of Labor and Industry using non-benchmark personnel. The correction of all serious hazards found is mandatory, a viable safety and health program must be in place, and the participating establishments remain subject to State enforcement in response to complaints and accidents. Exclusion of worksites participating in such a program from Virginia's benchmark calculation is justified.

For these reasons and the reasons already stateed in the *General Comments* section of this notice, OSHA believes application of the current benchmark formula for Virginia has resulted in staffing levels which result in fully effective enforcement in the State of Virginia.

Decision

OSHA has carefully reviewed the record developed during the above described proceedings, including all comments received thereon. The present **Federal Register** document sets forth the findings and conclusions resulting from this review.

In light of all the facts presented on the record, the Assistant Secretary has determined that the revised compliance staffing levels proposed for Indiana, North Carolina, South Carolina and Virginia meet the requirements of the 1978 Court Order in *AFL–CIO* v. *Marshall* in providing the number of safety and health compliance officers for a "fully effective" enforcement program. Therefore, the revised compliance staffing of 47 safety and 23 health for Indiana, 50 safety and 27 health for North Carolina, 17 safety and 12 health for South Carolina, and 38 safety and 21 health for Virginia are approved.

Effect of Decision

The approval of the revised staffing levels for Indiana, North Carolina, South Carolina and Virginia, set forth elsewhere in this notice, establishes the requirement for a sufficient number of adequately trained and qualified compliance personnel as set forth in section 18(c) of the Act and 29 CFR 1902.37(b)(1). These benchmarks are established pursuant to the 1978 Court Order in *AFL–CIO* v. *Marshall* and define the compliance staffing levels necessary for "fully effective" enforcement programs in these four States. The allocation of sufficient staffing to meet benchmarks is one of the conditions necessary for States to receive an 18(e) determination (final State plan approval) with its resultant relinquishment of concurrent Federal enforcement jurisdiction.

Explanation of Changes to 29 CFR Part 1952

29 CFR Part 1952 contains, for each State having an approved plan, a subpart generally describing the plan and setting forth the Federal approval status of the plan. This notice makes several changes to Subpart Z, I, C and EE of Part 1952 to reflect approval of the proposed revised compliance staffing benchmarks for Indiana, North Carolina, South Carolina and Virginia, respectively, as well as to reflect minor editorial modifications to the structure of the Subparts.

A new § 1952.323, *Compliance staffing benchmarks,* has been added to Subpart Z to reflect the approval of the revised benchmarks for Indiana.

A new § 1952.153, *Compliance staffing benchmarks,* has been added to Subpart I to reflect the approval of the revised benchmarks for North Carolina.

A new § 1952.103, *Compliance staffing benchmarks,* has been added to Subpart C to reflect the approval of the revised benchmarks for South Carolina.

A new § 1952.373, *Compliance staffing benchmarks,* has been added to Subpart EE to reflect the approval of the revised benchmark for Virginia.

While most of the existing subparts have been retained, paragraphs within each subpart have been rearranged and renumbered so that the major steps in the development of the plan (initial approval, developmental steps and certification of completion of developmental steps) are set forth in chronological order. Related editorial changes to the subparts include modification of the headings of §§ 1952.320, 1952.150, 1952.100 and 1952.370 to clearly identify the initial plan approvals of Indiana, North Carolina, South Carolina and Virginia, respectively. The addresses of locations where State plan documents may be inspected have been updated and are found at § 1952.326 for Indiana, § 1952.156 for North Carolina, § 1952.106 for South Carolina, and § 1952.376 for Virginia.

Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Act of 1980 (5 U.S.C. 601, *et seq.*) that this rulemaking will not have significant economic impact on a substantial number of small entities. Approval of the revised compliance staffing levels for Indiana, North Carolina, South Carolina and Virginia will not place small employers in those four States under any new or different requirements nor would any additional burden be placed upon the State governments beyond the responsibilities already assumed as part of the approved plan. A copy of this certification was previously forwarded

to the Chief Counsel for Advocacy, Small Business Administration.

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health.

(Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9–83 (48 FR 35736))

Signed at Washington, DC, this 9th day of January 1986.

Patrick R. Tyson,

Acting Assistant Secretary.

PART 1952—[AMENDED]

Accordingly, Subparts C, I, Z, and EE of 29 CFR Part 1952 are hereby amended as follows.

1. The authority citation for Part 1952 continues to read:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902, Secretary of Labor's Order No. 9–83 (48 FR 35736).

Subpart C—South Carolina

2. Section 1952.100 is amended by revising the heading to read:

§ 1952.100 Description of the plan as initially approved.

§ 1952.102 [Redesignated as § 1952.105]

3. Section 1952.102 is redesignated as § 1952.105.

4. Section 1952.104 is redesignated as § 1952.102 and new § 1952.104 is added and reserved.

5. Section 1952.103 is redesignated as § 1952.101 and a new § 1952.103 is added to read as follows:

§ 1952.103 Compliance staffing benchmarks.

Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall* compliance staffing levels (benchmarks) necessary for a "fully effective" enforcement program were required to be established for each State operating an approved State plan. In September 1984 South Carolina, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 17 safety and 12 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on January 17, 1986.

6. Section 1952.101 is revised and redesignated as § 1952.106 to read as follows:

§ 1952.106 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations: Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3476, Washington, DC 20210; Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 1375 Peachtree Street, NE, Suite 587, Atlanta, Georgia 30309; and Office of the Commissioner, South Carolina Department of Labor, 3600 Forest Drive, P.O. Box 11329, Columbia, South Carolina 29211.

Subpart I—North Carolina

1. Section 1952.150 is amended by revising the heading to read:

§ 1952.150 Description of the plan as initially approved.

§ 1952.152 [Redesignated as § 1952.155]

2. Section 1952.152 is redesignated as § 1952.155.

3. Section 1952.154 is redesignated as § 1952.152 and new § 1952.154 is added and reserved.

4. Section 1952.153 is redesignated as 1952.151 and a new § 1952.153 is added to read as follows:

§ 1952.153 Compliance staffing benchmarks.

Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall* compliance staffing levels (benchmarks) necessary for a "fully effective" enforcement program were required to be established for each State operating an approved State plan. In September 1984 North Carolina, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 50 safety and 27 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on January 17, 1986.

5. Section 1952.151 is revised and redesignated as § 1952.156 to read as follows:

§ 1952.156 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations: Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3476, Washington, DC 20210; Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 1375 Peachtree Street, NE, Suite 587, Atlanta, Georgia 30309; and Office of the Commissioner, North Carolina Department of Labor, 214 West Jones Street, Shore Building, Raleigh, North Carolina 27603.

Subpart Z—Indiana

1. Section 1952.320 is amended by revising the heading to read: § 1952.320 Description of the plan as initially approved.

§ 1952.322 [Redesignated as § 1952.325]

2. Section 1952.322 is redesignated as § 1952.325.

3. Section 1952.324 is redesignated a § 1952.322 and a new § 1952.324 is added and reserved.

4. Section 1952.323 is redesignated as 1952.321 and a new § 1952.323 is added.

§ 1952.323 Compliance staffing benchmarks.

Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall* compliance staffing levels (benchmarks) necessary for a "fully effective" enforcement program were required to be established for each State operating an approved State plan. In September 1984 Indiana, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 47 safety and 23 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on January 17, 1986.

6. Section 1952.321 is revised and redesignated as § 1952.326 to read as follows:

§ 1952.326 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations: Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3476, Washington, DC 20210; Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, 32nd Floor—Room 3244, 230 South Dearborn Street, Chicago, Illinois 60604; and Office of the Commissioner, Indiana Division of Labor, 1013 State Office Building, 100 North Senate Avenue, Indianapolis, Indiana 46204.

* * * * *

Subpart EE—Virginia

1. Section 1952.370 is amended by revising the heading to read:

§ 1952.370 Description of the plan as initially approved.

§ 1952.372 [Redesignated as § 1952.375]

2. Section 1952.372 is redesignated as § 1952.375.

3. Section 1952.374 is redesignated as § 1952.372 and a new § 1952.374 is added and reserved.

4. Section 1952.373 is redesignated as § 1952.371 and a new § 1952.373 is added to read as follows:

§ 1952.373 Compliance staffing benchmarks.

Under the terms of the 1978 Court Order in *AFL–CIO* v. *Marshall* compliance staffing levels (benchmarks) necessary for a "fully effective" enforcement program were required to be established for each State operating an approved State plan. In September 1984 Virginia, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 38 safety and 21 health compliance officers. After opportunity for public comment and service on the AFL–CIO, the Assistant Secretary approved these revised staffing requirements on January 17, 1986.

5. Section 1952.371 is revised and redesignated § 1952.376, to read as follows:

§ 1952.376 Where the plan may be inspected.

A copy of the principal documents comprising the plan may be inspected and copied during normal business hours at the following locations: Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3476, Washington, DC 20210; Regional Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, Gateway Building—Suite 2100, 3535 Market Street, Philadelphia, Pennsylvania 19104; and the Office of the Commissioner, Virginia Department of Labor and Industry, P.O. Box 12064, 205 North Fourth Street, Richmond, Virginia 23241–0064.

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

Extension of Deadline for Submission of Program Amendments to the Texas Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing its decision to extend the deadline for Texas to (1) promulgate rules governing the training, examination and certification of blasters and (2) develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation. On June 25, 1984, Texas requested a six-month extension of the deadline for submission of a blaster program. On September 21, 1984, OSM announced its decision to extend Texas' deadline to March 21, 1985 (49 FR 37062).

On March 7, 1985, Texas requested an additional four-month extension through July 15, 1986, to submit a blaster training and examination program. On June 3, 1985, OSM announced its decision to extend Texas' deadline to July 15, 1985 (50 FR 23299). On October 15, 1985, Texas requested another extension to May 15, 1986.

All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) are required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause. In accordance with the State's request, the Director is granting the State an additional extension of time, to May 15, 1986, to submit a proposed blaster certification program.

EFFECTIVE DATE: January 17, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining, 333 West Fourth Street, Room 3432, Tulsa, Oklahoma 74103; Telephone: (918) 581–7927.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Part 850 (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of Texas' program, the applicable date was 12 months after the publication data of OSM's rule, or March 4, 1984.

On March 1, 1984, Texas submitted an amendment to its approved program which was intended to implement the Federal requirements for a blaster training, examination and certification program. OSM published a notice of public comment period and opportunity for public hearing in the **Federal Register** on March 23, 1984 (49 FR 10943). In its subsequent review of the proposed amendment, OSM identified several deficiencies and pointed these out to the State. On June 25, 1984, Texas advised OSM that it would require a six-month extension of the deadline for resubmission of a blaster program to prepare any necessary revisions and additions to the program. On September 21, 1984, OSM announced its decision to extend the deadline for submission of the blaster program to March 21, 1985 (49 FR 37062).

On March 7, 1985, Texas requested an additional four-month extension to July 15, 1985, to submit a blaster training and certification program. Texas stated that, due to restrictions in its Administrative Procedure and Texas Register Act, only one rule action amending § 11.221 may be pending at a time. Because of another rulemaking ongoing in Texas, the State anticipated that a rulemaking to revise blaster certification regulations would not be submitted to the Railroad Commission until July 15, 1985. On June 3, 1985, OSM announced its decision to extend the deadline for submission of the blaster program to July 15, 1985 (50 FR 23299).

On October 15, 1985, Texas requested another extension to May 15, 1986, to submit a blaster training and certification program. Texas stated that only one proposed amendment to § 11.221 (which adopts by reference all substantive coal mining regulations) may be pending at any given time. Texas explained that the Railroad Commission of Texas (RCT) would be submitting proposed rules concerning four other program areas and would therefore be unable to submit blaster certification rule amendments until

these four amendments are approved and adopted. The State said that it was requesting an extension to May 15, 1986, to assure that adequate time was given so that another extension would not be necessary.

In the November 15, 1985 **Federal Register** (50 FR 47231), OSM sought comment on Texas' request for another extension to resubmit a proposed blaster training program. Public comment on this proposal was sought for 30 days ending December 16, 1985. No comments were received during the comment period.

Section 850.12(b) of the Federal regulations provides that the Director, OSM may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

Director's Determination

In accordance with the State's request, the Director has decided to extend the deadline until May 15, 1986, for Texas to resubmit rules governing a blaster certification and training program consistent with Federal requirements. This extension is granted in light of procedural restrictions in Texas' rulemaking schedule.

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 regulatory review by OMB.

The Department of the Interior has determined that this rule will 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 will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will 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 943

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: January 9, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services.

PART 943—TEXAS

30 CFR Part 943 is amended as follows:

1. The authority citation for Part 943 continues to read as follows:

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR Part 943 is amended by revising pargraph (a) of § 943.16 to read as follows:

§ 943.16 Required program amendments.

(a) By May 15, 1986, Texas shall submit for OSM's approval

(1) Rules governing the training, examination and certification of blasters and

(2) A program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operation.

* * * * *

[FR Doc. 86-956 Filed 1-16-86; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD Regulation 6010.8-R, Amdt. No. 36]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Inpatient Mental Health Services

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule will revise DoD 6010.8-R which implements the Civilian Health and Medical Program of the Uniformed Services. The rule will limit CHAMPUS payment for inpatient mental health services to 60 days annually for each patient. It is required in order to implement a provision of Pub. L. 98-94, the Defense Authorization Act for fiscal year 1984, which amended title 10, chapter 55, United States Code. This Public Law states that, with certain exceptions, no CHAMPUS funds may be expended for inpatient mental health services in excess of 60 days annually for each beneficiary who receives inpatient mental health services. It is similar to a provision that was contained in Pub. L. 97-377, the Defense Appropriations Act for Fiscal Year 1983, which restricted the funds available to CHAMPUS to pay inpatient mental health services, beginning January 1, 1983.

DATE: This amendment is retroactively effective to December 29, 1982.

FOR FURTHER INFORMATION CONTACT: David E. Bennett, Policy Branch, OCHAMPUS, Aurora, Colorado 80045, Telephone (303)-361-3537.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title.

In FR Doc. 84-24001 appearing in the **Federal Register** on September 13, 1984, (49 FR 35961), the Office of the Secretary of Defense published for public comment a proposed amendment limiting CHAMPUS payment of inpatient mental health services in excess of 60 days annually for each beneficiary. As a result of the publication, several comments were received from interested associations and agencies.

1. Several of the commentors believed that waiver criteria for coverage of inpatient mental health services in excess of 60 days were overly restrictive and did not adequately define "extraordinary circumstances." They also believed that the amendment did not clarify the fact that homicidal and suicidal actions were not the only criteria used in granting waivers.

The continued concern regarding the waiver criteria stems largely from the fact that detailed guidelines for evaluating waivers were not included in the proposed amendment. It has always been our position that regulatory provisions should be brief, concise and authoritative rather than operational or procedural. Examples of specific criteria used in the review process are: (1) Patients who have undergone destabilization characterized by a sudden and severe disruption of significant key supporting mechanisms or relationships, such as death or loss of intimate other; (2) aberrant medication response; (3) sudden and serious intercurrent medical condition; or (4) patients whose behavior was so disorganized that they could not function outside the hospital without danger to themselves. These examples clearly demonstrate that suicidal and

homicidal actions are not the only criteria used in the review process and that waivers are granted when inpatient care is required to protect the patient and community from the behavioral consequences of the mental disorder.

2. One of the commentors noted that there was no mention of the review process by a health professional in the regulation even though it was mentioned in the preamble. The review process has been addressed in the regulation to avoid any conflict.

3. There was a suggestion that the final rule make clear that retroactive approval of additional coverage is permissible. Prompt submission of requests for additional coverage was suggested in the preamble of the proposed amendment solely to reduce the risk of incurring noncovered expenses. We recognize that there will be situations where retroactive approval will be required.

4. One commentor noted an apparent conflict betweeen the proposed amendment and its companion amendment FR Doc. 84–24002 (49 FR 36092) regarding inpatient psychotherapy limitations. Paragraph (c)(3)(ix)(b)(2) pertaining to inpatient psychotherapy limitations has been removed from the final amendment since it was previously published as part of the Treatment of Mental Disorders amendment referenced above.

5. One commentor felt that inclusion of partial hospitalization in the amendment is confusing and misleading because CHAMPUS does not currently authorize such services. Partial hospitalization was included in the statute as an exception to the 60 day limit and is reiterated in this final rule.

6. Several of the commentors recommended that psychologists be included among the professional reviewers addressed in the proposed amendment. They believed that psychologist representation was essential to ensure adequate review of psychological factors and a high standard of patient care. Guidelines established and promulgated by the Director, Office of the Civilian Health and Medical Program of the Uniformed Services, will provide for the participation of psychologists.

7. Another commentor cited the problem of time delays in obtaining a determination of waiver application from OCHAMPUS to continue patient treatment. Because of the coordination time involved in the review process, the Director requires a minimum of 10 working days to make a determination for additional coverage. If care beyond the 60-day limit is anticipated, it is recommended that the request be submitted as soon as possible so alternative preparations for patient care can be made in the case of a denial.

8. Several commentors expressed concern over the serious impact that the 60-day limit has on children and adolescents. They felt that many young people have severe emotional behavioral disorders which cannot be treated sufficiently within the 60-day limit.

We are aware that the rigors of military life can contribute to the psychiatric problems of its children and adolescents. We have always been sensitive to the needs of this segment of our beneficiary population as can be exemplified in both the handicapped and residential treatment center programs. These specialized programs for children and adolescents have been excluded from the 60-day restriction. Also, the age and background of the patient would be considerations in the professional review process used in granting waivers for care in excess of 60 days.

The Department of Defense Appropriations Act, 1983 (Pub. L. 97–377), stipulated that no payment could be made for inpatient mental health in excess of 60 days per person per year with the exception of: (a) Services provided under the Program for the Handicapped; (b) admissions to residential treatment centers; (c) mental health services provided as partial hospitalization; that is, psychiatric day and night care; (d) mental health services provided to patients admitted to the inpatient facility before January 1, 1983, so long as they remained hospitalized continuously for medically or psychologically necessary reasons; and (e) mental health services provided pursuant to a waiver of the 60-day limit.

Because of the January 1, 1983, mandatory effective date, and because of the restriction on the funds appropriated to CHAMPUS, we issued a policy to implement this limitation on December 29, 1982, and began developing the regulatory amendment reflecting this limitation. In the meantime, Congress passed and the President signed Pub. L. 98–94, the Defense Authorization Act for fiscal year 1984. This public law contained a provision amending title 10, chapter 55, United States Code—the basic statute governing CHAMPUS—to incorporate the limitation of inpatient mental health services to 60 days annually per beneficiary. This amendment had the same exemptions as did Pub. L. 97–377; however, it contained the following provision regarding the waiver of the 60-day limit:

> The limitation . . . does not apply in the case of inpatient mental health services—
> (4) provided pursuant to a waiver authorized by the Secretary of Defense because of extraordinary medical or psychological circumstances that are confirmed by review by a non-federal health professional pursuant to regulations prescribed by the Secretary of Defense.

We believe this language is an unambiguous expression of congressional intent that the waiver not be used routinely to approve inpatient mental health care beyond 60 days.

We also interpret the inpatient mental limit to apply to the first 60 days for which claims are paid under most circumstances. The CHAMPUS fiscal intermediaries will notify the beneficiary when 30 days of inpatient mental health benefits have been paid in a calendar year. It will be the beneficiary's responsibility for assuring that all claims for care are submitted sequentially and on a regular basis.

Section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have a significant impact on a substantial number of small entities. The Secretary certifies, pursuant to section 605(b) of Title 5, United States Code, enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this regulation will not have a significant economic impact on a substantial number of small businesses, organizations or government jurisdictions.

We have determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It is not, therefore, a "major rule" under Executive Order 12291.

List of Subjects in 32 CFR Part 199

Health insurance, Military personnel, Handicapped. Accordingly, 32 CFR, Part 199, is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. In Part 199, § 199.10 is amended by adding paragraphs (b)(5)(xi) and (g)(39) to read as follows:

§ 199.10 Basic program benefits

* * * * *

(b) * * *

(5) * * *

(xi) *Inpatient mental health services.* Inpatient mental health services are those services furnished by institutional and professional providers for treatment of a nervous or mental disorder (as defined in § 199.8(b)) to a patient admitted to a CHAMPUS-Authorized acute care general hospital; a psychiatric hospital; or, unless otherwise exempted, a specialized treatment facility.

(*a*) *Benefits limited to 60 days of inpatient care.* CHAMPUS benefits for inpatient care are payable only so long as the inpatient level of care is medically or psychologically necessary and otherwise meets the requirements of this Part. In any case in which CHAMPUS benefits are paid for inpatient mental health services, such benefits will end automatically when payment has been made for 60 days of covered inpatient mental health services in a calendar year. This benefit limit applies whether the 60 days of paid inpatient mental health services are continuous or intermittent or involve one or more admissions to the same or different inpatient facilities. This limit on inpatient mental health services does not apply to services provided under the provisions of § 199.11, "Program for the Handicapped;" services provided on less than a 24-hour-a-day basis, or services provided in an authorized residential treatment center that meets the requirements of § 199.12, (b)(4)(v), "Residential Treatment Centers for Emotionally Disturbed Children."

(*b*) *Director, OCHAMPUS, may grant additional coverage.* Upon written request by or on behalf of the beneficiary, the Director, OCHAMPUS, or a designee, taking into account the opinions of professional review, may grant coverage of inpatient mental health services in excess of 60 days in a calendar year when such services are found to be required because of extraordinary medical or psychological circumstances. Coverage in excess of 60 days may be granted if the Director, or a designee, determines that extraordinary medical or psychological circumstances exist based upon a written request documenting that:

(*1*) the patient is suffering from an acute mental disorder or an acute exacerbation of a chronic mental disorder that results in the patient being put at significant risk to self or of becoming a danger to others, *and* the patient requires a type, level, and intensity of otherwise authorized service that can only be provided in an acute care inpatient setting; or

(*2*) the patient has a serious medical condition apart from his or her psychiatric condition that requires a type, level, and intensity of service that can only be provided in an acute care inpatient setting and the person continues to need psychiatric care, but cannot obtain it on an outpatient basis because of his or her inpatient status. The medical conditions and services provided must be otherwise covered under CHAMPUS.

* * * * *

(g) * * *

(39) *Inpatient mental health services.* More than 60 days of inpatient mental health services in any calendar year, unless additional coverage is granted by the Director, OCHAMPUS, or a designee, in accordance with § 199.10(b)(5)(xi). This exclusion does not apply to services provided under the provisions of § 199.11, "Program for the Handicapped;" services provided on less than a 24-hour-a-day basis; or services provided in a CHAMPUS-authorized residential treatment center that meets the requirements of § 199.12(b)(4)(v), "Residential Treatment Centers for Emotionally Disturbed Children."

* * * * *

3. In § 199.13, by adding a new paragraph (e)(2) and redesignating existing paragraph (e)(2) as (e)(3).

§ 199.13 Claims Submission, Review and Payment.

* * * * *

(e) * * *

(2) *Inpatient Mental Health Services.* Under most circumstances, the 60-day inpatient mental health limit applies to the first 60 days of care paid in a calendar year. The patient will be notified when the first 30 days of inpatient mental health benefits have been paid. The beneficiary is responsible for assuring that all claims for care are submitted sequentially and on a regular basis. Once payment has been made for care determined to be medically appropriate and a program benefit, the decision will not be reopened solely on the basis that previous inpatient mental health care had been rendered but not yet billed during the same calendar year by a different provider.

* * * * *

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

January 14, 1986.

[FR Doc. 86-1010 Filed 1-16-86; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2955-5]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: USEPA is disapproving a revised strategy for attaining the primary standards for total suspended particulates (TSP) in Lake County, Indiana. This revision to the Indiana State Implementation Plan (SIP) is comprised of materials submitted by the State on October 11, 1983, October 24, 1983, and April 16, 1984, in order to satisfy the requirements of Part D of the Clean Air Act (Act). A notice proposing to disapprove the Lake County TSP plan appeared in the January 31, 1985, **Federal Register** (50 FR 4537), based upon the revised strategy's failure to assure the attainment and maintenance of the primary TSP National Ambient Air Quality Standards (NAAQS).

EFFECTIVE DATE: This final rulemaking becomes effective on February 18, 1986.

ADDRESSES: Copies of the proposed and final disapproval of the Lake County TSP plan, the SIP revision, the proposed and final technical support documents, public comments on the notice of proposed rulemaking, and other materials related to this rulemaking, are available for inspection at the following addresses: (It is recommended that you telephone Colleen W. Comerford, at (312) 886-6034, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206

FOR FURTHER INFORMATION CONTACT: Colleen W. Comerford, (312) 886-6034.

SUPPLEMENTARY INFORMATION:

I. Background

For areas designated nonattainment under Section 107 of the Act, Part D of the Act requires that each State revise its SIP so that the primary NAAQS is attained by December 31, 1982. Since the December 31, 1982, deadline has passed, USEPA is now requiring that SIPs for nonattainment areas provide for attainment of the primary standard as

expeditiously as practicable, and otherwise satisfy the requirements of Part D; if they do not, then these areas are subject to a construction moratorium and/or other possible sanctions (48 FR 50686 and 50694; November 2, 1983). At present, the Lake County TSP nonattainment area is subject to a ban on construction of new major TSP sources, and major modifications of existing sources, pursuant to section 110(a)(2)(I) of the Act. This ban will remain in place until USEPA approves a primary Part D TSP plan for this area.

On October 11, 1983, October 24, 1983, and April 16, 1984, the State of Indiana submitted to USEPA materials comprising a revised plan for the attainment and maintenance of the primary TSP NAAQS in Lake County. Indiana stated that these submittals and their associated material superseded all previous submittals pertaining to the Lake County TSP plan. The plan was developed by the Lake County Attainment Task Force (LCATF). The LCATF was formed with the objective of developing a Lake County TSP control strategy that provides for attainment and maintenance of the primary NAAQS, in the most cost-effective way possible. The Lake County TSP plan consists of: two new regulations, 325 IAC 6–1–10.2 (Lake County TSP Point Source Strategy) and 325 IAC 6–1–11.1 (Lake County Fugitive Dust Limits) (October 11, 1983); a Technical Support Document for 325 IAC 6–1–10.2 and 6–1–11.1 (October 24, 1983); and a computer dispersion modeling analysis that modeled certain sources at reduced operating loads (April 16, 1984). These plan elements, as well as the regulatory history of the Lake County TSP plan, are discussed in detail in the notice of proposed rulemaking, which was published in the **Federal Register** on January 31, 1985 (50 FR 4537).

In the January 31, 1985, rulemaking action, USEPA evaluated the modeling used to provide the attainment demonstration, the recent monitoring data for the area, and the regulations, 325 IAC 6–1–10.2 and 6–1–11.1. USEPA identified several major deficiencies in the Lake County plan, specifically:

(1) Multiple deficiencies in the plan's modeling, undermining the model's prediction that the plan will assure attainment (e.g., unacceptable model calibration, control strategy inventory problems, incomplete receptor resolution, failure to provide an adequate reduced load analysis, failure to support emission limits for AMOCO and other specific sources);

(2) Defects in the fugitive dust regulation, 325 IAC 6–1–11.1, rendering it unenforceable (e.g., failure to submit individual plant industrial fugitive dust control programs to USEPA as site-specific SIP revisions, failure to provide sufficient clarity in the wording and structure of 325 IAC 6–1–11.1, failure to specify a compliance method to determine whether a source meets the required 50–85 percent fugitive emission reduction, failure to include enforceable commitments for off-plant road cleaning);

(3) Monitored violations of the TSP primary standard occurring after the effective compliance date of the state regulations, thereby casting further doubt on the adequacy of the plan; and

(4) Numerous problems with the organization, completeness, and wording of the regulations.

For the reasons specified above, USEPA proposed to disapprove the Lake County TSP plan. All of these deficiencies are reviewed in detail in the notice of proposed rulemaking and the associated technical support document.

In addition, USEPA noted that certain modeling requirements that were acceptable when work on this plan began (in 1979) are no longer acceptable. These include the plan's use of one year of meteorological (MET) data, instead of five years of MET data, and the use of statistical transform equations (Larsen's Transforms), instead of hourly sequential modeling, to calculate short-term TSP concentrations. USEPA only solicited comments on these modeling issues and did not cite these issues as a basis for the proposed disapproval.

In the January 31, 1985, notice, USEPA stated that, if the plan were finally disapproved, then the TSP construction ban currently in place in Lake County under section 110(a)(2)(I) of the Act would remain in effect. USEPA also stated that final disapproval might prompt further USEPA action, as required by the Clean Air Act. USEPA solicited comments on the Lake County TSP plan, on USEPA's proposed action, and on USEPA's analysis of the plan; these comments were to be submitted by March 31, 1985.

On February 27, 1985, the State of Indiana requested a three-month extension of the public comment period, but later amended its extension request to specify a September 30, 1985, due date. On March 5, 1985, a consultant for the Lake County Attainment Task Force (LCATF) also requested an extension of the public comment period to September 30, 1985. On April 12, 1985 (50 FR 14396), USEPA extended the initial 60-day comment period by an additional 45 days, to May 15, 1985.

II. Public Comment Discussion

In the notice of proposed rulemaking, USEPA proposed to disapprove the Lake County TSP plan because of numerous deficiencies. In the same notice, USEPA requested comment on its anlysis and, in response, received a total of seventeen comments. In this final rulemaking notice, USEPA is responding primarily to these seventeen comments, which do *not* address all the identified deficiencies. A discussion of the plan deficiencies not presented in this notice of final rulemaking can be found in the January 31, 1985, **Federal Register** (50 FR 4537), and the January 31, 1985, technical support document.

The Agency's evaluation of the major comments is summarized below. A more detailed evaluation of the comments received is provided in the final technical support document. A 105-day public comment period was provided for responding to USEPA's proposed action on the Lake County TSP plan. USEPA received thirteen comments during that time period. In addition, four parties submitted comments after the close of the public comment period. Despite the lateness of these submittals, USEPA has reviewed and responded to the late comments, as indicated below. The four parties submitting late comments were the Lake County Attainment Task Force, Citizens for a Better Environment, the Amoco Oil Company, and Multinational Business Services, Inc.

A. General

Comment: In addition to their request for an extension of the public comment period, the State of Indiana (Indiana), the Lake County Attainment Task Force (LCATF), and Multinational Business Services, Inc., (MBS) urged USEPA to approve the Lake County TSP plan, and to defer action on the Lake County TSP SIP until Indiana/LCATF had finished their responses to the issues cited in the notice of proposed rulemaking. The commentors cited the time and expenditures invested in developing the SIP and in responding to the notice of proposed rulemaking. They also maintained that the SIP needs time to be proven effective. MBS recommended that the Lake County plan be conditionally approved, provided that the modeling and emissions inventory deficiencies were corrected.

USEPA's Response: USEPA cannot withhold action indefinitely while the State/LCATF attempt to resolve the numerous deficiencies in the plan. USEPA not only has a Court-ordered commitment to publish a notice of final rulemaking on this SIP revision by

January 10, 1986, but also believes that the State/LCATF have been given more than adequate opportunity to resolve these problems in the past. In addition, as noted above, USEPA has considered the comments submitted by the LCATF, and other commentors, after the close of the public comment period. Therefore, USEPA sees no reason to further delay final rulemaking on this SIP revision. In response to MBS' request for a conditional approval of the Lake County TSP plan, USEPA's policy has been to grant conditional approvals for those SIPs with only minor deficiencies. In this case, the deficiencies are major, and, therefore, it would not be appropriate for USEPA to conditionally approve the Lake County TSP plan. In addition, MBS has made a commitment to correct the deficiencies in the plan in order to obtain a conditional approval, but USEPA has received no such commitment from the State of Indiana.

Comment: Indiana/LCATF and Multinational Business Services, Inc, (MBS) stated that USEPA's proposed action is based on a new tightening of the requirements for an attainment plan. They objected to this "moving target."

USEPA's Response: The reasons for USEPA's proposed disapproval are clearly stated in the notice of proposed rulemaking, and the associated technical support document. All the major issues had been discussed prior to the notice of proposed rulemaking with the State or with the LCATF. USEPA is basing its final disapproval on the State's failure to provide adequate data in response to the identification of these issues in the notice of proposed rulemaking. Furthermore, USEPA did not propose to disapprove the plan on the basis of the two "grandfathered" modeling issues (i.e., the use of the Climatological Dispersion Model (CDM) using Larsen's Transforms and the use of only one year of MET data), and is not basing final disapproval on these issues. Thus, USEPA disagrees with the commentors that the proposed rulemaking raised new issues.

Comment: CBE contends that section 110(a)(2)(F) of the Clean Air Act (Act) requires each SIP to contain a provision for self-monitoring at each source with a SIP emission limit.

USEPA's Response: USEPA disagrees with CBE's interpretation of section 110 (a)(2)(F). USEPA has promulgated minimum requirements for self-monitoring for each State SIP, which are found at 40 CFR 51.19(e) and in Appendix P of Part 51. A State may expand upon these requirements and may also provide for alternatives to continuous emission monitoring (CEM) at sources where it is not feasible. However, it is not USEPA's interpretation of 110(a)(2)(F) that self-monitoring is required at all sources with an emission limit, nor is there any legislative history to support CBE's interpretation. The courts have supported the concept that USEPA has broad discretion in making technical judgments under the Act (*Chevron U.S.A.* v. *Natural Resources Defense Council*, 104 S. Ct. 2778, 2787 (1984)). USEPA's technical judgment with respect to minimum self-monitoring requirements is expressed in 40 CFR Part 51, Appendix P.

Comment: CBE contends that USEPA has a nondiscretionary duty to promulgate a Part D TSP plan for the State of Indiana.

USEPA's Response: CBE's argument that USEPA has a nondiscretionary duty to promulgate a Part D TSP plan for a State that has failed to submit an approved plan is currently being litigated in the U.S. District Court for the Northern District of Illinois, in *CBE* v. *Thomas*, 80 C 003. It would be improper for USEPA to comment on this matter during the pendency of litigation. CBE also advances the argument that USEPA's failure to promulgate federal regulations in the absence of an approved Part D plan will defeat the goals of the Clean Air Act Amendments of 1977. However, the Amendments can be implemented in more than one way. Congress has also authorized the use of sanctions against those States that fail to adopt Part D plans. USEPA has made use of the appropriate sanctions as a tool for implementing the Act and its Amendments, and will continue to do so.

Comment: In their late comments, MBS asked USEPA to consider the current high unemployment levels in Lake County, and the effect of continuing the construction moratorium. MBS also argued that USEPA should replace the current construction moratorium with a system that would control new source growth through the new source permitting process.

USEPA's Response: USEPA's action on the Lake County TSP plan must be based on whether it satisfies the Part D requirements of the Clean Air Act. Although the concerns raised by the commentor are important, it must be understood that Part D does not address these concerns. Consequently, these concerns are not relevant to USEPA's review and action. In addition, USEPA cannot remove the current construction moratorium until the Part D requirements of the Clean Air Act have been fulfilled, meaning until an approved Part D TSP SIP is in place in Lake County.

B. Modeling Analysis

Comment: Indiana/LCATF maintain that CDM is the appropriate USEPA-approved model for estimating annual TSP concentrations. CBE objected to the use of CDM and claimed that the Industrial Source Complex (ISC) model is more suited for the numerous fugitive and point sources in Lake County.

USEPA's Response: As stated in the proposed and final technical support documents, and the notice of proposed rulemaking, USEPA accepts the use of CDM in this case for estimating annual concentrations. However, any future TSP attainment demonstration involving industrial source complexes in urban areas, such as Lake County, should follow currently applicable USEPA modeling guidelines.

Comment: Several commentors stated that the CDM calibration equation (i.e., a straight-line fit of modeled data and monitored data) was calculated in accordance with USEPA's procedures and recommendations. The commentors claimed that USEPA's concerns with model calibration (e.g., lack of documentation for the base year emissions inventory used in the calibration, and inclusion/exclusion of certain monitors) should not be a basis for disapproval because: (1) USEPA did not cite any problems with the emission rates that were calculated from the base year emissions inventory; and (2) USEPA's revised calibration equation, based on the inclusion/exclusion of specific monitors, did not significantly increase the estimated TSP concentration estimates. In their late comments, the commentors provided a "revised" listing of the base year emission inventory, as well as a revised calibration equation.

USEPA's Response: USEPA agrees with the comment concerning USEPA's revised calibration equation. Despite the increased accuracy and increased applicability to the study area of USEPA's revised calibration equation, USEPA agrees that the revised calibration does not change the annual and 24-hour concentration estimates significantly, or improve the interstate impact analysis. USEPA acknowledges the revised calibration equation submitted by the LCATF in their late comments. Because of the remaining deficiency with the base year inventory, which is discussed below, this revised equation is still not acceptable.

USEPA disagrees with the comment on the base year emission inventory. Although USEPA found no evidence of miscalculation of emission rates, the lack of documentation supporting

critical model input data used to calibrate the model, such as the base year emissions, remains an outstanding deficiency. The information contained in the LCATF's late comments fails to resolve USEPA's concern since it is merely a retyped version of the model input data.

Comment: Several comments were submitted pertaining to the use of CDM/Larsen's Transforms to approximate short-term TSP concentrations. The Illinois EPA (IEPA), Indiana/LCATF, and Northern Indiana Public Service Company (NIPSCO) supported the use of CDM/Larsen's Transforms because they felt that: CDM/Larsen's Transforms may provide better concentration estimates than USEPA's short-term models; CDM/Larsen's Transforms is consistent with USEPA's 1979 modeling guidelines; CDM was calibrated with monitored data and, therefore, provides more accurate estimates than USEPA's short-term models; and USEPA's model comparison was inappropriate because the input data for the analyses differ. CBE objected to the use of CDM/Larsen's Transforms because it does not reflect short-term concentrations under worst-case conditions. MBS stated its belief that USEPA is requiring the use of the ISC model, after USEPA had said that it would accept CDM, and objected to the change in requirements. Nevertheless, MBS stated that the LCATF would be willing to perform ISC modeling within a six month time frame, if USEPA approved the Lake County TSP SIP.

USEPA's Response: USEPA did *not* propose to disapprove the Lake County plan based on its use of CDM/Larsen's Transforms and the failure to use ISC, and is not basing final disapproval on this issue. Nevertheless, USEPA has decided that, since the plan is not otherwise approvable, and because the use of Larsen's Transforms is not consistent with USEPA's current modeling guidelines, USEPA has no reason to continue to accept CDM/Larsen's Transforms. Thus, all future TSP modeling in Lake County must comply with the currently applicable modeling guidelines. USEPA rejects the reasons given by the commentor in support of the continued use of Larsen's Transforms, on the grounds given in the final technical support document. Finally, USEPA acknowledges MBS' commitment, on the part of LCATF, to perform a new modeling analysis that conforms to USEPA's current modeling guidelines. Although USEPA encourages the LCATF to perform such an analysis, USEPA cannot rulemake on information that has not yet been submitted. In addition, in view of its Court-ordered deadline, USEPA cannot withhold rulemaking action to await submittal of this information.

Comment: Several comments were submitted pertaining to the number of years of MET data that were used to model the Lake County TSP plan. IEPA objected to the use of only one year of MET data in the plan. NIPSCO and Indiana/LCATF argued in their initial comments that five years of MET data had been modeled originally, and that the modeling currently before USEPA focused on the worst-case year only. In its late comments, the LCATF provided a modeling analysis of the final control strategy using five years of MET data. CBE acknowledged that the initial Lake County modeling was performed with five years of MET data, but argued that subsequent revisions to the emission inventory negated any previous identification of a worst-case year. CBE also claimed that the Midway Airport MET data used in the modeling were not representative of the conditions in Northwest Indiana and that a more site-specific data base (e.g., from NIPSCO's Bailly plant in Porter County) should have been used.

USEPA's Response: USEPA acknowledges that the Midway Airport MET data from 1973 to 1977 was the data base used in modeling an early version of the Lake County plan (1979 version). Although USEPA does not now accept, and has never accepted, the premise that 1973 is the worst-case year, this whole issue is now moot in light of the five-year analysis included in the LCATF's late comments.

USEPA wishes the emphasize that it did *not* propose to disapprove the Lake County plan based on the number of years of MET data used in the modeling, and will not do so now in light of the new five-year modeling analysis. However, it should be clear that all future TSP modeling in Lake County must comply with the currently applicable modeling guidelines, meaning five years of off-site MET data or at least one year of on-site MET data.

As for the representativeness of the Midway MET data, USEPA has evaluated the data and has concluded that these data are acceptable for annual statistical modeling. Although the Midway/NIPSCO data comparison provided by CBE indicates that each of these data bases will produce different short-term concentrations, it does not demonstrate that the annual concentrations will differ significantly.

Comment: Several comments were submitted to the emissions inventory and receptor resolution (i.e., ambient vs. nonambient air). The comments specifically addressed the following issues: (1) The use of different fuel mixtures in the Lake County sulfur dioxide (SO_2) and TSP emission inventories; (2) the combination of several small sources into one point source for modeling purposes; (3) the modeling of sources at either design or maximum actual production rates; (4) the coverage of all "ambient" locations in the modeling analysis; (5) difference between the SIP and the modeled inventory; (6) the provision of documentation for the area source inventory; (7) the revision of the emission inventory; (8) the reduced load analysis; (9) changes in the SIP and emission inventory as a result of the SIP development process; and (10) consistency of the SIP with USEPA's good engineering practice (GEP) stack height rule. In addition, MBS commented that USEPA had changed its receptor policy to require receptors on elevated highways and over water.

USEPA's Response: These issues were discussed in detail in the notice of proposed rulemaking and the associated technical support document. They are also discussed in detail in the final technical support document, as are the comments on the notice of proposed rulemaking. The issues identified in the "Comment" above as numbers (1) through (5) remain unresolved, because the necessary supporting documentation has not been submitted to USEPA. During the development of the Lake County TSP plan, USEPA has repeatedly asked the State/LCATF to submit supporting documentation for issues (1) through (5). Indiana/LCATF did not submit the appropriate information, thereby leaving deficiencies in the rulemaking record. USEPA addressed these deficiencies in the notice of proposed rulemaking and the accompanying technical support document. USEPA stated that multiple deficiencies in the plan's modeling undermined the model's prediction that the plan would assure attainment, and, therefore, USEPA considered these deficiencies to be a basis for proposing disapproval. During the public comment period, the State/LCATF acknowledged these issues and even committed to provide some of the requested information; however, no such information was submitted during the public comment period. USEPA cannot base its final rulemaking decision on documentation that has not yet been submitted. The deficiencies associated with each issue are further identified by USEPA in the final technical support document.

Issue (6), documentation of the area source inventory, has been resolved with the submittal of the LCATF's late comments. The documentation, a list of assumptions and the input data used to calculate area source emission rates, was included in that submittal. The LCATF also submitted a revised emission inventory with its late comments (issue 7). The revised inventory resolves the specific deficiencies identified by USEPA in the notice of proposed rulemaking and the technical support document, but it also creates several new problems. Many revisions reflect emission reductions that are more stringent than those required by the plan currently before USEPA. This additional credit cannot be taken unless the SIP is changed accordingly.

USEPA's evaluation of issue (8), the reduced load analysis, is that an acceptable analysis has not been provided by the State. Although the LCATF submitted additional emission inventory data in its late comments, the concerns raised by USEPA at the time of LCATF's initial analysis (June 30, 1983) have not been resolved. The submittal of emission inventory data alone does not address the lack of documentation to support LCATF's exclusion of some sources and its argument that certain sources are "inextricably linked". Concerning issue (9), USEPA wishes to emphasize that this final rulemaking is based solely on the final State plan and the corresponding technical support, which is comprised of submittals dated October 11, 1983, October 24, 1983, and April 16, 1984, and not on any changes that may have occurred during the SIP development process. With respect to issue (10), as stated in the notice of proposed rulemaking, the State/LCATF did not provide any information as to whether the Lake County TSP plan is affected by, or is consistent with, the stack height requirements of section 123 of the Act. During the public comment period, Indiana/LCATF submitted an October 19, 1983, letter from the State to C.T. Main, Inc. That letter, which quotes a creditable GEP stack height for U.S. Steel's Boiler 8 that is less than the modeled height, predates USEPA's proposed stack height regulations (November 9, 1984) by over a year. The reference to only one stack in the entire County, and the lack of a stack height review after proposal of the stack height rules, leads USEPA to question whether the plan is consistent with USEPA's current stack height regulations, which were promulgated on July 8, 1985 (50 FR 27892); thus, issue (10) remains unresolved. Failure to resolve these many issues is another reason for USEPA to disapprove the Lake County TSP plan. MBS' concern that USEPA's has changed its receptor policy is not applicable in this case, because receptor location over water or on elevated highways was not a basis for disapproval of the Lake County plan.

Comment: Several commentors responded to USEPA's concern about the modeled violations in Illinois to which Indiana's air pollution emissions contribute. They questioned the validity of the modeled concentrations in Illinois.

USEPA's Response: USEPA acknowledges that the many deficiencies in the emission inventory and the overall modeling analysis call in to question the validity of the resulting concentration estimates, in both Indiana and Illinois. USEPA was originally concerned about the modeled violations in Illinois because it felt that the model had underpredicted ambient TSP concentrations, and that these violations would actually be more severe. It should be noted, however, that USEPA has not cited the modeled results in Illinois as a basis for the proposed disapproval of the Lake County TSP plan, and is not basing its final disapproval on these modeling results. USEPA does wish to emphasize the importance and the need for an adequate interstate attainment demonstration for this bi-state area.

C. Source-Specific Issues

Comment: Amoco objected to the specific disapproval of its plantwide "bubble." The commentor disputed the two major deficiencies cited by USEPA: (1) Since the bubble was grounded in the overall SIP, disapproval of the overall SIP necessitates disapproval of the bubble; and (2) the Amoco inventory used in the final SIP modeling differs significantly from that used by Amoco to justify the bubble. Amoco said that it would resubmit an updated analysis upon completion of new modeling. Amoco submitted an updated analysis with its late comments and asserted that a plantwide TSP bubble would provide equivalent impacts relative to the Lake County submittal. In its late comments, MBS asserted that USEPA had changed its opinion concerning the Amoco bubble.

USEPA's Response: EPA's 1982 Emissions Trading Policy calls for review of proposed bubbles in relationship to existing SIP emissions limitations. This requirement is designed to assure that the ambient impact of new emission limits under a bubble will be equal to or better than the ambient impact of meeting pre-existing limits. In its comments, Amoco asserted not that there was ambient equivalency between its proposed bubble and *existing* SIP limits, but that equivalency existed between its proposed emissions cap and the emissions limits in the Lake County submittal pending before EPA. As EPA noted in its proposed disapproval of the bubble, this effort to demonstrate equivalency was insufficient because: (1) The ambient impacts of the bubble were compared not to existing limits, but to emissions rates in the plan which EPA proposed to disapprove; and (2) it was not clear how that plan differed from the existing limits; and (3) the Amoco inventory used in the modeling behind the Lake County submittal differed from that used by Amoco in the analysis it undertook to justify the bubble. Even prior to EPA's proposed disapproval, EPA put Amoco on notice that the acceptability of Amoco's demonstration of equivalency was contingent on the approvability of the Lake County submittal.

In late comments submitted to EPA, Amoco attempted a new analysis of the bubble, using a revised inventory, but still attempting to demonstrate equivalency to the rates contained in the Lake County submittal. There are a number of technical problems with this analysis, which are set forth in detail in the Technical Support Document. However, even without these problems, it would be inappropriate to establish equivalency with limits which EPA has disapproved. Under the 1982 Policy, unless Amoco is prepared to show that the pending limits are both (a) uniformly more stringent than existing limits and (b) applicable solely to sources located within 250 meters of each other, the correct comparison of ambient impacts through dispersion modeling is not between the Lake County submittal and the bubble, but between existing SIP limits and the bubble. This Amoco and the state have failed to furnish.[1]

Comment: Commonwealth Edison and Indiana/LCATF provided documention that responded to USEPA's concerns about Commonwealth Edison's Stateline

[1] EPA cannot perform the comparison itself with the information it has on hand. Because the bubble relies principally upon a plantwide emissions cap, it would allow a wide range of different patterns of emissions from the various units at the plant, including patterns under which some units would emit more than the existing SIP currently allows them to emit. Each of the emissions scenarios under the bubble would have its own air quality impacts, because of differences in the plume characteristics of the various units, and therefore would require its own equivalency analysis. Such an equivalency analysis would require computer modeling beyond what has been submitted or what EPA otherwise has on hand.

plant and American Brick's Munster plant.

USEPA's Response: USEPA agrees that its concerns will be resolved if the SIP is modified to contain the back-up boiler operating restrictions submitted by Commonwealth Edison, and if the SIP emission limits for American Brick's Munster plant are removed from the SIP to reflect the expiration of the plant's operating permit. Since the SIP has not been modified accordingly, the deficiencies remain.

D. Monitored Violations

Comment: Several comments were made concerning recent air quality data. Industry stated that the improvements in air quality resulted from decreased industrial emissions due to improved pollution control, despite stable and even increasing production. Industry also maintained that the 1984 data show attainment at all monitoring sites except one, and that that site was impacted by nearby road construction. MBS claimed that attainment of the TSP standards was achieved in Lake County in 1985. CBE disagreed with industry's comments. CBE believes: (1) That the improvement in air quality has been influenced by a decrease in steel mill production; and (2) that the current monitoring network does not reflect worst-case impacts.

USEPA's Response: USEPA does not dispute the significant effect that pollution control measures have had in reducing measured TSP concentrations in northern Lake County. USEPA's concerns, however, apply to the current data, USEPA is not convinced that these data are representative of either maximum anticipated operating levels, or worst-case air quality. Because the current measured concentrations are close to the primary NAAQS (with one monitor recording violations), it is not clear whether the additional emissions which would accompany an increase in production could be tolerated without violating the NAAQS. A review of the 1985 monitoring data may well yield actual violations.

USEPA agrees with CBE that the current monitoring network probably does not measure the actual maximum worst-case impacts. Although located in the general area of higher expected concentrations, the monitors are not necessarily located at the points of maximum concentrations. Therefore, even though only one monitor (Marktown) measured a violation in 1984, USEPA is not convinced that the data support a demonstration of attainment.

Lastly, according to USEPA's modeling guidelines, monitoring data alone cannot be used to demonstrate attainment of the standards for stationary sources. Thus, even if all the monitors in the County recorded no violations, USEPA would still require a modeling demonstration for the proposed control strategy to assure attainment and maintenance of the NAAQS.

Comment: Inland Steel cited several air pollution control projects and plant changes which will decrease emissions during 1985 and beyond, and, therefore, reduce monitored violations.

USEPA's Response: The air pollution control projects that Inland cited are needed to meet current consent decree requirements, but are not required by the Lake County TSP plan. USEPA cannot consider emission reduction impacts that are not required by the plan in its evaluation. The emission reductions that are necessary to meet the requirements of the Lake County TSP plan (325 IAC 6–1–10.2) have been included in the SIP emission inventory. Emission reductions resulting from consent decree requirements cannot be included in the emission inventory. This would include the emission reductions resulting from the secondary emission control system at Inland Steel's No. 4 basic oxygen furnance (BOF), which is needed to meet a consent decree requirement. In addition, the emission reductions resulting from the 1985 shutdown of the 44 Inch Hot Strip Mill cannot be credited unless required by the plan. Therefore, this source cannot be deleted from the emission inventory unless it is deleted from 325 IAC 6–1–10.2

E. Emission Limitations

Comment: CBE commented that the Clean Air Act requires Reasonably Available Control Technology (RACT) on all existing sources in nonattainment areas, and that the Lake County TSP plan is deficient because it does not require RACT for several major particulate sources. Also, CBE pointed out that both Inland and U.S. Steel have signed consent decrees which require the installation of RACT controls at their facilities.

USEPA's Response: USEPA is disapproving the Lake County plan on the grounds that it does not adquately provide for attainment of the primary TSP standard. USEPA is not disapproving the plan on the grounds that the plan does not require RACT for all sources. It is noted, however, that under USEPA policy, RACT is required on stationary sources to the extent necessary to provide for attainment to the TSP NAAQS as expeditiously as practicable (General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas, 44 FR 20372, 20375; April 4, 1979).

Comment: CBE objected to the inclusion of several shutdown facilities in the SIP. The commentor argued that such shutdown credit should not be given to the companies, but instead belong to the public. MBS noted that "retention of an outdated emission inventory overstates air quality impacts", and committed, on behalf of LCATF, to revise the inventory to reflect permanent plant closures and production cutbacks.

USEPA's Response: Section 110 of the Act requires only that the emission limits in the SIP provide for attainment and maintenance of the NAAQS. Therefore, sources that may have permanently shut down can be modeled as though they might operate in the future. USEPA would only look at their respective emission limits to see whether the standards were attained. The LCATF chose the emission inventory that would be used in the modeled attainment demonstration, which included some shutdown sources. USEPA is taking no position, at this time, concerning the "banked" status of shutdown sources. Consequently, USEPA has no objection to the removal of shutdown sources from the emissions inventory, as long as the SIP is changed accordingly.

Comment: Region V determined that fugitive dust control plans (325 IAC 6–1–11.1) for the seven plants needing 85 percent control, and the 18 plants needing 50 percent control, would have to be submitted to USEPA for approval as SIP revisions because of the deficiencies noted in the notice of proposed rulemaking (i.e., unenforceability and lack of specificity). Indiana/LCATF stated that submitting individual SIP revisions for each of the 25 plants is unnecessary, although not impossible. This task would require years of work due to the legal channels that must be followed, and the technical work involved in devising a refined fugitive dust control plan. MBS claimed that the issue of enforceability is moot since "the final measure of enforceability is not whether EPA *thinks* the regulations are enforceable, but whether the air attains the national ambient standards". The commentor also claimed that attainment of the standards was achieved in 1985.

USEPA's Response: Indiana has not corrected the deficiencies in 325 IAC 6–1–11.1 described in the notice of proposed rulemaking and the corresponding technical support document. In particular, the fact remains

that there are no enforceable requirements ensuring that the percentage of fugitive dust control specified by the SIP will be achieved. USEPA continues to believe that this deficiency in the SIP can be remedied only if specific, enforceable fugitive dust control programs are submitted by the State of Indiana to USEPA for approval as part of the Lake County TSP plan. This submittal and approval process appears to be the only means of ensuring the adequacy of the control program and its federal enforceability. The commentor has offered no reasons for its conclusion that submittal of individual SIP revisions for each of the plants is unnecessary, has offered no suitable alternative approach, and has not addressed the unenforceability of the fugitive dust control provisions of the SIP. Accordingly, USEPA still considers the unenforceability and lack of specificity of 325 IAC 6-1-11.1 a major deficiency of the Lake County TSP plan, and a major basis for disapproval. MBS argued that the issue of federal enforceability is irrelevant, as long as the primary TSP standard is attained. A review of 1985 monitoring data has not yet been completed; therefore it is premature to claim attainment at all sites in 1985. In any event, USEPA believes that the Lake County TSP plan must be federally enforceable to be approvable.

III. Summary

USEPA has reviewed and considered each of the public comments. Although the comments have resolved a few of the deficiencies cited in USEPA's notice of proposed rulemaking and its accompanying Technical Support Document, most of the deficiencies are still unresolved. Thus, USEPA has determined that the State's Lake County TSP SIP is not approvable for the following reasons:

Major Problems

1. Problems with the attainment demonstration, including:
   a. Unacceptable model calibration (e.g., base year inventory, stack exit parameters),
   b. Problems with the control strategy inventory (e.g., source treatment, modeled emission rates, operating levels),
   c. Incomplete receptor resolution (i.e., ambient vs. nonambient air);
2. Failure to provide acceptable attainment demonstration for "lbs/hr" form of emission limits for many sources (i.e., reduced load modeling);
3. Failure to support the Amoco bubble and collective emission limitations for many sources;
4. Existence of actual measured violations after the compliance date of the plan;
5. Defects in the TSP regulations, 325 IAC 6-1-10.2 and 6-1-11.1, including:
   a. Failure to specify coke quenching under Subsection (r) of 325 IAC 6-1-10.2;
   b. Failure to include enforceable commitments for road cleaning;
   c. Need to submit the 25 individual plant industrial fugitive dust control programs to USEPA as site-specific SIP revisions;
   d. 325 IAC 6-11-1 contains federally unenforceable requirements;

Minor Problems

1. Failure to justify the regulation for U.S. Steel Quench No. 6;
2. Failure to ensure consistency with the Good Engineering Practice Stack Height regulations and to provide a building downwash analysis for NIPSCO;
3. Failure to resolve the problems associated with the back-up boilers at Commonwealth Edison's Stateline plant and American Brick's Munster plant; and
4. Problems with the form of 325 IAC 6-1-11.1, including the omission of any designation for Subsection (e) and the omission of the word "paved" in several places in Subsection (c).

It should also be noted that USEPA will no longer accept both the use of statistical transform equation to approximate short-term TSP concentrations, and the use of only one year of off-site MET data in Lake County. All future modeling must conform to the currently applicable modeling guideline requirements.

The TSP growth restrictions of section 110(a)(2)(I) are currently in effect in the TSP nonattainment area in Lake County. Because USEPA is disapproving the Lake County plan, these restrictions will remain in effect. Additionally, USEPA may in the future take further actions as required by the Act. For a discussion of the appropriate actions, please see the sections in USEPA's Post-82 SIP Policy (November 2, 1983; 48 FR 50685) and "Guidance Document for the Correction of Part D SIPs for Nonattainment areas" (January 27, 1984), dealing with areas where a State submits a Part D plan but the USEPA determines that it is inadequate.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to USEPA, and any USEPA response, are available for public inspection at the USEPA Region V office listed above.

Under section 307(b) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 18, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Intergovernmental relations.

Note.—Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 10, 1986.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart P—Indiana

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

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.770 is amended by adding new paragraph (c)(57) as follows:

§ 52.770 Identification of Plan.

* * * * *

(c) * * *

(57) On October 11, 1983, October 24, 1983, and April 16, 1984, Indiana submitted a revised Lake County Total Suspended Particulates (TSP) Plan, including regulations 325 IAC 6-1-10.2 and 6-1-11.1. This plan is disapproved. See § 52.776(h)

* * * * *

3. Section 52.776 is amended by adding new paragraph (h) as follows:

§ 52.776 Control strategy: Particulate matter.

* * * * *

(h) The revised Lake County Total Suspended Particulates (TSP) Plan, comprised of submittals dated October 11, 1983, October 24, 1983, and April 16, 1984, is disapproved because the State did not demonstrate that it assures attainment and maintenance of the primary TSP National Ambient Air Quality Standards in Lake County, Indiana. See 40 CFR 51.10(b).

* * * * *

[FR Doc. 86-968 Filed 1-16-86; 8:45 a.m.]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 2

Organization Functions, and Authority Delegations; Correction

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule; Correction.

SUMMARY: This document corrects a section number in a prior rule publication.

FOR FURTHER INFORMATION CONTACT: William L. Harding, Office of General Counsel, Room 840, 500 C Street, SW, Washington, DC 20472, (202) 646–4096.

Accordingly, in FR Doc. 86–63 at 51 FR 194, appearing January 3, 1986, the following correction should be made in item 3.

Change § 2.22(a)(6) to § 2.22(b)(6).

Dated: January 10, 1986.

Spence W. Perry,

Acting General Counsel.

[FR Doc. 86–1072 Filed 1–16–86; 8:45 am]

BILLING CODE 6718–01–M

National Flood Insurance Administration

44 CFR Part 64

[Docket No. FEMA 6697]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This rule lists communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATE: The date listed in the fifth column of the table.

ADDRESS: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurance Program (NFIP) at: P.O. Box 457, Lanham, Maryland 20706, Phone: (800) 638–7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration (202) 646–2717, 500 C Street, Southwest, Donohoe Building—Room 416, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazards areas in some of these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard area shown on the map.

The Director finds that delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedures under 5 U.S.C. 553(b) are impracticable and unnecessary.

The Catalog of Domestic Assistance Number for this program is 83.100 "Flood Insurance."

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice stating the community's status in the NFIP and imposes no new requirements or regulations on participating communities.

List of Subjects in 44 CFR Part 64

Flood insurance—floodplains.

The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127).

PART 64—[AMENDED]

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 64.6 List of Eligible Communities

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Speical flood hazard areas identified
North Carolina: Bertie	Unincorporated areas	370290B	Dec. 4, 1985, Emerg.; Dec. 4, 1985, Reg	Sept. 29, 1978 and Dec. 4, 1985.
Tennessee: Gibson	Kenton, town of	470224A	Dec. 2, 1985, Emerg.; Dec. 2, 1985, Reg	Dec. 27, 1974 and Feb. 16, 1983.
Minnesota:				
Mille Lacs	Unincorporated areas	270624B	Apr. 15, 1974, Emerg.; Sept. 27, 1985, Reg.; Nov. 1, 1985, Susp.; Dec. 4 1985 Rein.	Feb. 2, 1979 and Sept. 27, 1985.
Faribault	do	270669	Nov. 1, 1974, Emerg.; May 17, 1982, Reg.; June 3, 1983; Susp.; Dec. 4, 1985 Rein.	July 22, 1977 and May 17, 1982.
Vermont: Orange	West Fairlee,[1] town of	500079A	May 5, 1976, Emerg.; Nov. 15, 1985, Reg.; Nov. 15, 1985, Susp.; Dec. 3, 1985, Rein.	Feb. 28, 1975 and Nov. 15, 1985.
New York: Otsego	Maryland,[2] town of	361272A	Aug. 30, 1976, Emerg.; Sept. 19, 1984, Susp.; Dec. 10, 1985, Rein.	Oct. 18, 1974 and June 25, 1976.
Indiana: Pulaski	Unincorporated areas	180482B	Dec. 30, 1985, Emerg.	Jan. 9, 1981.
Texas: Wheeler	Shamrock, city of	480656	Dec. 26, 1985, Emerg.	Oct. 22, 1976.
Pennsylvania: Beaver	South Heights, borough of	422330A	May 13, 1977, Emerg.; Aug 15, 1983, Reg.; Aug 15, 1983, Susp.; Dec. 18, 1985 Rein.	Jan. 31, 1975 and Aug. 15, 1983.
New York: Lewis	Martinsbury,[1] town of	360372B	Sept. 17, 1975, Emerg.; June 19, 1985, Reg.; June 19, 1985, Susp.; Dec. 20, 1985, Rein.	June 28, 1974 and Apr. 23, 1976.
Missouri: Saline	Sweet Springs,[1] city of	290407A	May 27, 1975, Emerg.; Oct. 5, 1984, Reg.; July 18, 1985, Susp.; Dec. 20, 1985, Rein.	June 7, 1974, Jan. 9, 1976 and Oct. 5, 1984.
New Jersey Burlington	Burlington, city of	345287C	Aug. 7, 1970, Emerg.; July 23, 1971, Reg.; Nov. 15, 1984, Susp.; Dec. 26, 1985, Rein.	July 23, 1971, July 1, 1974, Feb. 20, 1976, July 29, 1977 and Nov. 15, 1985.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Speical flood hazard areas identified
Pennsylvania:				
Pike	Milford, township of	422642B	Mar. 11, 1976, Emerg.; Dec. 4, 1985 Reg.; Dec. 4, 1985, Susp.; Dec. 26, 1985, Rein.	July 22, 1977 and Nov. 4, 1985.
Cambria	Munster, township of	422263B	Dec. 3, 1982, Emerg.; Dec. 4, 1985, Reg., Dec. 4, 1985, Susp.; Dec. 26, 1985, Rein.	Nov. 22, 1974 and Dec. 4, 1985.
Illinois: Alexander	East Cape Girardeau, village of	170916B	May 5, 1976, Emerg.; Dec. 4, 1985, Reg.; Dec. 4, 1985, Susp.; Dec. 27, 1985, Rein.	July 22, 1977 and Dec. 4, 1985.
Colorado: Pitkin	Aspen, city of	080143B	July 2, 1974, Emerg.; Dec. 4, 1985, Reg.; Dec. 4, 1985, Susp.; Dec. 30, 1985, Rein.	Feb. 15, 1974, Dec. 24, 1976 and Dec. 4, 1985.

NOTE.—The Cities of Fleming and Neon, Kentucky have merged and are one governmental entity. The new name is the City of Fleming-Neon, Letcher County, Kentucky. The City will use Community Number 210209 with emergency entry date of 7-21-76. A new map for the community has been requested.

[1] Minimal.
[2] Emergency Program Reinstatement.
Code for reading 4th column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

State, County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
Region I				
Massachusetts: Norfolk	Quincy, city of	255219B	Dec. 4, 1985, Suspension withdrawn	Sept. 21, 1973, July 1, 1974, July 30, 1976, and Dec. 4, 1985.
Vermont: Windham	Brattleboro, city of	500126B	do	Feb. 8, 1974, Feb. 18, 1977, and Dec. 4, 1985.
Region II				
New Jersey: Passaic	Bloomingdale, borough of	345284C	do	Mar. 10, 1972, July 1, 1974, July 9, 1976, and Dec. 4, 1985.
New York: Rockland	Nyack, village of	360685B	do	Dec. 4, 1985.
Region III				
Maryland: Kent	Unincorporated areas	240045B	do	Apr. 25, 1975, Sept. 17, 1982, and Dec. 4, 1985.
Region IV				
North Carolina: Camden	do	370042B	do	Dec. 20, 1975, Dec. 23, 1977, and Dec. 4, 1985.
Georgia: Glynn	Brunswick, city of	130093B	do	May 24, 1974, Jan. 19, 1976, and June 19, 1985.
Region V				
Minnesota: Redwood	Unincorporated areas	270644B	do	Nov. 11, 1977 and Dec. 4, 1985.
Ohio: Clark	Springfield, city of	390063C	do	Apr. 12, 1974, Mar. 14, 1975, July 2, 1982, and Dec. 4, 1985.
Wisconsin: Barron	Dallas, village of	550014B	do	July 19, 1974, June 25, 1976, and Dec. 4, 1985.
Region VI				
Arkansas: Craighead	Bono, city of	050046B	do	Aug. 30, 1974, Oct. 3, 1975, and Dec. 4, 1985.
Texas: Young	Olney, city of	480686C	do	Apr. 12, 1974, Mar. 19, 1976, Sept. 10, 1976, and Dec. 4, 1985.
Region VII				
Kansas: Saline	New Cambria, city of	200318A	do	Dec. 27, 1974 and Dec. 4, 1985.
Region VIII				
Montana:				
Richland	Sidney, city of	300065B	do	May 24, 1974, Dec. 5, 1975, and Dec. 4, 1985.
Do	Unincorporated areas	300165B	do	Jan. 31, 1978 and Dec. 4, 1985.
Region I—Minimal Conversion				
Connecticut: Windham	Scotland, town of	090182A	do	Jan. 31, 1975, May 21, 1976, and Dec. 4, 1985.
Maine:				
Aroostook	Portage Lake, town of	230031A	do	Jan. 24, 1975 and Dec. 4, 1985.
Do	St. Francis, town of	230183A	do	Dec. 20, 1974 and Dec. 4, 1985.
Do	Woodland, town of	230040B	do	June 21, 1974, Nov. 12, 1976, and Dec. 4 1985.
Massachusetts:				
Franklin	Hawley, town of	250119A	do	Nov. 22, 1974 and Dec. 4, 1985
Do	Monroe, town of	250351A	do	Feb. 21, 1975 and Dec. 4, 1985.
Region III—Minimal Conversions				
Pennsylvania:				
Pike	Delaware, township of	421963B	do	Nov. 29, 1974, July 25, 1980, and Dec. 4, 1985.
Huntingdon	Morris, township of	421696B	do	Nov. 22, 1974, June 6, 1979, and Dec. 4, 1985.
Wayne	Scott, township of	422173B	do	Nov. 22, 1974, Dec. 19, 1980, and Dec. 4, 1985.
Huntingdon	West, township of	421706	do	Jan. 17, 1975, May 18, 1979, and Dec. 4, 1979.
Region VIII				
South Dakota: Spink	Redfield, town of	460081B	do	Aug. 2, 1974, Jan. 2, 1976, Nov. 15, 1985, and Dec. 4, 1985.
Region II				
New Jersey: Passaic	Pompton Lakes, borough of	345528D	Dec. 18, 1985, suspension withdrawn	June 2, 1970, Sept. 1, 1970, July 1, 1974, July 4, 1975, Oct. 15, 1976, and Dec. 18, 1985.

State, County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified
New York:				
Jefferson	Herrings, village of	360339B	do.	Aug. 9, 1974, Dec. 12, 1975, and Dec. 18, 1985.
Chenango	Norwich, city of	360161B	do.	Feb. 22, 1974, Aug. 20, 1976, and Dec. 18, 1985.
Region III				
West Virginia:				
Putnam	Winfield, town of	540271B	do.	Nov. 15, 1974, Apr. 30, 1976, and Dec. 18, 1985.
Wood	Vienna, city of	540215B	do.	Dec. 13, 1974, Aug. 20, 1976, and Dec. 18, 1985.
Putnam	Bancroft, town of	540165B	do.	Aug. 9, 1974, June 11, 1976, and Dec. 18, 1985.
Region IV				
Alabama: Autauga	Unincorporated areas	010314B	do.	Mar. 24, 1978 and Dec. 18, 1985.
Region V				
Illinois: McLean	Unincorporated areas	170931B	do.	Sept. 8, 1978 and Dec. 18, 1985.
Wisconsin: LaCrosse	LaCrosse, city of	555562B	do.	Jan. 15, 1971, July 1, 1974, May 14, 1976, and May 15, 1985.
Region VI				
Texas: Parker	Springtown, city of	480521B	do.	May 24, 1974, June 25, 1976, and Dec. 18, 1985.
Region VIII				
North Dakota: Cass	Reed, township of	380257C	do.	Oct. 15, 1980, May 1, 1984, and Dec. 18, 1985.
Utah:				
Salt Lake	Murray, city of	490103B	do.	Mar. 29, 1974, Dec. 19, 1975, and Dec. 18, 1985.
Do	Draper, city of	490244A	do.	Dec. 18, 1985.
Do	South Jordan, city of	490107B	do.	July 26, 1974, Jan. 30, 1976, and Dec. 18, 1985.

Issued: January 13, 1986.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 86-1069 Filed 1-16-86; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 83-374; RM-4293; RM-4484]

TV Broadcast Station in Reno, NV and Redding, CA

AGENCY: Federal Communications Commission.

ACTION: Denial of petition.

SUMMARY: This action denies a Petition for Reconsideration filed by Sarkes Tarzian, Inc. of the action assigning VHF Television Channel 11 to Reno, Nevada, and denying a counterproposal to assign that channel to Redding, California.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Joel Rosenberg, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television.

PART 73—[AMENDED]

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Memorandum Opinion and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations (Reno, Nevada, and Redding, California), MM Docket No. 83-374, RM-4293, RM-4484.

Adopted: December 19, 1985.

Released: January 10, 1986.

By the Chief, Policy and Rules Division.

1. Before the Commission is a Petition for Reconsideration [1] filed by Sarkes Tarzian, Inc. ("STI") of the action (49 FR 42936, published October 25, 1984) assigning TV Channel 11 to Reno, Nevada, and denying a counterproposal to assign that channel to Redding, California. Oppositions were filed by Golden Empire Broadcasting Co. ("Golden Empire"), by William N. Denton ("Denton"), and by Sacramento Valley Television, Inc. ("Sacramento Valley"). STI filed a reply to the oppositions.[2]

2. In its petition, STI relates that in response to the *Notice of Proposed Rule Making* ("Notice") proposing to assign Channel 11 to Reno, it filed opposition comments and a counterproposal to assign that channel to Redding. Further, it notes that both the Reno petitioner and Donrey of Nevada, Inc. ("Donrey") filed comments, with Donrey proposing a UHF assignment to Reno in lieu of Channel 11, and that these pleadings addressed merely the issue of which community had the greater service need. STI asserts that no issue had been raised concerning the benefits of using any specific transmitter site. Nevertheless, STI notes that both Donrey and Golden Empire were granted additional time to prepare and file comments concerning engineering information, with Golden Empire's request for additional time being related to STI's counterproposal. Citing other reply comments directed toward its counterproposal, STI says that, although it requested permission to respond, the *Report and Order* relied exclusively on

[1] Public Notice of the petition was given on December 6, 1984.

[2] Thereafter, STI filed a petition for Leave to File Supplement to Petition for Reconsideration filed by Nevada Television Corporation ("Nevada Television"). Sacramento Valley filed an opposition to STI's Leave to File Supplement and to a Petition for Reconsideration filed by Nevada Television Corporation. These pleadings are unauthorized and have not been accepted, since they raise matters not necessary for resolution in this proceeding.

Denton's reply comments and found that Reno should be preferred because of Denton's claims that a station operating on Channel 11 at Reno from Peavine Peak would provide a first commercial TV service to 19,265 people and a second such service to 19,865 people in the Susanville, California area. According to STI, while it actually responded to Denton's newly raised arguments concerning coverage from Peavine Peak at the first opportunity, it was effectively denied the opportunity to respond to Denton or to arguments against its Redding counterproposal. Further, STI contends that claims regarding first and second service were only raised in Denton's reply comments and depend upon utilization of the Peavine Peak transmitter site. Because the Bureau relied on Denton's service claims, STI argues, it should have evaluated and not ignored STI's engineering materials contained in its response to reply comments. In this regard, STI asserts that it too could have shown coverage of the Susanville area from a Redding site but declined to do so because it recognized that, like service from Peavine Peak, service from Redding would suffer from shadowing. However, since the Bureau relied on Denton's engineering materials, STI now submits an engineering showing demonstrating an available Redding site making possible substantial first and second service.

3. STI next argues that, since the decision favoring Reno rests solely on a finding of first and second service to the Susanville area, and since use of the only possible site at Peavine Peak will result in shadowing problems, the Bureau's reliance on this assignment priority set forth in the *Sixth Report and Order on Television Allocations*, 41 F.C.C. 148 (1952), is misplaced. STI contends that if the Reno assignment stands, the Bureau ought to condition the assignment on, or require use of, an alternate Reno site from which actual service to the Susanville area can be provided, accounting for terrain obstacles. According to STI, a realistic evaluation of its proposal and of all relevant data, as required by the Administrative Procedure Act, would convincingly show that Redding ought to be preferred. In this regard, STI notes that Redding has only one commercial and one noncommercial television station, with no other usable allocations, compared to five and one such stations, respectively, for Reno. STI adds that, if the choice of communities is based on use of a particular transmitter site, a Redding assignment could satisfy the first TV service priorities as well as the factor favoring a competitive local commercial station.

4. Opponents of STI's petition for reconsideration argue that a Redding station will only provide "minimal" first and second service to the Susanville area. They maintain that in challenging the Reno proposal STI seeks to use terrain roughness factors which, in fact, should favor a Reno assignment and that the Commission has prohibited use of such factors. Second, it is argued that STI's proposed Redding site is nearly 40 miles from that community, surrounded by rugged terrain, and not reasonably available. Next, the opponents contend that STI's petition fails to satisfy § 1.429(b) of the Commission's Rules. In this regard, they indicate that STI should have been aware when it submitted its initial comments that the Commission's assignment decision would be premised on service to underserved areas. According to these opponents, STI should have presented any relevant arguments at the time it filed its proposal, and having failed to timely file a request for an extension of time to respond to the Reno comments, STI's arguments were not appropriately presented. In the interest of administrative finality, it is argued that STI should not now be able to rectify its prior lack of diligence, especially since Commission reconsideration is not shown to be in the public interest. Finally, it is argued that a reassignment of Channel 11 to Redding would foreclose any opportunity for a first television service at Fortuna, California, in contravention of section 307(b) of the Communications Act of 1934, as amended.

5. STI, replying to opposition comments, states that no party disputes its statements concerning terrain conditions or the conclusion that substantial first and second service to the area centered on Susanville will not result from either a Reno or Redding assignment. According to STI, if an assignment is based on first and second service, its engineering evidence cannot be ignored, and Susanville must get the assignment. Alternatively, STI argues that, if the Commission concludes that underserved areas will not receive service from either Reno or Redding, the assignment must depend on other priorities set forth in the Sixth Report and Order. Thus, STI asserts that, although it demonstrated that Redding should be preferred on the basis of new first and second service, the Commission did not consider other priorities. Further, STI contends that, since the Fortuna proposal is not yet the subject of a *Notice*, it is premature to consider it in the context of this proceeding.

6. As to the argument that STI's presentation of data refuting Denton's claims of first and second service was untimely, STI asserts that Denton's failure to present its own evidence in response to the *Notice* created unusual circumstances. According to STI, had Denton filed its engineering claims initially, other parties could have considered and refuted them in the usual course. STI complains that, insofar as Denton waited until the reply comment stage, it was not responsive to matters previously in issue, and fairness requires that others be afforded the chance to respond. Petitioner contends that it offered evidence refuting Denton's service claims as soon as possible. Further, noting that § 1.429(b)(3) provides for reconsideration in the public interest, STI maintains that it can demonstrate that the basis for the Bureau's determination, service to the Susanville area, is impossible from Reno. In light of these arguments, STI urges that if its Redding counterproposal is not granted, and if the Commission's determination is based on service to underserved areas, Channel 11 ought to be assigned to Susanville, with the matter submitted for additional comment, if necessary.

Discussion

7. Initially, the Commission notes that the engineering statement accompanying STI's petition contains a claim that, according to standard Commission prediction methodology, a Redding station transmitting from Bunchgrass Mountain will provide first and second service to 12,198 and 9,156 people, respectively. Significantly, STI does not challenge Denton's conclusion that 19,265 and 19,865 people, respectively, could receive first and second service from Peavine Peak according to that same standard methodology. Thus, the Channel 11 proposal for Reno would provide more first and second video service to the area around Susanville than would a Redding assignment. Further, an examination by the Commission staff of license applications on file reveals that any of eight proposed facilities situated at Peavine Peak could provide service to the unserved and underserved areas near Susanville.[3] Thus, as set forth in the

[3] The applications were filed by Reno Family Television Ltd. (BPCT-850509KW), Reno Eleven Broadcasting (BPCT-850509KP), Juan Villareal, d/b/a Reno Telecommunications Co. (BPCT-850509KK), Nevada Television Corporation (BPCT-850509KU), David Moore (BPCT-850509KR).

Continued

Report and Order [4] based on the comparative predicted first and second services, Reno was properly preferred over Redding for the Channel 11 assignment.[5] Since the assignment was predicted on such service, the Commission anticipates that the decision of the Administrative Law Judge in comparing mutually exclusive applications for Channel 11 at Reno will take that factor into account.

8. In adopting its television assignment scheme, the Commission, while considering the UHF and VHF bands as component parts of a single television service, recognized the difference in signal propagation characteristics. In light of the fact that VHF stations can effectively cover larger areas, the Commission determined that, where possible, it would assign VHF channels to larger cities with broad areas of common interest. This determination reflected the Commission's conclusion that, to achieve an equitable distribution of television facilities, metropolitan centers should be assigned VHF channels rather than smaller communities. *Sixth Report and Order, supra,* at 168 (1952). In general, UHF channels were to be assigned to smaller communities in order to provide service for more localized needs. Reno (population 110,751) is substantially larger than Redding (population 41,995). The Commission staff has determined that a number of UHF channels are available to serve Redding. Accordingly, an assignment of Channel 11 to Reno rather than Redding is consistent with its general television assignment scheme set forth in the *Sixth Report and Order.*

9. Since an assignment of Channel 11 to Reno is preferable to an assignment to Redding, based on predicted first and second service and the standards set forth in the *Sixth Report and Order,* it is not incumbent on the Commission to address other aspects of STI's argument. Nevertheless, the Commission notes that STI had the opportunity to present engineering data illustrating the extent of predicted first and second service to the Susanville area in the context of its initial comments supporting its Redding counterproposal. In such circumstances, a proponent for a new television assignment should provide all relevant information which sheds the most favorable light on its proposal. Significantly, STI does not assert that it initially lacked access to information on which to construct predicted first and second service from a Redding site at Bunchgrass Mountain. Had STI presented such information in the context of its initial comments, the Commission would have compared the resultant predicted service with the predicted service from Peavine Peak and based on accepted Commission methodology, would have recognized the advantage of a Reno assignment. On the other hand, the Reno proponents did not know of the Redding counterproposal and did not have an opportunity to file comments of a comparative nature to respond to that counterproposal. Nevertheless, the Commission has considered the merits of STI's comments on this matter and reaffirms its previous findings. As to the suggested Susanville alternative, since no party indicated in response to the *Notice* that it was willing to be licensed to that community, it was not appropriate for the Commission to consider it. Finally, we note that at least one other TV channel (Channel 26) is available for assignment to Redding to provide an additional local television service upon request.

10. Accordingly, it is ordered, That the subject Petition for Reconsideration, filed by Sarkes Tarzian, Inc., is denied.

11. It is further ordered, That the subject Petition for Leave to File Supplement to Petition for Reconsideration and the subject Supplement to Petition for Reconsideration, filed by Sarkes Tarzian, Inc., are denied.

12. Further information on this matter may be obtained by contacting Joel Rosenberg, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–945 Filed 1–16–86; 8:45 am]

BILLING CODE 6712-01-M

Hirshland Communications, Inc. (BPCT–850509KO), Reno Eleven Telecasters (BPCT–850509KH), and Peavine, Inc. (BPCT–850509KV).

[4] See, *Sixth Report and Order on Television Allocations, supra.*

[5] In its referenced engineering statement, STI questions whether, in fact, either Bunchgrass Mountain near Redding or Peavine Peak is a suitable site from which to provide first or second service to Susanville area. In this regard, STI relies on terrain profile studies. According to STI, although the Commission has temporarily suspended use of terrain roughness factors, that suspension was the result of anomalous results occurring under certain terrain conditions, the terrain factors here do not produce such anomalous results, and their use here will produce accurate coverage predications. However, the Commission's *Order* extending previous action staying the use of terrain roughness factors is applicable to all atypical terrain configurations, "even in those limited number of cases where terrain anomalies are encountered." *Effects of Terrain on Signal Propagation, Evaluation; Temporary Suspension of Certain Portions of Sections,* 42 FR 25736, published May 19, 1977.

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1150

[Ex Parte No. 392 (Sub-No. 1)]

Class Exemption for the Acquisition and Operation of Rail Lines

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission exempts from regulation acquisitions and operations under 49 U.S.C. 10901. This exemption does not apply when a class I railroad abandons a line and another class I railroad then acquires the line in a transaction that results in a major market extension as defined at 49 CFR 1180.3(c). To qualify for this exemption, applicant must file a verified notice providing information about the transaction. The new rules are set forth at 49 CFR 1150, Subpart D, *Exempt Transactions* (See attached appendix).

DATE: The rules are effective February 17, 1986.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

This action will not significantly affect either the quality of the human environment or energy conservation. This rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1150

Administrative practice and procedures, and Railroads.

Authority: 49 U.S.C. 10321, 10901, 49 U.S.C. 10505; and 5 U.S.C. 553.

Decided: December 19, 1985.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Taylor, Sterrett, Andre, Lamboley, and Strenio. Vice Chairman Simmons concurred with a separate expression. Commissioner Lamboley concurred in part, and dissented in part with a separate expression.

James H. Bayne,

Secretary.

Appendix

PART 49—[AMENDED]

1. The authority citation for 49 CFR Part 1150 is revised to read as follows:

Authority: 49 U.S.C. 10321, 10901 and 10505; and 5 U.S.C. 553.

2. Title 49, Subtitle B, Chapter X, Part 1150 of the Code of Federal Regulations is amended by adding a new Subpart D, reading as follows:

Subpart D—Exempt Transactions

Sec.
1150.31 Scope of exemption.
1150.32 Procedures and relevant dates.
1150.33 Information to be contained in notice.
1150.34 Format for caption summary.

Subpart D—Exempt Transactions

§ 1150.31 Scope of exemption.

(a) Except as indicated below, this exemption applies to all acquisitions and operations under section 10901 (*See* 1150.1, *supra*). This exemption also includes: (1) Acquisition by a noncarrier of rail property that would be operated by a third party; (2) operation by a new carrier of rail property acquired by a third party; (3) a change in operators on the line; and (4) acquisition of incidental trackage rights. Incidental trackage rights include the grant of trackage rights by the seller, or the assignment of trackage rights to operate over the line of a third party that occur at the time of the exempt acquisition or operation. This exemption does not apply when a class I railroad abandons a line and another class I railroad then acquires the line in a proposal that would result in a major market extension as defined at 49 CFR 1180.3(c).

(b) Other exemptions that may be relevant to a proposal under this Subpart are the exemption for control at 49 CFR 1180.2(d) (1) and (2), and the exemption from securities regulation at 49 CFR 1175.

§ 1150.32 Procedures and relevant dates.

(a) To qualify for this exemption, applicant must file a verified notice providing details about the transaction, and a brief caption summary, conforming to the format in 1150.34, for publication in the **Federal Register**.

(b) The exemption will be effective 7 days after the notice is filed. The Commission, through the Director of the Office of Proceedings, will publish a notice in the **Federal Register** within 30 days of the filing. A change in operators would follow the provisions at 49 CFR 1150.34, and notice must be given to shippers.

(c) If the notice contains false or misleading information, the exemption is void *ab initio*. A petition to revoke under 49 U.S.C. 10505(d) does not automatically stay the exemption.

§ 1150.33 Information to be contained in notice.

(a) The full name and address of the applicant;

(b) The name, address, and telephone number of the representative of the applicant who should receive correspondence;

(c) A statement that an agreement has been reached or details about when an agreement will be reached;

(d) The operator of the property;

(e) A brief summary of the proposed transaction, including (1) the name and address of the railroad transferring the subject property, (2) the proposed time schedule for consummation of the transaction, (3) the mile-posts of the subject property, including any branch lines, and (4) the total route miles being acquired;

(f) A map that clearly indicates the area to be served, including origins, termini, stations, cities, counties, and States; and

§ 1150.34 Caption summary.

The caption summary must be in the following form. The information symbolized by numbers is identified in the key below:

Interstate Commerce Commission

Notice of Exemption

Finance Docket No.

(1)—Exemption (2)–(3)

(1) Has filed a notice of exemption to (2) (3)'s line between (4). Comments must be filed with the Commission and served on (5). (6).

Key to symbols:

(1) Name of entity acquiring or operating the line, or both.

(2) The type of transaction, *e.g.*, to acquire, operate, or both.

(3) The transferor.

(4) Describe the line.

(5) Petitioners representative, address, and telephone number.

(6) Cross reference to other class exemptions being used.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Taylor, Sterrett, Andre, Lamboley, and Strenio. Vice Chairman Simmons concurred with a separate expression. Commissioner Lamboley concurred in part, and dissented in part with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 86–1075 Filed 1–16–86; 8:45 am]

BILLING CODE 7035-01-M

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49 CFR Part 1152

[Ex Parte No. 274 (Sub-14)]

Rail Abandonments; Offers of Financial Assistance

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: On April 12, 1985, a Notice of Proposed Rulemaking was published to modify the regulations at 49 CFR 1152.27 governing the filing of offers of financial assistance under 49 U.S.C. 10905, (50 FR 14401). Upon further consideration, the Commission has decided to revise: (1) Section 1152.27(h)(4) to provide that the offeror must submit its evidence and argument in support of its requested terms by the 30th day after the offer was made, the carrier must submit its reply evidence by the 50th day after the offer was made, and the offeror may submit rebuttal by the 60th day after the offer was made; and (2) § 1152.27(h)(1) to provide that the Commission will issue its decision within 60 days after the request for it to set terms was due (i.e., 90 days after the offer was made).

DATE: The rule will be effective February 17, 1986.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

This action will not significantly affect either the quality of the human environment or energy conservation. This rule will not have a significant economic impact on a substantial number of small entities because the purpose is to protect the rights of parties to have a balanced and quick resolution to their request to have the Commission set the terms for sale or subsidy.

The list of subjects involved in 49 CFR Part 1152 includes: Administrative Practice and Procedures, and Railroads.

Decided: December 30, 1985.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners

Taylor, Sterrett, Andre, Lamboley, and Strenio. Commissikoners Taylor and Strenio did not participate.

James H. Bayne,

Secretary.

Appendix

PART 1152—[AMENDED]

1. The authority citation for 49 CFR Part 1152 is revised to read as follows:

Authority: 49 U.S.C. 10321, 10326 and 10905; and 5 U.S.C. 553.

2. 49 CFR Part 1152.27 is amended by revising paragraphs (h) (1) and (4) to read as follows:

§ 1152.27 Financial assistance procedures.

* * * * *

(h) * * *

(1) If the Commission is requested to establish conditions and compensation for financial assistance under paragraph (g)(1) of this section, the Commission will issue a decision within 60 days after the request is due (i.e., within 90 days after the offer is made).

* * * * *

(4) The offeror must submit all evidence and information supporting the terms it seeks within 30 days after the offer is made. The carrier's reply to this evidence and support for the terms it seeks are due within 50 days after the offer is made. The offeror may submit rebuttal evidence within 60 days after the offer is made. Evidence and information submitted after these dates may be rejected.

* * * * *

[FR Doc. 86-1079 Filed 1-16-86; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 51, No. 12
Friday, January 17, 1986

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 Parts 1131 and 1136

Milk in the Central Arizona and Great Basin Marketing Areas; Proposed Termination of Certain Provisions of the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed termination of rules.

SUMMARY: This notice invites written comments on proposals to terminate certain provisions of the Central Arizona and Great Basin orders. The proposed action would remove the requirements that handlers pay more than the Class III price in making partial payments for milk received the first 15 days of the month. Safeway Stores, Inc., the proponent of the proposed action, indicates that the termination order is needed to reduce the level of partial payments because the current method of determining such payments under each order results in partial payments which are higher than the respective Class I prices.

DATE: Comments are due February 3, 1986.

ADDRESS: Comments (two copies) should be filed with the Dairy Division, Agricultural, Marketing Service, Room 2968–South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–4829.

SUPPLEMENTARY INFORMATION: The Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the orders on certain milk handlers by reducing the level of the partial payments that are required to be made for milk received during the first 15 days of each month.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the termination of the following provisions of the Central Arizona and Great Basin milk orders is being considered:

1. In § 1131.73 (a)(1) and (d)(1) the words "1.3 times".

2. In § 1136.73 (a)(1), (d)(1) (b)(1) and (e)(1) the words "1.2 times".

All persons who want to send written data, views, or arguments about the proposed termination should send two copies of them to the Dairy Division, Agricultural Marketing Service, Room 2968–South Building, U.S. Department of Agriculture, Washington, D.C. 20250, not later than 15 days after the publication of this notice in the **Federal Register.**

The comments that are received will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27 (b)).

Statement of Consideration

The proposed termination would remove the requirement under the Central Arizona and Great Basin orders that handlers pay that portion of the partial payment rate that is more than the Class III price to producers for milk received the first 15 days of the month.

The Central Arizona order provides that handlers must pay producers or their cooperative 1.3 times the Class III price for the preceding month for milk received the first 15 days of the month. A partial payment under this order is not required for milk of producers who have discontinued shipping milk before the 25th day of the month. With respect to milk received from a cooperative association in its capacity as a bulk tank handler or as the operator of a pool plant, the order requires a partial payment at the above rate for all milk received the first 15 days of the month.

Similarly, the proposed termination order would remove the requirements under the Great Basin order that handlers pay more than the Class III price for all milk received the first 15 days of the month from any producer. The partial payment rate under the Great Basin order is 1.2 times the Class III price for the preceding month. The Great Basin order also requires partial payments to a cooperative association in its capacity as a bulk tank handler and as the operator of a pool plant.

Safeway Stores, Inc. (Safeway), proposed the termination of that portion of the partial payment rates that are higher than the Class III price under each order. Safeway indicates that at the present time, the price relationship between the Class I price and the preceding month's Class III price is such that partial payments at either the 1.3 or 1.2 rate times the preceding month's Class III price results in handlers having to pay producers more than the Class I price. Safeway indicated, for example, that for the month of October 1985 under the Central Arizona order, the minimum Federal order partial payment rate was $14.46 (Class III price for September $11.12×1.3), or $.86 more than the $13.60 Class I price. Under the Great Basin order, for example, the minimum partial payment rate was $13.34 (Class III price for September $11.12×1.2) or $.36 more than the Class I price of $12.98. In both cases, the difference would be even larger when compared to the uniform price.

At the time the current partial payment rates were promulgated (Central Arizona—final decision issued January 19, 1961; Great Basin—final decision issued March 29, 1961) it was determined that in both markets the rate for partial payments would not result in any "overpayments". This was determined because at that time the difference under each of the orders between the uniform price and the Class III price was substantially larger than in recent months. Under current market conditions, the orders require a partial payment at a price that exceeds the final minimum order pay price, including the Class I price for milk received from a cooperative association and for which payment is required at not less than class prices.

The proposed termination would not result in the elimination of partial payments under either order. Therefore, comments are sought concerning whether the aforementioned provisions should be terminated.

List of Subjects in 7 CFR Parts 1131 and 1136

Milk marketing orders, Milk, Dairy products.

The authority citation for CFR Parts 1131 and 1136 continue to read as follows:

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

Signed at Washington, D.C. on: January 14, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86–1121 Filed 1–16–86; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Parts 1924 and 1944

Section 502 Rural Housing Loan Policies, Procedures and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations regarding Section 502 Rural Housing Loan Policies, Procedures and Authorizations. The proposed action implements the authority to make loans for the purchase of mobile/manufactured homes and sites under the Section 502 Rural Housing Program. The circumstance requiring this action is enactment of the Housing and Urban Rural Recovery Act of 1983, Pub. L. 98–181, which sets the standards for FmHA to provide housing loans for manufactured homes. The intended effect is to comply with Pub. L. 98–181 and provide safe, sanitary and decent housing for eligible families in rural areas.

DATE: Comments must be received on or before March 18, 1986.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit any comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Mathias J. Felber, Branch Chief, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5340, South Agriculture Building, Washington, DC 20250, telephone: 202–382–1543 or Raymond R. McCracken, Senior Loan Officer, Single Family Housing Processing Division, Farmers Home Administration, USDA, Room 5346, South Agriculture Building, Washington, DC 20250, telephone: 202–382–1486.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or 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.

This action requires no increase in costs to the Government. There is no impact on proposed budget levels and funding allocations will not be affected because of this action. There will be a modest increase in the reporting requirements required of the public in order to determine eligibility of those receiving the benefits. We have determined that the increase in reporting requirements is not a significant impact and that this regulation maximizes net benefit to society at the lowest net cost.

Background

The Housing and Urban—Rural Recovery Act of 1983, Pub. L. 98–181, amends section 502 of the Housing Act of 1949 and establishes standards under which FmHA may make housing loans for mobile/manufactured homes and lots. The proposed regulations contain the requirements, under which (1) an applicant may obtain a rural housing loan to purchase a mobile/manufactured home and lot; and (2) a dealer-contractor may obtain approval to develop a site with a mobile/manufactured home. The proposed regulations also provide applicants and FmHA personnel with the necessary mobile/manufactured home site planning and construction, installation, set-up and other development requirements necessary for loans made with respect to a mobile/manufactured home.

FmHA proposes to implement the authorizing statute by amending Subpart A of Part 1924 and Subpart A of Part 1944 of Chapter XVIII, Title 7, Code of Federal Regulations by adding Exhibit J to Subpart A of 1924 and Exhibit F to Subpart A of Part 1944.

Discussion of Proposed Exhibit J to Subpart A of Part 1924

1. The Agency is extending the eligibility of section 502 rural housing loans to newly constructed mobile/manufactured homes which comply with the Federal Manufactured Home Construction and Safety Standards (FMHCSS) and are permanently attached to a site built permanent foundation meeting FmHA adopted Minimum Property Standards requirements or a Model Building Code acceptable to FmHA.

The site, site improvements, and all other features of the financed property not addressed by the FMHCSS must meet or exceed the applicable requirements of the proposed Exhibit J, "Mobile/Manufactured Home Sites, Rental Projects and Subdivisions: Development, Installation and Set-up," of Subpart A of Part 1924.

2. Part B, Paragraph (I)(C) provides that the finish grade elevation beneath the mobile/manufactured home or the first floor habitable space, whichever is lower be above the 100-year return frequency flood elevation. The National Flood Insurance Program damage projections indicate that mobile/manufactured housing is more susceptible to flood damage than site-built housing because of the materials used. Therefore, the higher elevation is required to minimize a possible risk to the insurance fund. The use of fill to accomplish this should be a last resort. However, as stated in § 1940.304, special policy, it is FmHA's policy not to approve or fund any proposal in a 100-year flood plain area unless there is no practicable alternative to such a flood plain location.

3. Part B, Paragraph (II)(A) (1) and (2) proposes that mobile/manufactured homes financed under the FmHA housing programs be permanently attached to a permanent foundation that meets or exceeds those foundation requirements of the FmHA adopted Mimimum Property Standards or a Model Building Code acceptable to FmHA. The regulation precludes any intent to move to another location and is intended to make the mobile/manufactured home on its foundation a

structural entity comparable to a stick-built house on its foundation.

4. Part B, Paragraph (II)(A)(4) requires a continuous perimeter enclosure constructed of a material that conforms to the FmHA adopted Minimum Property Standard requirements for foundations. This enclosure may or may not be the supporting foundation of the mobile/manufactured home depending upon its structural characteristics. If it is the supporting foundation it must meet FmHA adopted Minimum Property Standard requirements and be able to resist all design loads identified in section 601 of the FmHA adopted Minimum Property Standards. If is is not the supporting foundation, it must resist whatever forces to which it may be subject without transmitting adverse forces to the unit superstructure.

5. Part B, Paragraph (II)(A)(7) requires that the mobile/manufactured home be braced and stiffened where necessary before it leaves the factory to eliminate racking and potential damage during transport. FmHA believes that this requirement is necessary for mobile/manufactured homes to be financed under our housing programs. The transportation period is considered to begin when the mobile/manufactured home leaves the manufacturer and to continue until it is placed upon its permanent foundation.

Discussion of Proposed Exhibit F to Subpart A of Part 1944

1. Paragraph (I)(b) provides for the property to be classified and taxed as real estate rather than personal property and the mortgage to cover both the mobile/manufactured home and site. By classifying the loans as real estate, rather than personal property, the debt can be amortized for a longer period and provide lower monthly payments for the buyer. FmHA believes the longer amortization period will bring homeownership within the repayment ability of very low- and low-income families who otherwise could not afford to purchase a home.

2. Paragraph (V)(f) proposes to exclude furniture as an authorized loan purpose. The proposed regulation defines furniture as movable articles of personal property such as drapes, beds, bedding, chairs, sofas, divans, lamps, tables, televisions, radios, or stereo sets and other similar items of personal property, but furniture does not include wall-to-wall carpeting, refrigerators, ovens, ranges, washing machines, clothes dryer, heating or cooling equipment or other similar items. Furniture as defined is normally considered personal property with a short useful life as compared to real property and is not normally financed as part of the home under real estate transactions. Therefore, FmHA proposes not to finance furniture with mobile/manufactured home loans.

3. Paragraph VI proposes the use of HUD Title II Thermal Standards for manufactured homes. We are, however, soliciting public comment on the use of this standard and whether it may be more appropriate to use the thermal standards for manufactured homes developed under Title VI of the Housing and Community Development Act of 1974.

4. Paragraph VIII proposes to limit the amount of the loan to the market value of the security as determined by an appraisal or cost, whichever is lower. The cost approach will limit the sale price of the unit to 131 percent of the wholesale price which amount shall include the costs of transportation, set-up and anchoring. FmHA believes the 131 percent is consistent with HUD's proposal for combination loans under Title I of 125 percent of invoice plus borrower down payment of 5 percent of purchase price. The second approach in determining maximum loan amount was added because of the difficulty in determining value by the appraisal method. There are a limited number of mobile/manufacture homes in rural areas which have sold as real estate including site and unit. In most cases, the comparables will need to be conventional built homes adjusted for quality, size, location, etc. By adding the cost approach FmHA gives another check and balance to assure a sound loan.

5. Paragraph XV provides for the term of the mortgage not to exceed 20 years. We have determined that because of the uncertainty regarding the useful economic life of manufactured housing that a 20-year maximum term is prudent for manufactured houses. The 20-year term reduces the potential subsidy cost to the Government. Assuming a $32,000 loan amortized at 11⅜% interest, the maximum potential government subsidy is $46,880 for 20 years, $61,275 for 25 years and $76,500 for 30 years. This shorter term has the potential of reducing subsidy cost by $29,620. However, in lieu of the fact other lenders are offering up to 30 year terms and the monthly cost to the borrower would be less, we solicit public comment on this part.

6. Certain sections is Subpart A of Part 1944 are amended to conform with the proposed Exhibit F.

For the reasons set forth in the Final Rule related to Notice 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities," the section 502 rural housing loan program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

However, when regulations for financing mobile/manufactured homes are implemented under Subpart E of Part 1944, "Rural Rental Housing Loan Policies, Procedures and Authorizations," in conjunction with Exhibit J of Subpart A of Part 1924 "Mobile/Manufactured Homes Sites, Rental Projects and Subdivisions: Development; Installation and Set-up," the Program and Activities will be subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this proposed action does not constitute a major Federal action significantly affecting the quality of the human environmental, 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 Title and Number

10.410 Low Income Housing Loans.

List of Subjects

7 CFR Part 1924

Agriculture Construction management, Construction and repair, Energy conservation, Housing, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing.

7 CFR Part 1944

Loan programs—Housing and community development, Low and moderate income housing, Mortgages, Rural housing, Subsidies, Mobile homes.

Therefore, FmHA proposes to amend Chapter XVIII, Title 7, Code of Federal Regulations as follows:

PART 1924—CONSTRUCTION AND REPAIR

7 CFR part 1924 is amended as follows:

1. The authority citation for Part 1924 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Planning and Performing Construction and Other Development

1a. Section 1924.5 is amended by adding paragraph (e)(4) to read as follows:

§ 1924.5 Planning development work.

* * * * *

(e) * * *

(4) The site planning, design, development installation and set-up of mobile/manufactured home sites, rental projects and subdivisions shall be guided by Exhibit J of this subpart.

* * * * *

2. Exhibit J is added to Subpart A of Part 1924 to read as follows:

Mobile Manufactured Home Sites, Rental Projects and Subdivisions: Development, Installation and Set-Up

Exhibit J.—Mobile/Manufactured Home Sites, Rental Projects and Subdivisions: Development, Installation and Set-Up

Part A—Introduction

1. *Purpose and Scope.* This Exhibit describes and identifies acceptable site development, installation and set-up practices and concepts for mobile/manufactured homes. It is intended for FmHA field personnel, builders, developers, sponsors and others participating in FmHA housing programs.

This Exhibit applies to all mobile/manufactured homes on scattered sites or in rental projects and subdivisions and covers the requirements for design and construction of mobile/manufactured home communities. FmHA may approve alternatives or substitutes if it finds the proposed design satisfactory for the proposed use, and if the materials, installation, device, arrangement, or method of work is at least equivalent to that prescribed in this Exhibit considering quality, strength, effectiveness, durability, safety and protection of life and health.

FmHA will require satisfactory evidence to be submitted to substantiate claims made regarding the use of any proposed alternative.

II. *Background.* FmHA has authority to make (1) Section 502 Rural Housing (RH) loans with respect to mobile/manufactured homes and lots, and (2) Section 515 Rural Rental Housing (RRH) loans with respect to mobile/manufactured home rental projects.

The mobile/manufactured home must be constructed in conformance with the Federal Manufactured Home Construction and Safety Standard (FMHCSS) and be permanently attached to a site-built permanent foundation which meets or exceeds the Minimum Property Standards (MPS) for One- and Two-Family Dwellings or Model Building Codes acceptable to FmHA. The mobile/manufactured home must be permanently attached to that foundation by anchoring devices adequate to resist all loads identified in the MPS. This includes resistance to ground movements, seismic shaking, potential shearing, overturning and uplift loads caused by wind. Note that anchoring straps or cables affixed to ground anchors other than footings will *not* meet these requirements.

Subpart G of Part 1940 of this chapter applies on scattered sites, in subdivisions and rental projects to the development, installation and set-up of *mobile/manufactured homes.* To determine the level of environmental analysis required for a particular application, each mobile/manufactured home or lot involved shall be considered as equivalent to one housing unit or lot as these terms are used in §§ 1940.310–.312 as well as in any other sections of Subpart G of Part 1940 of this chapter. The implementation of FmHA environmental policies and the consideration of important land use impacts are of particular relevance in the review of proposed mobile/manufactured home sites and in achieving the two purposes highlighted below. Because the development, installation and set-up of mobile/manufactured home communities, including scattered sites, rental projects, and subdivisions, differs in some requirements from conventional site and subdivision development, two of the proposes of this Exhibit are to:

A. Encourage economical and orderly development of such communities and nearby areas, and

B. Promote the safety and health of residents of such communities.

Therefore, this Exhibit identifies those required standards and regulations and suggested guidelines for eliminating and preventing health and safety hazards and promoting the economical and orderly development and utilization of land for planning and development of mobile/manufactured home communities. The Exhibit also provides the requirements for meeting the following:

A. *Resistance to Wind.* Foundations and anchorages shall be designed to resist wind forces specified in American National Standards Institute (ANSI) A–58.1–1982 for the geographic area in which the mobile/manufactured home will be sited;

B. *Proper Installation.* The manufacturer's installation instructions provided with each mobile/manufactured home shall contain instructions for at least one site-built foundation with interior and/or perimeter supports. FmHA field office personnel shall review to determine its adequacy as security for an FmHA loan only, the foundation design concept for compliance with this Exhibit, the FmHA/MPS and any Model Building Code acceptable to FmHA in that particular geographic area; and

C. *Proper Foundation Design.* Mobile/manufactured homes shall be installed on a foundation system which is designed and constructed to sustain, within allowable stress and settlement limitations, all applicable loads. Any foundation and anchorage system or method of construction to be used should be analyzed in accordance with well-established principles of mechanics and structural engineering.

III. *Definitions.* For the purpose of this Exhibit the following definitions apply:

Accessory Building or Structure. A subordinate building or structure which is an addition to or supplements the facilities provided by a mobile/manufactured home, such as awnings, cabanas, ramadas, storage structures, carports, garages, porches, patios, fences and windbreaks.

Anchoring Systems. An approved system for securing the mobile/manufactured home to the ground or foundation system that will when properly designed and installed resist overturning and lateral movement of the home from wind forces.

Contiguous. Sharing a boundary, adjoining or adjacent. A lot or subdivision is considered to be contiguous to other lots or subdivisions if it is adjoining, touching or adjacent.

Federal Manufactured Home Construction and Safety Standards (FMHCSS). A 1976 Federal standard, commonly known as the HUD Standard, for the construction, design and performance of a mobile/manufactured home which meets the needs of the public including the need for quality, durability and safety. Units conforming to the FMHCCS are certified by an affixed label that reads as follows:

AS EVIDENCED BY THIS LABEL NO. ——— THE MANUFACTURER CERTIFIES TO THE BEST OF THE MANUFACTURER'S KNOWLEDGE AND BELIEF THAT THIS MANUFACTURED HOME HAS BEEN INSPECTED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND IS CONSTRUCTED IN CONFORMANCE WITH THE FEDERAL MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS IN EFFECT ON

THE DATA OF MANUFACTURE. SEE DATA PLATE.

Mobile/Manufactured Home. A structure which is built to the Federal Manufactured Home Construction and Safety Standards and the HUD Title II Thermal Standards for manufactured homes. It is transportable in one or more sections, which in the traveling mode is ten body feet or more in width, and when erected on site is four hundred or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities. It is designed and constructed for permanent occupancy by a single family and contains permanent eating, cooking, sleeping and sanitary facilities. The plumbing, heating, and electrical systems are contained in the structure.

Mobile/Manufactured Home Community. A parcel of contiguous parcels of land which contains two or more mobile/manufactured home sites available to the general public for placement of mobile/manufactured homes or homes and sites for occupancy. Sites may be for rent (as in a park), or sites may be sold for residential occupancy (as in a subdivision).

Mobil/Manufactured Home Rental Project. A parcel or multiple parcels of land which have been so designated and improved to contain mobile/manufactured homes with sites available for rent and/or sites for rent which will accommodate mobile/manufactured homes for occupancy.

Mobile/Manufactured Home Site. A designated parcel of land in a mobile/manufactured home rental project, subdivision or scattered site designed for the accommodation of a unit and its accessory structures for the exclusive use of the occupants.

Mobile/Manufactured Home Subdivisions. A contiguous group of 10 or more (developed or undeveloped) lots or building sites designed or intended to be conveyed by deed to individual owners for residential occupancy primarily by mobile/manufactured homes. Typically all roads, rights-of-ways, water, sewer and other utility line easements would be dedicated to a public body which would be responsible for maintenance.

Permanent Perimeter Enclosure. A permanent perimeter structural system completely enclosing the space between the floor joist of the mobile/manufactured home and the ground. If separate from the foundation system, secured to the perimeter of the manufacture home, properly ventilated and constructed of materials that conform to the FmHA adopted MPS requirements for foundations.

Pier Support System. Consists of footings, piers, caps, leveling spacers, or approved prefabricated load bearing devices.

Related Facilities. Any nonresidential structure or building used for rental housing related purposes as defined in § 1944.205(i) of Subpart E of Part 1944 of this chapter.

Site-Built Permanent Foundation System. A foundation system (consisting of a combination of footings, piers, caps and shims and anchoring devices or required structural connections) which is designed and constructed to support the unit and sustain, within allowable stress and settlement limitations, all applicable loads specified in ANSI A58.1–1982. All loads shall be transferred from the mobile/manufactured home to the earth at a depth below the established frost line without exceeding the safe bearing capacity of the support soil.

Set-Up. The work performed and operations involved in the placement of a mobile/manufactured home on a foundation system, to include installation of accessories or appurtenances and anchoring devices, and when local regulations permit, connection of utilities, but excluding preparation of the site.

Housing and Urban Development (HUD) Title II Thermal Standards for Manufactured Homes. According to these standards manufactured homes shall be insulated so that the envelope "Uo" value (the rate of heat loss through floors, walls, doors, windows and ceilings, measured in BTUs per hour per square foot of surface per degree Fahrenheit difference between indoor and outdoor temperatures) does not exceed:

(a) 0.145 in Climatic Zone I, which includes Alabama, Arizona, Arkansas, California, Florida, Georgia, Hawaii, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee and Texas;

(b) 0.087 in Climatic Zone III, which includes Alaska, Maine, Michigan, Minnesota, Montana, New Hampshire, North Dakota, South Dakota, Vermont, Wisconsin and Wyoming; and

(c) 0.099 in Climatic Zone II, which includes the remainder of the States;

IV. *Compliance with Local Regulations.* These requirements do not replace standards established by local law, ordinances, or regualtions. Whenever such local standards contain more stringent provisions than any of the minimums of FmHA, the more stringent standards shall govern.

V. *Applicable Standards, Regulations and Manuals.*

A. Mobile/manufactured housing to be financed by FmHA must comply with the following standards:

1. Federal Manufactured Home Construction and Safety Standard, 24 CFR Part 3280, mandated by Congress under Title VI of the Federal Housing and Community Development Act of 1974.

2. Foundation requirements of the Minimum Property Standards as adopted by FmHA or a Model Building Code acceptable to FmHA.

3. [Reserved]

4. Uniform Federal Accessibility Standard (UFAS).

5. ANSI A58.1–1982, Minimum Design Loads for Buildings and Other Structures.

B. Mobile/manufactured housing to be financed by FmHA shall comply with all applicable FmHA regulations, including but not limited to the following:

1. Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5), "Planning and Performing Site Development Work".

2. Subpart G of Part 1940, "Environmental Program."

3. Subpart A of Part 1944, "Section 502 Rural Housing Loan Policies, Procedures and Authorizations."

4. Subpart E of Part 1944, "Rural Rental Housing Loan Policies, Procedures and Authorizations."

The requirements of the above references have not been repeated in this Exhibit. Those requirements contained above are either mandatory or minimums and every effort should be made by the applicant, builder-developer or dealer-contractor to utilize higher standards, when appropriate.

Part B—Construction and Land Development

I. *General Acceptability Criteria.* The following criteria apply to development on scattered sites, in subdivisions and in rental project communities.

A. A mobile/manufactured home development including a site, rental project or subdivision shall be located on property designated for that use, where designations exist, by the local jurisdiction.

B. Conditions of soil, ground water level, drainage, flooding and togography shall not create hazards to the property or the health or safety of the residents.

C. The finished grade elevation beneath the mobile/manufactured home or the first floor elevation of the habitable space, whichever is lower, shall be above the 100-year return frequency flood elevation. This requirement applies wherever mobile/manufactured homes may be installed, not just in locations designated by the National Flood Insurance Program as areas of special flood hazards. The use of fill to accomplish this is a last resort. However, as stated in § 1940.304 of Subpart G of Part 1940 of this chapter, it is FmHA's policy not to approve or fund any proposal in a 100-year flood plain area unless there is no practicable alternative to such a flood plain location.

D. Essential services such as employment centers, shopping, schools, recreation areas, police and fire protection, and garbage and trash removal shall be convenient to the development and any site, community, or subdivision must meet the environmental and location requirements contained in Subpart G of Part 1940 of this chapter.

E. Mobile/manufactured home sites or rental projects and subdivisions shall not be subject to any adverse influences of adjacent land uses. An adverse influence is considered as one that is out of the acceptable level or range of a recognizable standard or where no standard exists is considered a nuisance irrespective of a site being zoned for mobile/manufactured home use. Health, safety and aesthetic consequences of location shall be carefully assessed by inspection of the site prior to selection for development. Undesirable land uses such as deteriorated residential or commercial areas and noxious industrial properties shall be avoided to ensure compatibility. Other undesirable elements such as heavily traveled highways, airport runways, railroads, or fire hazards and other areas subject to recognizably intolerable noise levels shall be avoided.

F. The requirements for streets shall be those found in § 1804.67 of Subpart D to Part 1804 of this chapter (paragraph VII of FmHA Instruction 424.5).

G. The site design and development shall be in accordance with sound engineering and

architectural practices and shall provide for all utilities in a manner which allows adequate, economic, safe, energy efficient and dependable systems with sufficient easements for their required installation and maintenance.

H. Utilities for each mobile/manufactured home site, rental housing project or subdivision shall be designed and installed in accordance with §§ 1804.66 and 1804.70 of Subpart D of Part 1804 (paragraph VI and X of FmHA Instruction 424.5); and the State health authority having jurisdiction, and all local laws and regulations requiring approval prior to construction.

I. Exhibit C, Section V of this Subpart shall be complied with by the applicant, dealer-contractor or builder-developer for mobile/manufactured home projects with individual water supply and sewage disposal systems. This Exhibit shall be used by the FmHA County Supervisors, District Directors, and State Directors in reviewing submissions.

J. During the planning, design, and construction of the foundation system and/or perimeter enclosure, provisions shall be made for the installation and connection of on-site water, gas, electrical and sewer systems, which are necessary for the normal operation of the mobile/manufactured home. Water and sewer system hookups shall be adequately protected from freezing.

II. *Development on Scattered Sites and in Subdivisions.*—A. *General.* Scattered sites and subdivision developments will be planned and constructed in accordance with specific requirements of this Subpart, subpart D of Part 1804 (FmHA Instruction 424.5), and Subpart G of Part 1940 of this chapter, and the applicable FmHA/MPS or Model Building Codes acceptable to FmHA. Mobile/manufactured homes for development in a mobile/manufactured home community shall:

1. Be erected with or without a basement on a site-built permanent foundations that meets or exceeds applicable requirements of the FmHA/MPS for One- and Two-Family Dwellings or Model Building Codes acceptable to FmHA;

2. Be permanently attached to that foundation by anchoring devices adequate to resist all loads identified in the FmHA adopted MPS (this includes resistance to ground movements, seismic shaking, potential shearing, overturning and uplift loads caused by wind, etc.);

3. Have had the towing hitch or running gear, which includes tongues, axles, brakes, wheels, lights and other parts of the chassis that operate only during transportation, removed;

4. Have any crawl space beneath the manufactured home properly ventilated and enclosed by a continuous permanent perimeter enclosure. If it is not the supporting foundation, designed to resist all forces to which it may be subject without transmitting to the building superstructure movements or any effects caused by frost heave, soil settlement (consolidation), or shrinking or swelling or expansive soils; and be constructed of materials that conform to FmHA adopted MPS requirements for foundations;

5. Conform with the HUD Title II thermal standards for manufactured homes;

6. Have a mobile/manufactured home site, site improvements, and all other features of the mortgaged property not addressed by the Federal Manufactured Home Construction and Safety Standards, meet or exceed applicable requirements of Subpart A of Part 1924 and Part 1804, Subpart D of this chapter, (FmHA Instruction 424.5), the FmHA adopted MPS except paragraph 311–2.2 or a Model Building Code acceptable to FmHA;

7. Have had the mobile/manufactured unit itself braced and stiffened where necessary before it leaves the factory to eliminate racking and potential damage during transportation; and

8. Be eligible for financing in accordance with the requirements of either section 502, or section 515 of FmHA's Housing Program, for which purpose the beginning of construction will be the commencement of on-site work even though the mobile/manufactured home itself may have been produced and temporarily stored prior to the date of application for financing.

B. *Site Planning and Development.* The site planning and development of mobile/manufactured home scattered sites and subdivisions shall also comply with the following:

1. *Arrangement of Structures and Facilities.* The site, including the mobile/manufactured home, accessory structures, and all site improvements shall be harmoniously and efficiently organized in relation to topography, the shape of the plot, and the shape, size and position of the unit. Particular attention shall be paid to use, appearance and livability.

2. *Adaption to site Assets.* The mobile/manufactured home shall be fitted to the terrain with a minimum disturbance of the land. Existing trees, rock formations, and other natural site features shall be preserved to the extent practical. Favorable views or outlooks shall be emphasized by the plan.

3. *Site plan.* The site plan shall provide for a desirable residential environment which is an asset to the community in which it is located.

4. *Lot size.* The size of mobile/manufactured home lots (scattered sites and subdivisions) shall be determined by § 1944.11(C) of Subpart A of Part 1944 and § 1804.69 of Subpart D of Part 1804 of this chapter (paragraph IX of FmHA Instruction 424.5).

C. *Foundation Systems, Anchoring and Set-up.* 1. The foundation system shall be constructed in accordance with this subpart and one of the following: (a) The foundation system included in the manufacturer's installation instruction meeting FmHA/MPS requirements, (b) the FmHA/MPS 4900.1, which specifies performance requirements for foundations in Section 600 "General" and paragraph 601–16 "Foundations," or (c) an FmHA recognized model building code.

2. The mobile/manufactured home permanent foundation system shall constitute a permanent load bearing support system for the mobile/manufactured home. The manufacturer or applicant shall be permitted to design or specify the installation of a foundation system which meets FmHA/MPS design requirements for foundations and the general requirements above.

3. The applicant's responsibility for proper design and installation of the permanent foundation system, anchoring and set-up shall be in accordance with § 1924.5(f)(1), Subpart A of Part 1924 of this chapter.

4. The builder/developer of the mobile/manufactured home property, for proposed construction, shall submit with the application for financing by the applicant or for a conditional commitment design calculations, details and drawings for the installation, anchorage and construction of permanent foundation and perimeter enclosure to be used.

III. *Rental Housing Project Development.*—A. *General.* Mobile/manufactured housing rental developments shall be planned and constructed in accordance with requirements of Subpart D to Part 1804 (FmHA Instruction 424.5); Subpart A of Part 1924; Subpart G of Part 1940; the FmHA/MPS; and the requirements of Subpart E of Part 1944 of this chapter.

B. *Site Planning and Development.* Site planning and development shall adapt to individual site conditions and the type of market to be served, reflect advances in site planning and development techniques, and be adaptable to the trends in design of the mobile/manufactured home. Site planning and development shall utilize existing terrain, trees, shrubs and rock formations to the extent practicable. A regimental style site plan design should be avoided.

C. *Foundation Systems, Anchoring and Set-up.* 1. Foundation systems, anchoring and set-ups for mobile/manufactured home rental projects (site and home) developed under FmHA Section 515 Rural Rental Housing Program shall comply with the requirements of paragraph II A and II C above.

IV. *Accessory Structures and Related Facilities.*—A. *General.* Accessory structures and related facilities are dependent upon the mobile/manufactured home and its environment.

1. Accessory structures and related facilities shall be planned, designed and constructed in accordance with the applicable provisions of Subpart A of Part 1924 of this chapter; the FmHA/MPS; and local criteria of the authority having jurisidiction.

2. Accessory structures and related facilities shall be designed in a manner that will enhance the appearance of the mobile/manufactured home development.

3. Accessory structures and related facilities shall not obstruct required openings for light and ventilation of the mobile/manufactured home and shall not hamper installation and utility connections of the unit.

B. *Accessory Structures.* 1. Accessory structures shall not include spaces for pantries, bath, toilet, laundries, closets or utility rooms.

2. Accessory structures shall be carefully designed and constructed for the convenience and comfort of the mobile/manufactured home occupant. These features significantly affect the visual appearance of the community and influence livability.

C. *Related Facilities (Rental Housing Projects).* 1. This includes those facilities as

defined in §§ 11944.205(i) and 1944.212(f) of Subpart E of Part 1944 of this chapter.

2. Related facilities built on site must meet the FmHA/MPS and Subpart A of Part 1924 of this chapter or other building codes approved by FmHA.

3. Workmanship shall be of a quality equal to good standard practice. Material shall be of such kind and quality as to assure reasonable durability and economy of maintenance, all commensurate with the class of building under consideration.

4. All members and parts of the construction shall be properly designed to carry all loads imposed without detrimental effect on finish or covering materials.

5. The structure shall be adequately braced against lateral stresses and each member shall be correctly fitted and connected.

6. Adequate precautions shall be taken to protect against fire and accidents.

7. All related facilities which require accessibility to the handicapped must comply with the Uniform Federal Accessibility Standard (UFAS).

V. *Fire Protection and Safety.* A. The design of the site plan for each mobile/manufactured community and scattered site shall meet the fire protection and safety requirements of the local authority responsible for providing the necessary fire protection services.

B. All fire detection and alarm systems and water supply requirements for fire protection for mobile/manufactured communities shall be in accordance with the local authority responsible for providing the necessary fire protection services.

Part C—Drawings, Specifications, Contract Documents and Other Documentation

I. *General.* Adequate site development and foundation installation drawings and specifications shall be provided by the applicant or dealer-contractor to FmHA to fully describe the construction and other development work. These documents shall be provided according to the requirements of § 1924.5(f)(1). Contract documents will be prepared in accordance with § 1924.6 and, in the case of multiple family housing construction and development, § 1924.13 of Subpart A of Part 1924 of this chapter.

A. The documents recommended shall be used as a guide for drawings and specifications to be submitted in support of all types of loan and/or grant applications involving mobile/manufactured homes. Adequate and accurate drawings and specifications are necessary to:

1. Determine the acceptability of the physical environment and improvements,

2. Determine compliance with the applicable standards and codes,

3. Review cost estimates, and

4. Provide a basis for financing, inspections, and the warranty.

B. Detail floor plans, drawings and specifications are not required for any mobile/manufactured home to be installed on a scattered site, in a subdivision or rental housing project. However, a schematic floor plan should be submitted by the applicant when applying for FmHA financing.

The unit must have an affixed label as specified in paragraph XIV(c)(4) of Exhibit F of Subpart A of Part 1944 indicating that the unit is constructed to the HUD Title II Thermal Standards for manufactured homes in the appropriate climatic zone. This will indicate that the manufacturer certifies that the unit has been properly inspected and it meets the HUD Title II Thermal Standards for manufactured homes.

C. For proposed construction, the builder or dealer-contractor shall submit with the loan or grant application design calculations, details and drawings for the installation, anchorage and construction of the permanent foundation and perimeter enclosure to be used. Drawings and specifications for foundation systems will be reviewed and examined by the FmHA County Supervisor, District Director, State Director or State Architect/Engineer for foundation support locations, loads and connection requirements specified by the manufacturer as a basis for evaluating foundation compliance with the FmHA/MPS or Model Building Code, and for determining design suitability for soil conditions. Drawings and specifications will also be examined by FmHA to determine compliance with all other on-site features not covered by the FMHCSS.

D. Foundation design sections and details of all critical construction points systems, anchorage methods, and structural items shall be scaled as necessary to provide all appropriate information 1:30 (⅜"=1'-0") minimum.

II. *Scattered Sites.* Drawings for single family mobile/manufactured housing shall be submitted by the applicant in addition to the requirements of paragraph I above and the requirements of paragraph I A and D-7 of Exhibit C of subpart A of Part 1924 of this chapter.

III. *Subdivisions.* A. § 1804.74 of Subpart D of Part 1804 (Exhibit A of FmHA Instruction 424.5) will be used as a guide by the applicant or builder-developer in preparing a proposal, and in providing supporting documents for a site development with 10 or more sites.

B. Section 1804.74 of Subpart D of Part 1804 (Exhibit A of FmHA Instruction 424.5) will be used by FmHA County Supervisors, District Directors, and State Directors in reviewing subdivision submissions.

IV. *Rental Housing Projects.* A. Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5) will be used as a guide by the applicant or dealer-contractor in preparing a proposal and supporting documents for mobile/manufactured housing rental projects.

B. Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5) shall be used by FmHA County Supervisors, District Directors and State Directors in reviewing mobile/manufactured housing rental project submissions.

V. *Specifications.* A. Form FmHA 424-2, "Description of Materials," or other acceptable and comparable descriptions of all materials used for site development, foundation installation and the permanent perimeter enclosure shall be submitted with the drawings by the applicant.

B. The material identification information shall be in sufficient detail to fully describe the material, size and grade. Where necessary, additional sheets shall be attached as well as manufacturer's specification sheets for equipment and/or special materials.

Part D—Inspection of Development Work

I. *General.* The following policies will govern the inspection of all mobile/manufactured housing development work. This includes scattered sites, subdivisions, rental housing projects and all necessary structures and related facilities unless otherwise indicated.

II. *Inspections.* A. The responsibility for, frequency and purpose of inspections shall be in accordance with § 1924.9(b) (1), (2) and (3) of this subpart. The Stage 2 inspection customary for site-built housing when the building is enclosed is not required for mobile/manufactured homes.

B. The borrower will join the County Supervisor or the District Director in making periodic inspections as often as possible and always for the final inspection.

C. The borrower should be encouraged to make enough periodic visits to the site to be familiar with the progress and performance of the work, in order to protect the borrower's interest. If the borrower observes or otherwise becomes aware of any fault or defect in the work or nonconformance with the contract documents, the borrower should give prompt written notice thereof to the dealer-contractor with a copy to the appropriate County Supervisor or District Director.

D. During inspection, it will generally be infeasible to determine whether a mobile/manufactured unit erected on a site was properly braced and stiffened during transportation. Inspectors should examine these units to detemine that there is no obvious damage or loosening of fastenings that may have occurred during transportation. The dealer-contractor must warrant these units against such damage, which should protect FmHA's interest.

III. *Warranty Plan Coverage.* The warranty requirements for all development work shall be in accordane with § 1924.9(d) of this subpart and Exhibit F of Subpart A of part 1944 of this chapter.

PART 1944—HOUSING

7 CFR Part 1944 is amended as follows:

3. The authority citation for Part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

§1944.3 [Amended]

3a. In § 1944.3 paragraph (a)(3) is amended by replacing the period at the end of the sentence with a comma and adding the following, "except for mobile/manufactured homes."

4. In § 1944.3 paragraph (b)(9) is amended by replacing the period at the end of the sentence with a comma and adding the following, "and incidental

expenses authorized in Exhibit F of this subpart."

5. Section 1944.16 is amended by adding paragraph (e) to read as follows:

§ 1944.16 Building requirements.

* * * * *

(e) *Mobile/manufactured homes.* Exhibit F of this subpart contains supplemental information concerning building requirements for mobile/manufactured homes.

6. In § 1944.17 the introductory text of paragraph (a) is amended by inserting between the phrases "the security" and "less the unpaid" the following: "(except as provided in Exhibit F of this Subpart)."

7. In § 1944.17 paragraph (a)(1) is amended by replacing the period at the end of the sentence with a comma and adding the following, "except as provided in Exhibit F of this subpart."

8. Section 1944.17 is amended by adding paragraph (a)(2)(vi) to read as follows:

§ 1944.17 Maximum loan amounts.

(a) * * *

(2) * * *

(vi) The mobile/manufactured home and site meet the requirements in Exhibit F of this subpart and Exhibit J of Subpart A of Part 1924 of this chapter.

9. Section 1944.22 is amended by revising paragraph (a) to read as follows:

§ 1944.22 Refinancing debts.

(a) Refinancing of FmHA debts and debts on a building site without a dwelling or debts on a mobile/manufactured home is not authorized.

* * * * *

10. Section 1944.24 is amended by revising paragraph (b) to read as follows:

§ 1944.24 Technical services.

* * * * *

(b) *Planning and performing site development work.* Any site development will be planned and completed in accordance with Subpart D of Part 1804 of this chapter (FmHA Instruction 424.5), except as provided for mobile/manufactured homes in Exhibit J of Subpart A of Part 1924 of this chapter.

* * * * *

§ 1944.25 [Amended]

11. In § 1944.25, paragraph (c) is amended in the first sentence by inserting between the phrases "33 years" and "from the date" the following, "(20 years for mobile/manufactured home loan)."

12. Section 1944.30 is amended by adding paragraph (b)(8) to read as follows:

§ 1944.30 Preparation of loan docket.

* * * * *

(b) * * *

(8) When the loan is for a mobile/manufactured home the supplemental information needed is listed in Exhibit F paragraph XVIII of this subpart.

§ 1944.34 [Amended]

13. Section 1944.34, paragraph (f)(1)(iii) is amended by inserting between the phrases "33 years" and "unless authorized" the following, "(20) years for a mobile/manufactured homes loan.)."

14. Section 1944.40 is amended by revising the introductory paragraph to read as follows:

§ 1944.40 Rural housing disaster (RHD) loans.

RHD loans may be made to repair (except on RH loan may be made on mobile/manufactured homes unless a repair loan would be authorized in Exhibit F paragraph (IV)(d) of this subpart) or replace dwellings which were damaged or destroyed by a natural disaster such as earthquake, flood, forest fire, sever windstorm or lightning.

* * * * *

15. Section 1944.45 is amended by revising paragraphs (a), (b), (c)(1), and (c)(2), to read as follows:

§ 1944.45 Conditional commitments.

(a) *General.* A conditional commitment is assurance from FmHA to a qualified builder, dealer-contractor or seller that a dwelling to be built, rehabilitated, or developed as a mobile/manufactured home package and offered for sale will be acceptable for purchase by qualified RH loan applicants if built in accordnce with FmHA approved plans and specifications and priced at not more than a specified maximium amount. The conditional commitment does not reserve funds for a loan nor does it assure that the area the dwelling is in will remain rural or that an eligible loan applicants if built in accordance with dwelling.

(b) *Eligibility.* To be eligible for conditional commitments, the builder, deal-contractor, or seller must:

* * * * *

(c) * * * (1) Conditional commitments will be issued only in cases where the commitment applicant's selling price does not exceed the commitment price, which will never be more than the appraised value minus customary closing costs. For mobile/manufactured homes, conditional commitments will be issued only in cases where the commitment applicant's selling price does not exceed the commitment price, which will never be more than the appraised value minus customary closing costs or the cost (as defined in Exhibit F, paragraph VIII of this subpart), whichever is less.

(2) Conditional commitments will be issued by FmHA only for new homes to be constructed, new mobile/manufactured homes, or existing conventional homes to be rehabilitated.

* * * * *

16. In § 1944.45, paragraph (d) is amended in the first sentence by inserting between the phrases "to a builder" and "who packages" the following "or dealer-contractor."

17. In § 1944.45 paragraph (f)(1) is amended by adding after the second sentence the following "For mobile/manufactured homes the dealer-contractor will also submit an itemized cost breakdown as required in Exhibit F paragraph XVII of this subpart."

18. In § 1944.45, paragraph (h) is amended in the first sentence by removing "Exhibit D" inserting the following, "Exhibits D and J (for mobile/manufactured homes)" in place thereof.

19. In § 1944.45, paragraph (k) is amended in the first sentence by inserting between the phrases "builder" and "or seller" the following, "dealer-contractor"; and between the phrases "Builder's Warranty," and "or provide" the following "(mobile/manufactured home warranty will be in accordance with Exhibit F paragraph (XIII) of this subpart)".

20. Paragraph (II)(B) of Exhibit A is amended by adding at the end of the paragraph the following, "Additional information required for mobile/manufactured homes is listed in Exhibit F, paragraph XVIII of this subpart".

21. Subpart A is amended by adding Exhibit F, which reads as follows:

Supplemental Requirements for Making Section 502 RH Loans for Mobile/Manufactured Homes

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Exhibit F—Supplemental Requirements for Making Section 502 RH Loans for Mobile/Manufactured Homes

I. What are the general conditions for financing a mobile/manufactured home?

a. This Exhibit provides for the financing of a mobile/manufactured home (herein called unit) with a Section 502 Rural Housing loan. Manufactured homes, generally referred to as modular homes that are constructed to the FmHA adopted MPS or FmHA recognized building codes, are not affected by this Exhibit. All parts of Part 1944, Subpart A of this chapter apply unless modified by the Exhibit.

b. FmHA may finance a mobile/manufactured home if both the unit and its site are covered by the mortgage and the unit is classified and taxed as real estate according to state statutes. FmHA may loan to buy a unit and a lot, or a unit to put on a lot already owned by the applicant. The real estate mortgage or deed of trust must cover both the unit and the site. FmHA may not finance a lot for a unit already owned by the applicant. It is a violation of this regulation to finance furniture or to refinance any existing debts owed by the applicant/borrower.

II. What are the definitions of terms used in this Exhibit?

As used in this Exhibit the term—

a. "Mobile/Manufactured Home" (Unit) means a structure which is built to the Federal Manufactured Home Construction and Safety Standards and The HUD Title II Thermal Standards for manufactured homes. It is transportable in one or more sections, which in the traveling mode, is ten body feet or more in width, and when erected on site is four hundred or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities. It is designed and constructed for permanent occupancy by a single family and contains permanent eating, cooking, sleeping and sanitary facilities. The plumbing, heating, and electrical systems are contained in the structure. For the purpose of the FmHA Section 502 mobile/manufactured home program permanent foundations are required.

b. "Furniture" means movable articles of personal property such as drapes, beds, bedding, chairs, sofas, divans, lamps, tables, televisions, radios, or stereo sets, and other similar items of personal property but furniture does not include wall-to-wall carpeting, refrigerators, ovens, ranges, washing machine, clothes dryers, heating or cooling equipment or other similar items.

c. "Single Wide" means a dwelling unit that is 12 or more feet in width and contains 400 or more square feet. It is a totally self-contained dwelling unit as transported from the factory on a single permanent chassis.

d. "Double Wide" means two or more sections transported from the factory on a permanent chassis intended to be joined together horizontally when located on the site, but capable of independent movement. The sections when joined together must be 20 or more feet in width.

e. "Federal Manufactured Home Construction and Safety Standards" (FMHCSS) means a 1976 Federal standard commonly known as the HUD standards for the construction, design and performance of a mobile/manufactured homw which meets the needs of the public including the need for quality, durability and safety. Units conforming to the FMHCSS are certified by an affixed label that reads as follows:

AS EVIDENCED BY THIS LABEL NO. ——— THE MANUFACTURER CERTIFIES TO THE BEST OF THE MANUFACTURER'S KNOWLEDGE AND BELIEF THAT THIS MANUFACTURED HOME HAS BEEN INSPECTED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND IS CONSTRUCTED IN CONFORMANCE WITH THE FEDERAL MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS IN EFFECT ON THE DATE OF MANUFACTURE. SEE DATA PLATE.

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f. "Manufacturer's Invoice" is an official document issued by the manufacturer stating the true wholesale price of a unit and its equipment, accessories and furniture. The document shall be on a form which is in general use in the industry.

g. "Dealer-Contractor" is a person, firm, partnership or corporation in the business of selling and servicing mobile/manufactured homes and developing sites for mobile/manufactured homes. A person, firm, partnership or corporation not capable of providing the complete service is not eligible to be a "dealer-contractor."

h. "New Unit" means a unit not previously occupied as a residence and less than 1-year old.

i. "Existing Unit" is a unit previously occupied as a residence or more than 1-year old.

j. "Design Approval Primary Inspection Agency" (DAPIA) is a state or private organization which has been approved by the Secretary of HUD to evaluate (i.e. approve or disapprove) mobile/manufactured home designs and quality control programs.

k. "Housing and Urban Development (HUD) Title II Thermal Standards for manufactured homes" is an insulation standard so that the envelope "Uo" value (the rate of heat loss through floors, walls, doors, windows and celings, measured in BTUs per hour per square foot of surface per degree Fahrenheit difference between indoor and outdoor temperatures) does not exceed:

1. 0.145 in Climatic Zone I, which inlcudes Alabama, Arizona, Arkansas, California, Florida, Georgia, Hawaii, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee and Texas;

2. 0.087 in Climatic Zone III, which inlcudes Alaska, Maine, Michigan, Minnesota, Montana, New Hampshire, North Dakota, South Dakota, Vermont, Wisconsin and Wyoming; and

3. 0.099 in Climatic Zone II, which includes the remainder of the States.

III. What are the applicant eligibility requirements? An applicant meeting the eligibility requirements of § 1944.8 and 1944.9 of this subpart is eligible for a loan on a mobile/manufactured home.

IV. For what purposes may Section 502 RH loan funds be used?

FmHA may finance the following when a real estate mortgage covers both the unit and the lot:

a. A new unit for a site owned by the applicant which meets the requirements and limitations of § 1944.11 of this subpart or a leasehold meeting the provisons of § 1944.15(a)(5) of this subpart.

b. A new unit and site which meets the requirements of § 1944.11 of this subpart.

c. Site development work. The types of site development required and permitted are in paragraph VI of this Exhibit and Part 1924, subpart A of this chapter.

d. Subsequent loans for equity or repair with a transfer, credit sale, or a subsequent loan for repair of a unit if the unit is currently financed with a Section 502 Rural Housing loan.

e. Transportation and set-up costs if a new unit is financed.

V. For what purpose may Section 502 RH funds *not* be used?

FmHA may *not* use loan funds to finance:

a. An existing unit and site unless it is already financed with a Section 502 Rural Housing loan or is being sold from FmHA inventory.

b. The purchase of a site without also financing the unit.

c. Existing debts owed by the applicant/borrower.

d. A unit without an affixed certified label indicating the construction of the unit is in accordance with the FMHCSS.

e. Alteration or remodeling of the unit when the initial loan is made.

f. Furniture as defined in this Exhibit.

g. Any unit not constructed to HUD Title II Thermal Standards for manufactured homes as identified by an affixed label for the HUD climatic zone where the unit will be located.

h. A unit that at the time of loan approval would result in more than one person per room. The number of rooms includes bedrooms, living room, dining room, kitchen, den or family room.

VI. What are the building and siting requirements? The unit must be modest in design, size and cost as defined in § 1944.16 of this subpart. The floor area must be 400 square feet or more, and the width 12 feet or more for a single wide unit and 20 feet or more for a double wide unit. Construction of the unit must conform with the FMHCSS as evidenced by an affixed certification label. The unit must be constructed to the HUD Title II Thermal Standards for manufactured homes for that zone as identified by an affixed label as required in paragraph XIV (c) (c) (4) of this Exhibit. Site development and set-up must conform to Exhibit J of Subpart A of Part 1924 of this chapter.

VII. How will a mobile/manufactured home be appraised?

a. The appraiser will use normal single family residential appraisal techniques when appraising a mobile/manufactured home and the site. Since other mobile/manufactured homes and sites provide the most similar comparables, every effort must be made to obtain such comparables even if their distance from the subject is greater than normally desirable. If other units are not available within a reasonable distance, the appraiser may use conventionally built homes after adjusting for location, construction material, size, quality, etc.

b. The appraiser will use Marshall and Swift cost data for manufactured housing to determine the cost approach.

VIII. What are the loan limitations?

A loan for a new unit, new unit and site or an existing site with unit may not exceed the final reconciliation/estimated value of the developed security as determined by a real estate appraisal. A loan for a new unit or a new unit and site is limited to the final reconciliation/estimated value or the cost, whichever is less. The cost is the total of the following: a, b, c and d:

a. The lesser of 1 or 2.

1. The market value of the lot (excluding the unit) including all site work as determined by an appraisal.

2. The actual cost to the borrower of the lot including all site work.

b. The lesser of 1 or 2.

1. 131 percent of the wholesale price for the unit excluding furniture, as detailed in the manufacturer's invoice, which amount shall include the costs of transportation, set-up and anchoring.

2. The actual dealer-contractor's retail price for the unit, excluding furniture.

c. Building permit, state and local sales tax.

d. The actual loan closing cost.

IX. How does a dealer-contractor qualify to participate in the program? A dealer-contractor may apply to participate by submitting U.S. Department of Housing and Urban Development, Federal Housing Authority, Form FH–13, "Dealer-Contractor Application," and a current financial statement prepared by a public accountant and certified by the dealer to the FmHA County Supervisor. A person, firm, partnership or corporation unable to provide a full service of sales, service, erection and site development are not eligible to participate as a dealer-contractor. To qualify to participate a dealer-contractor must be:

a. financially responsible,

b. qualified to perform satisfactorily the set-up of the homes and site development work,

c. equipped to extend proper services to the customer, and

d. willing to provide a warrantly as required in paragraph XIII of this Exhibit.

X. What are the County Supervisor's responsibilities in evaluating a dealer-contractor?

The County Supervisor will:

a. Maintain an operational file for each dealer-contractor who submits Form FH–13, "Dealer-Contractor Application," and a certified financial statement.

b. Obtain a commercial credit report on the firm and consumer credit reports on each of the principals.

c. Make direct checks on trade and bank references and check with the local Better Business Bureau.

d. Inspect the dealer's place of business to determine the permanency of same and the adequacy of available equipment.

e. Obtain copies of brochures, descriptive literature, guarantees, sales contracts, and price lists.

f. Determine that the dealer-contractor has the necessary equipment and experience to perform all site development work. If the firm uses subcontractors, obtain the names of the subcontractors and their qualifications. A field inspection of recently developed sites and set-ups would be desirable in determining whether the dealer-contractor has the necessary experience.

g. Carefully analyze the above information to determine if the dealer-contractor is able to provide the full service of sales, service, erection and warranty of mobile/manufactured homes and developing sites for them. If a dealer-contractor is acceptable, issue a letter of acceptance. If the County Supervisor determines the dealer-contractor unacceptable, grant appeal rights under Subpart B of Part 1900 of this chapter.

h. Submit names and addresses of acceptable dealer-contractors to the State Office. The State Director will issue a list of acceptable dealer-contractors in the state as a State Supplement to this Exhibit.

i. Maintain a complaint file on each dealer-contractor to establish a basis for limiting future business with that dealer-contractor, if necessary. Any *unresolved* complaints are reasons for possible debarment action under Subpart E of Part 1924 of this Chapter.

XI. What are the contract requirements?

The dealer-contractor must sign Form FmHA 424–6, "Construction Contract," which will cover both the unit and site development work. The "borrower method" of development or use of multi-contracts is *prohibited*. A dealer-contractor may use subcontractors if the dealer-contractor is *solely* responsible for all work under the contract. Payment for all work will be in accordance with Form FmHA 424–6 and Subpart A of Part 1924 of this Chapter, except no payment will be made for materials or property stored on site (e.g. payment for a unit will be made only after it is permanently attached to the foundation).

XII. What are the lien release requirements?

All persons furnishing materials or labor in connection with the contract must sign Form FmHA 424–10, "Release by Claimants," except the manufacturer of the unit. The manufacturer of the unit must furnish an executed manufacturer's certificate of origin that the unit is free and clear of all legal encumbrances. The use of Form FmHA 424–10 is optional in a state if the State Director has issued a State Supplement not requiring its use. However, in all states the certificate of origin is required.

XIII. What are the warranty requirements?

A dealer-contractor must provide a warranty in accordance with the provisions of § 1924.9(d) of Subpart A of Part 1924. The warranty must identify the unit(s) by serial number(s). In addition, the dealer-contractor will provide an addendum warranting that the mobile/manufactured home substantially complies with the plans and specifications and the unit sustained no hidden damage during transportation and, if manufactured in separate sections, that the sections were properly joined and sealed. The dealer-contractor will also furnish the applicant with a copy of all manufacturers warranties.

XIV. What are the requirements for inspections and design reviews?

a. The County Supervisor will inspect and review:

1. That the unit has a properly affixed certification label indicating the construction of the unit is in accordance with the FMHCSS.

2. That the unit is modest in size, design and cost in accordance with § 1944.16 of this subpart and other housing financed for similar applicants in the area.

3. That the unit contains the manufacturer's thermal certification as required in paragraph XIV(c)(4) of this Exhibit, and that the certified climatic zone is correct for the location of the unit.

4. To determine compliance with Exhibit J of Subpart A of Part 1924 of this chapter for all onsite development and features not covered by the FMHCSS.

5. To determine foundation support locations, loads and connection requirements specified by the manufacturer as a basis for evaluating foundation compliance with Exhibit J of Subpart A of Part 1924 of this chapter and for determining design suitability for the soil conditions.

6. To determine compliance with site development requirements.

7. To determine that the site is in compliance with Subpart G of Part 1940 of this chapter.

b. Designs must be reviewed and construction must be inspected in accordance

with the procedures established by the Secretary of HUD in 24 CFR Part 3282.

c. A manufacturer must be authorized by the National Office of FmHA to certify that a unit conforms with the HUD Title II thermal standards for manufactured homes.

1. The thermal design of a unit must be reviewed by a Design Approval Primary Inspection Agency (DAPIA) providing design approval services to a manufacturer in accordance with 24 CFR Part 3282.

2. The DAPIA must submit to the FmHA National Office Program Support Staff all drawings, sketches, material descriptions, thermal calculations, and any other information needed to substantiate design conformance with the HUD Title II thermal standards for manufactured homes. The DAPIA must ensure that each design package is assigned a unique designation, i.e., a designation may not be repeated for other design packages.

3. Based on the soundness of the submittal in paragraph XIV.c.2 and FmHA acceptance, FmHA will authorize the manufacturer to self-certify that a unit when constructed will conform with one of the climatic zones in the HUD Title II thermal standards for manufactured homes.

4. Based on the authorization in paragraph XIV.c.3., the manufacturer must include the following statement on either the "Data Plate" specified in 24 CFR Part 3280 or on a separate label adjacent to the "Data Plate": "This unit is constructed in accordance with design package ——— which conforms with the HUD Title II thermal standards for manufactured homes in climatic zone ———. The manufacturer will insert into the first blank space the designation for the design package and into the second blank space the climatic zone identified in paragraph XIV.c.3.

XV. What are the rates and terms of the loan?

The interest rates are the same as for other real estate loans made with Section 502 rural housing loan funds. The term of the loan may be up to 20 years for both single-wide and double-wide units.

XVI. Can a borrower be granted interest credit with a Section 502 RH loan on a mobile/manufactured home?

A borrower may receive interest credit under the conditions of § 1944.34 of this subpart.

XVII. May a dealer-contractor obtain conditional commitments for mobile/manufactured homes?

A dealer-contractor may obtain conditional commitments under § 1944.45 of this subpart. In addition to the requirements of § 1944.45 of this subpart, the dealer-contractor will furnish an itemized breakdown of all costs before receiving a conditional commitment.

XVIII. What information must an RH applicant submit with a request for financing a mobile/manufactured home?

In addition to the information required in Subpart A of Part 1944 of this chapter, an applicant must submit the following:

a. A copy of the manufacturer's invoice.

b. A plot plan and site development plan under Subpart A of Part 1924 of this chapter.

c. An itemized cost breakdown of the total package including the unit, site development and lot costs.

d. A statement signed by the dealer-contractor that any cash payment or rebate as a result of the purchase of the mobile/manufactured home will be deducted from the manufacturer's invoice price for the unit and not paid to the applicant.

e. A statement signed by the dealer-contractor that this is the full price of the unit and all development, and if furniture is being purchased by the applicant, that a lien will not be filed against the security property.

XIX. What are the other considerations?

a. Development under the Mutual Self-Help and borrower construction methods is not permitted for mobile/manufactured homes.

b. Debarment procedures apply to dealer-contractors.

Dated: December 24, 1985.

Vance L. Clark,

Administrator.

[FR Doc. 86-1034 Filed 1-16-86; 8:45 am]

BILLING CODE 3410-07-M

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7 CFR Part 1944

Revision of Section 515 Rural Rental Housing Loan Policies, Procedures and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations regarding Section 515 Rural Rental Housing Loan Policies, Procedures and Authorizations. The proposed action implements the authority to make loans for the purchase of mobile/manufactured homes and sites for rental under the Section 515 Rural Housing Program. The circumstance requiring this action is enactment of the Housing and Urban Rural Recovery Act of 1983, Pub. L. 98-181, which authorizes FmHA to provide housing loans for manufactured homes. The intended effect is to implement the authority in Pub. L. 98-181 and provide safe, sanitary and decent housing for eligible families in rural areas.

DATES: Comments must be received on or before March 18, 1986.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Obediah Baker, Branch Chief, Rural Rental Housing Branch, Multiple Family Housing Processing Division, Farmers Home Administration, USDA, Room 5331, South Agriculture Building, Washington, DC 20250, telephone: 202-382-1604 or Karen L. King, Real Estate Loan Specialist, Rural Rental Housing Branch, Multiple Family Housing Processing Division, Farmers Home Administration, USDA, Room 5331, South Agriculture Building, Washington, DC 20250, telephone: 202-382-1604.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined to be "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or 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.

This action requires no increase in costs to the Government. There is no impact on proposed budget levels and funding allocations will not be affected because of this action. There will be no increase in the reporting requirements required of the public in order to determine eligibility of those receiving the benefits of the proposed rule.

Background: The Housing and Urban—Rural Recovery Act of 1983, Pub. L. 98-181, amends section 515 of the Housing Act of 1949 and authorizes FmHA to make financing available for mobile/manufactured home rental parks where both the lots and homes are available for rent by eligible occupants. The proposed regulations contain the requirements, under which an applicant may obtain a rural rental housing loan to develop a project which will accommodate mobile/manufactured homes.

FmHA proposes to implement the authorizing statute by amending Subpart E of Part 1944 of Chapter XVIII of Title 7 of the Code of Federal Regulations by adding § 1944.223, "Supplemental Requirements for Mobile/Manufactured Home Rental Project Development," thereto.

Discussion of Proposed § 1944.223

The Agency is expanding the term housing under section 515 to include the rental of sites with mobile/manufacured homes within a rental project development, provided the dwelling

units comply with the HUD "Federal Manufactured Home Construction and Safety Standards" (FMHCSS) and are permanently attached to a site built permanent foundation meeting FmHA adopted development standards or a Model Building Code acceptable to FmHA.

The site, improvements, and all other features of the financed property not addressed by the FMHCSS must meet or exceed the applicable requirements of Exhibit J, "Mobile/Manufactured Home Sites, Rental Projects and Subdivisions: Development, Installation and Set-up," of Subpart A of Part 1942 of this chapter.

1. Section 1944.223(a) provides for the financing of the site, site development and the dwelling unit to be placed on site, provided there are at least two contiguous dwelling sites constituting a rental project. FmHA believes that this requirement maintains consistency and balance with the conventional section 515 rural rental housing program which provides multiple family housing to eligible households.

2. Section 1944.223(b) proposes to limit the amount of the loan as follows:

a. For public bodies and nonprofit organizations, the amount of the loan will be limited to the development cost or the appraised value of the project, whichever is less, plus 2 percent initial operating capital and/or if eligible, relocation costs as provided by the Uniform Relocation Assistance and Real Estate Property Acquisition Act of 1970.

b. For all other applicants, the amount of the loan will be limited to 95 percent of the development cost or 95 percent of the appraised value of the project, whichever is less.

Under the cost approach, it is proposed that dwelling unit cost be limited to 131 percent of the manufacturer's invoice price which includes profit, the cost of transportation, set-up and anchoring. This approach toward determining maximum loan amount is added because of the difficulty in determining value by the appraisal method. There are a limited number of mobile/manufactured home rental projects in rural areas which have sold as site and dwelling unit classified as real estate. FmHA believes, by adding the cost approach, it can provide greater assurance of equability in determining dwelling unit value by the appraisal method.

3. Section 1944.223(c) provides for the term of the mortgage not to exceed 20 years. FmHA has determined that because of the uncertainty regarding the useful economic life of manufactured housing that a 20-year maximum term is prudent for mobile/manufactured houses. However, since other lenders use up to 30-year terms, we are soliciting comments.

4. Section 1944.223(d) provides for the property to be classified as real estate rather than personal property and the mortgage to cover both the mobile/manufactured homes and project site. If the property cannot be so classified in a particular State, FmHA will not make loans for the purchase of mobile/manufactured homes and sites for rental purposes in that State. By classifying the loans as real estate, rather than personal property, the debt can be amortized for a longer period and provide lower monthly payments for the borrower. FmHA believes the longer amortization period will bring the rental housing within the payment ability of very low- and low-income families who otherwise could not afford to rent the housing.

5. Section 1944.223(e)(9)(iii) requires that mobile/manufactured homes to be financed by FmHA conform with HUD Title II thermal standards for manufactured homes as specified in Exhibit J of Subpart A of Part 1924 of this chapter. We are, however, soliciting public comment on the use of this standard and whether it may be more appropriate to use the thermal standards for manufactured homes developed under Title VI of the Housing and Community Development Act of 1974.

6. Section 1944.232(f) is amended to require that loans for congregate housing and mobile/manufactured housing receive prior review and concurrence by the National Office before loan approval. This will be a temporary measure until the FmHA National Office is assured that appropriate rental housing design concepts are being implemented.

7. In Exhibit B, the introductory text of paragraph III is revised to lower the minimum number of years for the term of the loan from 40 to 20 in order to be eligible for interest credit.

This program/activity is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983).

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed 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.

These proposed changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.415—Rural Rental Housing Loans.

List of Subjects in 7 CFR Part 1944

Administrative practice and procedure, Loan programs—Housing and community development, Low- and moderate-income housing—Rental, Mobile/Manufactured homes, Rent subsidies, Rural housing.

Therefore, as proposed, Subpart E of Part 1944, Chapter XVIII, Title 7, of the Code of Federal Regulations is amended as follows:

PART 1944—HOUSING

1. The authority citation for Part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480(j); 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Rural Rental Housing Loan Policies, Procedures, and Authorizations

2. Section 1944.205 is amended by adding paragraphs (cc) through (gg) to read as follows:

§ 1944.205 Definitions.

* * * * *

(cc) *Mobile/Manufactured home (unit).* A dwelling unit which is built to conform with the Federal Manufactured Home Construction and Safety Standards and HUD Title II thermal standards for manufactured homes. Affixed to the outside of every unit is a label in accordance with 24 CFR 3280.8, known as the HUD seal, which certifies that the home was built in compliance with the Federal standards. It is manufactured as a movable dwelling unit designed and constructed for permanent occupancy by a single family and contains permanent eating, cooking, sleeping and sanitary facilities. For the purpose of this Subpart, it is a dwelling attached to a foundation after all development is completed.

(1) "Single Wide" means a dwelling unit that is 12 or more feet in width and contains 400 or more square feet. It is a totally self-contained dwelling unit as transported from the factory on a single permanent chassis.

(2) "Double Wide" means two or more sections transported from the factory on a permanent chassis intended to be joined together when located on the site, but capable of independent movement. The sections when joined together must be 20 or more feet in width.

(dd) *Manufacturer's invoice.* An official document issued by the mobile/manufactured home manufacturer which itemizes the cost of the mobile/manufactured home and its equipment, accessories and amenities to the wholesale purchaser. The document shall be in form which is in general use in the industry.

(ee) *Mobile/Manufactured home rental project.* A parcel or parcels of land located in the same community which contain two or more mobile/manufactured home units on each parcel for rental occupancy and is operated under one management plan with one loan agreement/resolution.

(ff) *Federal Manufactured Home Construction and Safety Standards (FMHCSS).* A 1976 federal standard, commonly known as the HUD Standard, for the construction, design and peformance of a mobile/manufactured home which meets the needs of the public including the need for quality, durability and safety. Units conforming to the FMHCSS are certified by an affixed label that reads as follows:

AS EVIDENCED BY THIS LABEL NO. ——— THE MANUFACTURER CERTIFIES TO THE BEST OF THE MANUFACTURER'S KNOWLEDGE AND BELIEF THAT THIS MANUFACTURED HOME HAS BEEN INSPECTED IN ACCORDANCE WITH THE REQUIREMENTS OF THE DEPARTMENT OF HOUSING AND UBRAN DEVELOPMENT AND IS CONSTRUCTED IN CONFORMANCE WITH THE FEDERAL MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS IN EFFECT ON THE DATE OF MANUFACTURE. SEE DATA PLATE.

(gg) *Dealer-Contractor* is a person, firm, partnership or corporation in the business of selling and servicing mobile/manufactured homes and developing sites for mobile/manufactured homes for persons who, in good faith, purchase such homes for purposes other than resale.

3. Section 1944.223 is added to read as follows:

§ 1944.223 Supplemental requirements for mobile/manufactured home rental project development.

This section includes additional provisions that apply to the making of loans for mobile/manufactured home rental project development. This section will apply in addition to all other applicable requirements contained elsewhere in this subpart. All references in this subpart to project and housing for rent to eligible occupants shall also mean the rental of sites with mobile/manufactured homes within a rental project development.

(a) *Eligible projects.* At the time a loan is closed on a mobile/manufactured home rental project, the owner/borrower shall have constructed and completed, pursuant to a commitment given in accordance with § 1944.235 (c)(1) of this subpart, or shall be obligated to construct and complete, pursuant to § 1944.235 (c)(2) of this subpart, such project designed principally for rental use for mobile/manufactured homes, and conforming to the development, installation and set-up requirements of Exhibit J to Subpart A of Part 1924 of this chapter.

(1) The project owner/borrower must be the first owner purchasing the mobile/manufactured homes in good faith for purposes other than resale.

(2) The project must include two or more new dwelling units on any one parcel of land. Each mobile/manufactured home unit must not have been previously occupied as a residence or for any other purpose and be less than 1-year old from date of manufacture.

(3) A project is not eligible if the purpose of the loan is to refinance the project, except as provided for in § 1944.212(p) of this subpart.

(4) A loan may be made to rehabilitate mobile/manufactured home units of an existing project only if the units to be rehabilitated are currently financed by FmHA under this subpart.

(5) An eligible project may include the purchase of the real property of an existing project which will be redeveloped with the placement of new, previously unoccupied, mobile/manufactured homes and conforming to the development, installation and set-up requirements of Exhibit J to Subpart A of Part 1924 of this chapter.

(b) *Loan limitations.* The portion of an RRH loan designated for the purchase of new mobile/manufactured housing units shall be limited to the lesser of development cost of the market value of such units as determined by an appraisal performed in accordance with Subpart B of Part 1922 of this chapter. The maximum loan amount shall be determined in accordance with § 1944.213 (a)(1) or (2) as applicable. For the purpose of this section, unit cost shall not exceed the actual manufacturer's invoice price of the unit, furniture excluded, plus a maximum markup not to exceed 31 percent of the manufacturer's invoice for profit, transportation, set-up and anchoring. The applicant will provide a copy of the manufacturer's invoice.

(c) *Rates and terms.* The amortization period of each loan shall not exceed the economic life of the security, taking into account probable depreciation. However, under no circumstance shall the amortization period for the loan made under this section exceed 20 years from the date of the promissory note.

(d) *Security.* A mortgage will be taken on the entire property purchased or improved with the loan and shall cover the mobile/manufactured homes in such a manner that it will constitute a mortgage on property classified as real estate.

(e) *Property requirements.* (1) Construction and development of the project, including related facilities constructed or erected on the security property, shall be in accordance with § 1944.222(d) of this subpart and Exhibit J to Subpart A of Part 1924 of this chapter.

(2) Mobile/Manufactured home rental projects shall be designed to provide for a desirable residential environment. Innovative and imaginative design is encouraged. Stylized patterns and monotony shall be avoided. All property improvements shall relate to the individual characteristics of the land. The project, including structures, streets, and all site improvements, should be harmoniously, efficiently and conveniently arranged in relation to the topography and the shape of the property.

(3) The owner/borrower shall not use or permit the use of any portion of the security property for demonstrating manufactured/mobile home models for sale promotion purposes.

(4) The use and character of adjacent properties shall not adversely affect the project. However, the project shall be reasonably accessible to shopping centers or neighborhood stores, sources of employment, neighborhood parks, schools, if families with children are anticipated, and to other community services and facilities as appropriate for the size, scope and character of the project.

(5) Any portion of a project which is devoted to common use will be primarily for the use of, or service to, the project occupants. Any nonresidential use of the property must be subordinate to the residential use and character of the property. However, adequate passive and/or active recreation area shall be provided to meet the needs of the tenants. For example, tot lots equipped for small children's play shall be provided if it is anticipated that there will be children residing in the project.

(6) The domestic water supply and sewage disposal systems must meet state and local as well as FmHA standards in accordance with § 1804.66 of Subpart D to Part 1804 of this chapter

(paragraph VI of FmHA Instruction 424.5).

(7) Parking spaces may be provided at each individual unit or in courts or bays. The number of spaces should be adequate to meet the needs of residents and their guests without interference with normal traffic.

(8) Each mobile/manufactured home should be fitted to the terrain with the least possible disturbance to the land. Existing trees, shrubs and ground cover shall be preserved to the extent possible and used to enhance the project. Additional plantings shall be provided to screen undersirable views, for shade and for visual appeal. All existing vegetation and proposed plantings shall be shown on the site plan or on a separate planting plan.

(9) The mobile/manufactured home, when placed on site, shall have floor space area of not less than 400 square feet, and a width of 12 feet or more for single wide and 20 feet or more for a double wide unit. The unit must:

(i) Be placed on a site-built permanent foundation that meets or exceeds applicable requirements of the FmHA adopted standards which are identified in Exhibit J to Subpart A of Part 1924 of this chapter or other building codes approved by FmHA.

(ii) Be permanently attached to the foundation by anchoring devices adequate to resist all loads identified in Exhibit J to Subpart A of Part 1924 of this chapter or other building codes approved by FmHA.

(iii) Be constructed in compliance with HUD-Title II thermal standards for manufactured homes as specified in Exhibit J to Subpart A of Part 1924 of this chapter. The unit must have an affixed label as specified in paragraph XIV.c.4 of Exhibit F to Subpart A of Part 1944 of this chapter indicating that the unit is constructed to HUD Title II thermal standards for manufactured homes in the appropriate climatic zone.

(iv) Be constructed in compliance with applicable standards and manuals adopted by FmHA as evidenced in Part A, paragraph V of Exhibit J to Subpart A of Part 1924 of this chapter. All units must conform to the HUD "Federal Manufactured Home Construction and Safety Standards", and must be identified by an affixed certification label as defined in § 1944.205(ff) of this subpart.

(f) *Special warranty requirements.* The project general contractor or dealer-contractor, as may be applicable, must provide a warranty in accordance with the provisions of § 1924.9(d) of Subpart A of Part 1924 of this chapter.

(1) The warranty shall provide that the manufactured homes, foundations, positioning and anchoring of the units to their permanent foundations, and all contracted improvements are constructed in substantial conformity with applicable approved plans and specifications.

(2) The warranty shall also include provisions that the manufactured homes sustained no hidden damage during transportation, and for double-wide units, that the sections were properly joined and sealed.

(3) The project general contractor or dealer-contractor must warrant that the manufacturer's warranty is in addition to and not in derogation of all other warranties, rights and remedies that the owner/borrower may have.

(4) The seller of the manufactured homes will deliver to the owner/borrower the manufacturer's warranty. The warranty shall identify the units by serial number.

4. Section 1944.232 is amended by revising paragraph (f) to read as follows:

§ 1944.232 Preparation of completed loan docket.

* * * * *

(f) *Submission of docket to National Office.* If the State Director considers it necessary after completing the review of the docket, the State Director may submit recommendation, a copy of a proposed memorandum of approval, and the complete loan docket to the National Office for review and recommendations. If the docket was required to be reviewed (or was reviewed) by OGC, the comments of that office will be included. Prior review and concurrence by the National Office before loan approval will in all cases be required for all projects involving congregate housing, group type living arrangements or mobile/manufactured housing.

* * * * *

5. In Exhibit B to Subpart E, the definition for "Basic Rental" in paragraph II D and the introductory text of paragraph III is revised to read as follows:

Exhibit B—Interest Credits on Insured RRH and RCH Loans

* * * * *

II * * *

D *"Basic Rental"* means a unit rental charge determined on the basis of operating the project with payments of principal and interest on a loan to be repaid over a 20-year or longer period at 1 percent per annum.

* * * * *

III *ELIGIBILITY:* Borrowers may receive interest credits provided the loan (1) was made on or after August 1, 1968, to a nonprofit corporation, consumer cooperative, State or local public agency, or to any individual or organization operating on a limited profit basis; (2) is repaid over a period of 20 years or more; and (3) meets the other requirements of this Exhibit subject to the following limitations:

* * * * *

Dated: December 24, 1985.

Vance L. Clark,

Administrator.

[FR Doc. 86-1033 Filed 1-15-86; 8:45 am]

BILLING CODE 3410-07-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 352

Nondiscrimination on the Basis of Handicap; Extension of Final Rule Publication Deadline

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Extension of deadline for publishing final rule.

SUMMARY: This notice serves to extend the period for publishing the FDIC's final rule on nondiscrimination on the basis of handicap to March 31, 1986.

ADDRESS: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to and reviewed weekdays in Room 6108 between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ann Marie Kohlligian, Attorney, Legal Division (202/389-4151), Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC.

SUPPLEMENTARY INFORMATION: The FDIC's Statement of Policy on Development and Review of FDIC Rules and Regulations, 44 FR 31007 (1979), states that it is the intention of the FDIC to withdraw formally any proposed regulation on which final action by the Board of Directors has not been taken within nine months from the date the regulation was last proposed. The FDIC published Notice of Proposed Rulemaking regarding prohibitions against discrimination on the basis of handicap as it applies to programs and activities conducted by the FDIC in the Federal Register 50 FR 15453 on April 18, 1985. Pursuant to the FDIC policy, final action on this proposed regulation should be taken by January 18, 1986 in order to avoid the withdrawal of the proposed rule.

The FDIC has determined, however, that final action on the proposed regulation will not be completed by January 18, 1986. The Board of Directors of the FDIC has concluded that

withdrawing the proposal and initiating the rulemaking process anew will cause unnecessary delays and has, by publication of this notice, extended the deadline for final agency action on the proposed regulation to March 31, 1986.

By order of the Board of Directors, this 13th day of January, 1986.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86-1106 Filed 1-16-86; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-ANE-21]

Airworthiness Directives; Allison

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede existing Airworthiness Directive (AD) AD 84-24-02, Amendment 39-4957, 49 FR 48531, effective Decmber 18, 1984, which applies to Model 250-C30 and -C30S engines installed in Sikorsky Model S-76A helicopters. The proposed supersedure AD is needed to define the final corrective actions to further reduce the possibility of, and to provide improved protection against, uncontained gas producer turbine wheel failures of certain Allison Model 250-C30 Series engines installed in, but not limited to, Sikorsky Model S-76A, Bell Model 206L-1 STC, 206L-3, and Hughes Model 369F and 369FF helicopters.

DATES: Comments must be received on or before March 14, 1986.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Office of Regional Counsel, FAA, ATTN: Rules Docket No. 84-ANE-21,12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to the above address, to Room No. 311.

Comments delivered must be marked: Docket No. 84-ANE-21.

Comments may be inspected at Room No. 311 on weekdays, except Federal holidays, between 8:00 a.m. and 4:30 p.m.

The applicable service information may be obtained from Allison Gas Turbine Division, General Motors Corp., P.O. Box 420, Indianapolis, Indiana 46206-0420; and Sikorsky Aircraft, Division of United Technologies Corp., North Main Street, Stratford, Connecticut 06601.

A copy of this information is contained in the Rules Docket at the Office of Regional Counsel, FAA, ATTN: Rules Docket No. 84-ANE-21, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined weekdays, except Federal holidays, between 8:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Royace H. Prather, Chicago Aircraft Certification Office, Propulsion Branch, ACE-140C, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone 312-694-7132.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comment will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of the proposed AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comment submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 84-ANE-21". The post card will be date/time stamped and returned to the commenter.

This notice proposes to supersede existing AD 84-24-02, Amendment 39-4957, 49 FR 48531, effective December 18, 1984, which currently requires engine inspections/modifications and incorporation of engine and aircraft energy absorption rings/shields to reduce the possibility of, and to provide additional protection against, uncontained gas producer turbine wheel failures of certain Allison Model 250-C30 and -C30S engines installed in Sikorsky Model S-76A helicopters. The proposed supersedure AD is needed to define the final corrective actions to further reduce the possibility of, and to provide improved protection against, uncontained gas producer turbine wheel failures of Allison Model 250-C30 and -C30S engines installed in Sikorsky Model S-76A helicopters. The final corrective engine type design changes consist of incorporating a first stage turbine wheel internal energy absorbing ring and an increased strength second stage turbine wheel. The replacement second stage turbine wheel is designed not to fail in the event of an overspeed resulting from a disconnect between the compressor and gas producer turbine rotor.

Additionally, this proposed rule, based on similarity of type design, adds Model 250-C30 Series engines installed in other than Sikorsky Model S-76A helicopters. A later compliance date is proposed for these installations since they have not experienced an over-speed gas producer rotor uncontained failure.

Conclusion: The FAA has determined that this proposed regulation involves 400 aircraft, and that the engine manufacturer is providing the replacement parts and additional manhours required at the next turbine repair/overhaul at no cost to the operators. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Engines, Air Transportation, Aircraft, Aviation Safety, Incorporation by Reference.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

2. By adding the following new AD to § 39.13:

Allison Gas Turbine Division, General Motors Corp. (Allison, formerly Detroit Diesel Allison): Applies to Model 250–C30 Series engines installed in, but not limited to, Sikorksy Model S–76A, Bell Model 206L–1 STC, 206L–3, and Hughes Models 369F and 369FF helicopters certificated in any category.

Sikorsky Aircraft: Applies to Sikorsky aircraft Model S–76A helicopters certificated in any category and equipped with Allison Model 250–C30 and -C30S engines.

Compliance is required as indicated unless already accomplished.

To prevent conditions that can lead to a possible gas producer turbine rotor uncontained failure and to prevent critical secondary damage in the event of a gas producer turbine rotor uncontained failure, accomplish the following:

Note.—Paragraphs (a)(1) thru (a)(3) of this AD are equivalent to the technical requirements of AD 84–24–02 which is superseded by this AD. Paragraphs (a)(4) and (b) delineate final corrective actions for all Model 250–C30 Series engines to prevent the above described failure/secondary damage.

(a) *Allison Model 250–C30 and -C30S engines installed in Sikorsky Aircraft Model S–76A helicopters*

(1) Within the next 30 days after December 18, 1984, for aircraft in compliance with telegraphic AD (TAD) T84–16–51, and prior to further flight for aircraft not in compliance with TAD T84–16–51, perform the following:

(i) Install the Sikorsky Model S–76A helicopter engine compartment protective shields, P/N 76070–20077–013 or P/N 76070–20077–014, in accordance with Sikorsky Alert Service Bulletin (ASB) 76–71–7 dated November 9, 1984, or FAA-approved equivalent; and concurrently,

(ii) Install Allison first stage turbine wheel external energy absorbing rings, P/N 23031910, L.H. and 23031920, R.H., around the Allison Model 250–C30 and -C30S engines in accordance with Allison Commercial Engine Alert Bulletin CEB–A–72–3124 dated November 15, 1984, and prerequisite CEB–A–72–3125 dated November 15, 1984, and Sikorsky ASB 76–71–7 dated November 9, 1984, or FAA-approved equivalents; or, install an Allison first stage turbine wheel internal energy absorbing ring P/N 23031909, in accordance with Allison Commercial Engine Alert Bulletin CEB–A–72–3128 dated November 15, 1984, and Sikorsky ASB 76–71–7 dated November 9, 1984, or FAA-approved equivalents.

(2) Within the next 25 hours time-in-service after compliance with (a), above, and thereafter at intervals not to exceed 25 hours time-in-service, inspect the Sikorsky Model S–76A helicopter engine compartment protective shields in accordance with Chapter 5 of Sikorsky Airworthiness and Inspection Requirements Manual, Publication No. SA 4047–76–2–1 dated November 12, 1984, or FAA-approved equivalent.

(3) At the next engine repair/overhaul shop visit after December 18, 1984, but not later than November 30, 1986, update the engines to the "Allison Assured Engine" configuration and continue to maintain in accordance with Allison Commercial Service Letter, CSL–3068 initial issue dated October 1, 1984, or CSL–3068, Revision 1, dated September 30, 1985, or FAA-approved equivalent with the following exception to the November 30, 1986 compliance deadline:

At the next engine repair/overhaul shop visit after December 18, 1984, but not later than March 30, 1986, inspect and modify the 29–34 labyrinth seal for engines with more than 100 hours time-in-service since turbine overhaul or repair, in accordance with Allison CEB–A–72–3127, Revision 2, dated April 3, 1985, or prior issues and CEB–A–72–3131, Revision 1, dated April 22, 1985, or initial issue, respectively, or FAA-approved equivalents.

Note.—The date November 30, 1986, that appears in paragraph 4B and 8 of Allison Commercial Service Letter CSL–3068, Revision 1, dated September 30, 1985, should read March 30, 1986.

(4) At the next turbine repair/overhaul shop visit after the effective date of this AD, but not later than November 30, 1986, perform the following:

(i) Install first stage turbine wheel internal energy absorbing ring P/N 23031909, or P/N 23032263, or FAA-approved equivalent, in accordance with Allison CEB–A–72–3128, Revision 1, dated September 30, 1985, or FAA-approved equivalent.

(ii) Replace existing second stage turbine wheel P/N 6892762, or P/N 689822, or P/N 23004233 with P/N 23032280, or FAA-approved equivalent, in accordance with Allison CEB–A–72–3132, dated February 1, 1985, or FAA-approved equivalent.

(iii) Remove engine external energy absorbing ring P/N 23001910, L.H. or P/N 23001920, R.H., as appropriate, in accordance with Allison CEB–72–3136 dated July 31, 1985, or FAA-approved equivalent.

(iv) At operator option, remove the Sikorsky Model S–76A helicopter engine compartment protective shields, P/N 76070–20077–013, or P/N 76070–20077–014, in accordance with Sikorsky Customer Service Notice No. 76–158 dated January 14, 1985.

Note.—The engine containment configurations 1 thru 4, and authorized configuration mixes listed in Appendix 1 of Sikorsky Customer Service Notice No. 76–158 dated January 14, 1985, continue to be FAA-approved until November 30, 1986; after this date only configurations 3 and 4 are authorized per paragraphs (a)(1)(i) and (a)(4) of this AD for Allison Model 250–C30 and –C30S/Sikorsky Model S–76A installations.

(b) *Allison Model 250–C30, –C30L, –C30M, –C30P, and –C30S engines installed in other than Sikorsky aircraft Model S–76A helicopters*

At the next turbine repair/overhaul shop visit after the effective date of this AD, but not later than November 30, 1987, perform the following:

(1) Install first stage turbine wheel internal energy absorbing ring P/N 23031909, or P/N 23032263, or FAA-approved equivalent, in accordance with Allison CEB–A–72–3128, Revision 1, dated September 30, 1985, or FAA-approved equivalent, in accordance with Allison CEB–A–72–3128, Revision 1, dated September 30, 1985, or FAA-approved equivalent.

(2) Replace existing second stage turbine wheel P/N 6892762, or P/N 6898922, or P/N 23004233 with P/N 23032280, or FAA-approved equivalent, in accordance with Allison CEB–A–72–3137, Revision 1, dated May 3, 1985, or FAA-approved equivalent.

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Chicago Aircraft Certification Office, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Chicago Aircraft Certification Office may adjust the compliance time specified in this AD.

The FAA will request the permission of the **Federal Register** to incorporate by reference the manufacturers' service information identified and described in this document.

This NPRM proposes to supersede AD 84–24–02, Amendment 39–4957, 49 FR 48531, effective December 18, 1984.

Issued in Burlington, Massachusetts, on January 2, 1986.

Robert E. Whittington,

Director, New England Region.

Issued in Fort Worth, Texas, on January 3, 1986.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 86–1020 Filed 1–16–86; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–22787; File No. S7–626]

Securities Transaction Fees; Exemption for National Market System Securities

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendments.

SUMMARY: In connection with extending unlisted trading privileges to certain over-the-counter stocks and permitting certain listed securities to be concurrently designated National Market System Securities, the Commission is proposing to amend its rule governing transaction fees to exempt all transactions in National Market System Securities that are traded on an exchange (on a listed or unlisted trading privileges basis).

DATE: Comments to be received by February 15, 1986.

ADDRESSES: All comments should be submitted in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW.,

Washington, DC 20549. All comments should refer to File No. S7–626, and will be available for inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Leland H. Goss, Esq., (202) 272–2827, Room 5204, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Summary

Section 31 of the Securities Exchange Act of 1934 ("Act") [1] requires that every national securities exchange pay to the Commission a fee based on sales of securities transacted on that exchange.[2] In addition, section 31 requires payment of similar fees from broker-dealers for over-the-counter ("OTC") transactions in listed securities. The section also gives the Commission authority to grant exemptions from the fee requirement.[3]

On September 16, 1985, the Commission issued two releases that could, as a by-product, subject transactions in certain OTC securities designated as National Market System ("NMS") securities [4] to section 31 fees for the first time. First, the Commission has announed the terms and conditions for exchanges to commence trading NMS Securities on an unlisted trading privileges ("UTP") basis beginning January 1, 1986.[5] Second, the Commission has adopted amendments to the NMS Securities Rule to allow listed securities that are not reported in the consolidated transaction reporting system to be designated as NMS Securities beginning October 1, 1985.[6] Although OTC securities are not now generally subject to section 31 fees, transactions in either listed NMS Securities, or NMS Securities admitted to UTP would be subject to the Section's fee requirement, whether effected on an exchange or in the OTC market.[7]

II. Discussion

Because Section 31 requires every national securities exchange to pay a fee calculated on the dollar amount of "sales of securities . . . transacted on such [exchange]," exchanges would pay fees on NMS Securities traded on that exchange pursuant to a grant of UTP. Furthermore, because section 12(f)(6) of the act [8] deems any security admitted to UTP on a national securities exchange as "registered" within the meaning of the Act, broker-dealers trading such securities in the OTC market would also have to pay section 31 fees.[9] Similarly, Section 31 would also cover transactions in listed securities concurrently designated as NMS Securities, after January 1, 1986. Therefore, once trading in these securities begins in multiple markets, all transactions in such NMS Securities, both on an exchange and OTC, would be subject to payment of section 31 fees.

The commencement of OTC/UTP trading and exchange traded NMS Securities raises the issue of the appropriateness of payment of section 31 fees on what are essentially OTC securities.[10] The Commission solicits comment on whether it should exempt the application of section 31 to the limited group of NMS Securities subject to UTP or concurrent exchange trading. Absent this exemption, the application of section 31 could depend on exchange decisions on whether to have UTP. This could automatically subject all OTC participants who trade the affected NMS Securites to section 31 fees, even if there was little or no exchange trading. This is particularly a concern during the start-up period for exchange UTP in NMS Securities, where the Commission can not predict whether there will be substantial exchange trading and the number of NMS Securities subject to UTP will be limited. The Commission preliminarily believes that it might be preferable to address the application of section 31 fees to the OTC market and to all reported securities directly, and not through the automatic application of section 31 as a result of granting UTP to NMS Securities or the concurrent exchange listing and NMS designation of a limited number of securities.[11]

Accordingly, the Commission is proposing for comment temporary amendments to Rule 31–1 that would exempt from Section 31 transactions in NMS Securities traded on an exchange on a listed or UTP basis. The proposed amendments are narrow in scope, and would apply only to transactions in those NMS Securities that are subject to either UTP or a concurrent exchange listing. The proposed amendments would be effective for a period not to exceed two years to allow the Commission time to reach a conclusion regarding the applicability of section 31 fees to NMS Securities.

III. Summary of the Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis

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[1] 15 U.S.C. 78a *et seq.*, as amended.

[2] The text of Section 31, as amended, is:

"Every national securities exchange shall pay to the Commission on or before March 15 of each calendar year a fee in an amount equal to one three-hundredths of 1 per centum of the aggregate dollar amount of the sales of securities (other than bonds, debentures, and other evidences of indebtedness) transacted on such national securities exchange during each preceding calendar year to which this section applies. Every registered broker and dealer shall pay to the Commission on or before March 15 of each calendar year a fee in an amount equal to one three-hundredths of 1 per centum of the aggregate dollar amount of the sales of securities registered on a national securities exchange (other than bonds, debentures, and other evidences of indebtedness) transacted by such broker or dealer otherwise than on such an exchange during each preceding calendar year: *Provided*, however, that no payment shall be required for any calendar year in which such payment would be less than one hundred dollars. The Commission, by rule, may exempt any sale of securities or any class of sales of securities from any fee imposed by this section, if the Commission finds that such exemption is consistent with the public interest, the equal regulation of markets and brokers and dealers, and the development of a national market system."

[3] *Id.*

[4] Rule 11Aa2–1 under the Act [17 CFR 240.11Aa2–1) ("NMS Securities Rule") sets forth the criteria and procedures by which certain OTC securities are designated as NMS Securities. *See* Securities Exchange Act Release No. 21583 (December 18, 1984), 50 FR 730 ("NMS Amendments Release"); Securities Exchange Act Release No. 17549 (February 17, 1981), 46 FR 13992 ("NMS Adoption Release"). The primary effect of designation as an NMS Security is that the security is subject to last sale reporting and confirmation requirements similar to those applicable to exchange traded securities. Transaction reports are collected and disseminated through the NASD's NASDAQ system pursuant to an effective transaction reporting plan administered by the NASD. These securities are listed securities included in the consolidated transaction reporting system are "reported securities." *See* 17 CFR 240.11Aa3–1(a)(4).

[5] Securities Exchange Act Release No. 22412 (September 16, 1985), 50 FR 38640 ("OTC/UTP Release").

[6] Securities Exchange Act Release No. 22413 (September 16, 1985), 50 FR 38515 ("OTC/Listed NMS Securities Release"). At present, transactions in these securities are subject to payment of Section 31 fees. Because the great majority of the trading of these securities occurs OTC, the Commission believes it is inappropriate for exchanges and market makers to pay Section 31 fees on transactions in these securities at the current time.

[7] *See also* section 12(f)(6) of the Act, 15 U.S.C. 78*l* and Rule 31–1 under Act, 17 CFR 240.31–1.

[8] 15 U.S.C. 78*l*.

[9] *See also* 17 CFR 240.31–1.

[10] Although listed securities concurrently designated NMS technically may resemble listed securities which are traded off-board in the "third market" and are presently covered by Section 31, the former are predominantly traded in the OTC market, while third-market stocks trade primarily on exchanges.

[11] The Commission also requests comment on whether listed NMS Securities should be treated differently than NMS Securities subject to UTP. Although traded predominantly OTC, listed securities that are eligible for NMS designation currently are subject to Section 31 fees; depending on how many of these securites seek NMS designation, providing an exemption for such securities may have a minor revenue impact. The Commision requests comment on whether it is more appropriate to treat these securities as primarily listed or primarily OTC securities for the purpose of Section 31.

("IRFA"), pursuant to the requirements of the Regulatory Flexibility Act,[12] regarding the proposed amendment to Rule 31–1. The IRFA indicates that the proposed amendment would exempt from section 31 of the Act exchanges and broker-dealers engaging in transactions in NMS Securities subject to UTP or to a concurrent exchange listing. The IRFA notes that the principal effect of this exemption would be to relieve exchanges and broker-dealers from payment of fees to which they otherwise would be subject. The IRFA states that, in order to determine the amount of fee owed under section 31, market participants would need to separately calculate dollar volume in NMS Securities and dollar volume in non-ANMS Securities. The IRFA solicites comments on the costs associated with this calculation as well as any other reporting, recordkeeping, or compliance costs. A copy of the IRFA may be obtained by contacting Leland H. Goss, Esq. (202) 272–2827, Division of Market Regulation, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

IV. Text of Proposed Amendments

The Commission proposes to amend Chapter II of Title 17 of the Code of Federal Regulation as follows:

1. The authority citation for Part 240 continues to read as follows:

Authority: Section 23, 48 Stat. 901, as amended; 15 U.S.C. 78w. * * * § 240.31–1 is also authorized under section 31, 48 Stat. 904, as amended (15 U.S.C. 78ee).

2. Section 240.31–1 is amended by adding a new paragraph (f) as follows:

§ 240.31–1 Securities transactions exempt from transaction fees.

* * * * *

(f) Transactions in National Market System Securities as defined in § 240.11Aa2–1 (Rule 11Aa2–1 under the Act). The terms and provisions of this paragraph shall remain effective until May 25, 1988.

Dated: January 10, 1986.

By the Commission.

John Wheeler,

Secretary

[FR Doc. 86–1126 Filed 1–16–86; 8:45 am]

BILLING CODE 8010–01–M

[12] 5 U.S.C. 601 *et. seq.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 606

[Docket No. 86N–0008]

Device Good Manufacturing Practice Advisory Committee; Meeting on Draft Guidelines; Possible Rulemaking

AGENCY: Food and Drug Administration, HHS.

ACTION: Announcement of meeting on draft guidelines.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The Device Good Manufacturing Practice Advisory Committee will meet to discuss FDA's draft "Guideline on General Principles of Process Validation" and planned revision of the "Guideline List of Critical Devices." Members of the public will be given the opportunity to comment on, and the committee will be given the opportunity to make recommendations on, a possible proposed amendment to the current good manufacturing practice requirements for blood and blood products (the blood CGMP's) to cover blood products that are device components or device raw materials. This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

DATE: Written comments on the two guidelines mentioned in this notice should be submitted by February 14, 1986.

ADDRESS: Written comments on the guidelines should be submitted to Sharon M. Kalokerinos (address below). A copy of 21 CFR Part 606 will be available at the meeting. Persons interested in making oral presentations on the proposed adoption of Part 606 under section 520(f) of the Federal Food, Drug, and Cosmetic Act should so inform Mary Gustafson, Office of Compliance (HFN–322), Center for Drugs and Biologics, 5600 Fishers Lane, Rockville, MD 20857, 301–443–7388, (after January 25, 1986, 301–295–8095) before the meeting.

Meeting: The following advisory committee meeting is announced:

Device Good Manufacturing Practice Advisory Committee

Date, time, and place. March 20 and 21, 1986, 9 a.m., Auditorium, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, March 20, 9 a.m. to 12 m.; open committee discussion, 1 p.m. to 3:30 p.m.; open committee discussion, March 21, 9 a.m. to 3:30 p.m.; Sharon M. Kalokerinos, Center for Devices and Radiological Health (HFZ–332), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7984.

General function of the committee. The committee reviews proposed regulations regarding current good manufacturing practice (CGMP) for methods used in, and the facilities and controls used for, the manufacture, packing, storage, and installation of devices, and makes recommendations regarding the feasibility and reasonableness of those proposed regulations. The committee also provides advice with regard to any petition submitted by a manufacturer for an exemption or variance from device CGMP regulations.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, or issues pending before the committee. Those desiring to make formal presentations should notify the contact person before February 14, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee heard comments during an October 1985 meeting concerning a draft guideline entitled "Guideline on General Principles of Process Validation." Availability of the draft guideline was announced in the **Federal Register** of March 29, 1983 (48 FR 13096). The committee will continue to accept written comments prior to the meeting, at which time they will present their recommendations to the agency. FDA will review the committee's recommendations in the course of preparing a final guideline. A transcript of the discussion on this matter will become part of the administrative file which FDA established for the guideline (82D–0350).

Other topics of discussion include FDA's planned revision of the "Guideline List of Critical Devices" (see **Federal Register** of July 21, 1978 (43 FR 31508, 31511). The committee will also accept written comments on the agency's planned revision of the list until the time of the meeting. The list of devices identified for addition to the Guideline List of Critical Devices is

available from the committee contact person.

Although the committee will accept written comments on either or both guideline until the time of the meeting, FDA urges interested persons to submit any such written comments to the contact person by February 14 to allow distribution of the comments to the committee members in advance of the meeting.

The committee also will discuss a proposed amendment to FDA's regulations on current good manufacturing practice for blood and blood products (the blood CGMP's) (21 CFR Part 606) to correct a current anomaly in which blood products that are device components or device raw materials, such as whole blood not intended for transfusion, recovered plasma, human serum, are not currently subject to good manufacturing practice requirements even though these requirements are needed to ensure the manufacture of products that comply with the law. The products were subject to the blood CGMP's until the Medical Device Amendments of 1976 broadened the definition of "device," with the inadvertent effect of removing these products from the scope of the blood CGMP's which apply only to products that are biologics or drugs, or both. The proposed amendment would cite section 530(f) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(f)) as authority for the blood CGMP's, insofar as they apply to blood products that are device components or device raw materials. Section 520(f) of the act is the statutory section that authorizes CGMP's for medical devices. FDA will publish a proposed revision of the blood CGMP's in a future issue of the Federal Register.

After a presentation by representatives of the Center for Drugs and Biologics, members of the public will be allowed to present their views on the proposal to apply the blood CGMP's to blood products that are device components or device raw materials. Thereafter, the committee will be afforded the opportunity to submit recommendations to FDA with respect to the regulations proposed to be promulgated in accordance with section 520(f)(1)(B)(i) of the act.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meeting announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as in practical, is accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA-305), Food and Drug Administration, Room. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under sections 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: January 10, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-1048 Filed 1-16-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-73-80]

Income Taxes; Residential Energy Credit; Public Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the residential energy credit.

DATES: The public hearing will be held on February 14, 1986, beginning at 10 a.m. Outlines of oral comments must be delivered or mailed by January 31, 1986.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The request to speak and outlines or oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:: (LR-73-80), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: B. Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, 202-566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations which amend the Income Tax Regulations under section 23 of the Internal Revenue Code of 1954. The proposed regulations appeared in the Federal Register for Thursday, October 31, 1985 (50 FR 45423).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations, should submit, not later than Friday, January 31, 1986, an outline of the oral

comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Peter K. Scott,

Director, Legislation and Regulations Division.

[FR Doc. 86-1235 Filed 1-15-86; 2:47 pm]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 541

Defining, and Delimiting the Terms "Employee Employed in a Bona Fide Executive, Administrative, or Professional Capacity (Including Any Employee Employed in the Capacity of Academic Administrative Personnel or Teacher in Elementary or Secondary Schools), or in the Capacity of Outside Salesman"

AGENCY: Wage and Hour Division, ESA, Labor.

ACTION: Advance notice of proposed rulemaking; Extension of comment period.

SUMMARY: This document extends the period for filing comments regarding an advance notice of proposed rulemaking intended to obtain the views of the public on possible changes in Part 541 of Title 29 of the Code of Federal Regulations (29 CFR Part 541). These regulations contain the criteria for exemption from the minimum wage and overtime requirements of the Fair Labor Standards Act for bona fide executive, administrative, professional, and outside sales employees.

DATE: Comments must be received on or before March 22, 1986.

ADDRESS: Written comments (preferably in triplicate) should be addressed to Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, Room S-3502, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Any commenters desiring notification of receipt of comments should include a self-addressed, stamped post card.

FOR FURTHER INFORMATION CONTACT: Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, Room S-3502, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202-523-8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In the Federal Register of November 19, 1985 (50 FR 47696) the Department of Labor published an advance notice of proposed rulemaking in order to solicit comments from the public on possible changes in 29 CFR Part 541. These regulations contain the criteria for exemption under section 13(a)(1) of the Fair Labor Standards Act for employees employed in a bona fide executive, administrative, professional, or outside sales capacity. Interested persons were requested to submit comments on or before January 21, 1986. The agency believes that an extension of the comment period is appropriate because a number of interested parties have requested such an extension in order to permit them to complete a full examination of the advance notice of proposed rulemaking and provide comprehensive comments.

Signed at Washington, DC, this 15th day of January 1986.

Susan R. Meisinger,

Deputy Under Secretary for Employment Standards.

[FR Doc. 86-1205 Filed 1-16-86; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

30 CFR Part 75

Safety standards for Roof, Face and Rib Support; Public Hearings

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of Public Hearings.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold public hearings on its proposal to revise existing safety standards for roof, face and rib support at underground coal mines. The hearings will be held in Pittsburgh, Pennsylvania, Lexington, Kentucky, and Denver, Colorado. Each hearing will cover the major issues raised by comments submitted in response to the proposed rule.

DATES: All requests to make oral presentations for the record should be submitted at least five days prior to each hearing date. Immediately before each hearing, any unallotted time will be made available to persons making late requests.

The public hearings will be held at the following locations on the dates indicated, beginning at 9:00 a.m.:

February 24, 1986, Pittsburgh, Pennsylvania

February 25, 1986, Lexington, Kentucky

February 27, 1986, Denver, Colorado.

ADDRESSES: The hearings will be held at the following locations:

February 24, 1986, Bureau of Mines Auditorium, 4800 Forbes Avenue, Pittsburgh, Pennsylvania 15213.

February 25, 1986, Lexington Hilton Inn, Room Red Mile A&B, 1938 Stanton Way, Lexington, Kentucky 40511.

February 27, 1986, Federal Office Building, Room 244, 1961 Stout Street, Denver, Colorado 80294.

Send requests to make oral presentations to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, Phone (703) 235-1910.

SUPPLEMENTARY INFORMATION: On October 15, 1985, MSHA published proposed revisions to its existing safety standards in 30 CFR Part 75 for roof, face and rib support in underground coal mines (50 FR 41784). Except for comments related to roof control on the Agency's Task Force recommendations for Two-Entry Longwall Mining systems, the written comment period for this proposed rule ended on December 16, 1985. The written comment period regarding MSHA's Two-Entry Task Force recommendations on longwall mining was extended until February 17, 1986 (50 FR 50925). In the comments to the proposed rule, MSHA received requests for public hearings.

The purpose of the public hearings is to receive relevant comment and respond to questions about the proposed rule. The hearings will be conducted in an informal manner by a panel of MSHA officials. Although formal rules of evidence will not apply, the presiding official may exercise discretion in excluding irrelevant or unduly repetitious material and questions.

Each session will begin with an opening statement from MSHA. The public will then be given an opportunity to make oral presentations. During these presentations, the hearing panel will be available to answer relevant questions. At the discretion of the presiding official, speakers may be limited to a maximum of 20 minutes for their presentations. Time will be made available at the end of the hearings for rebuttal statements. A verbatim transcript of each proceeding will be taken and made part of the rulemaking record. Copies of the hearing transcript will be available for review by the public.

MSHA will also accept additional written comments and other appropriate data from any interested party, including those not presenting oral statements. Written comments and data submitted to MSHA will be included in the rulemaking record. To allow for the submission of any post-hearing comments, the record will remain open until March 21, 1986.

Issues

Commenters questioned many specific provisions contained in the proposal. However, some of the provisions of the rule, which are discussed in this notice, raised important issues. MSHA will be specifically addressing these issues at the public hearings and solicits comment on them in addition to any other aspects of the proposed rule.

A. Full Roof Bolting

A commenter requested that MSHA prohibit the use of conventional roof supports as the sole means of roof support and require full overhead roof bolting at all mines. In support of this position the commenter stated that current mining methods and technology have made the use of conventional supports, as the sole means of roof support, obsolete and unsafe. Further, the commenter stated that the total number of roof fall fatalities occurring each year could be significantly reduced if full overhead roof bolting was required at each mine.

B. Automated Temporary Roof Support (ATRS) Systems

Although commenters generally supported the proposed ATRS requirement, conceptually they opposed the scope and applicability of the provision. Some commenters requested that ATRS systems be required only during roof bolting operations in coal seam heights of 42" or more, and in lower seam heights when practicable. These commenters stated that ATRS systems have been proven effective and practicable during roof bolting operations in seam heights of 42" or more, and that other uses for ATRS systems have not been proven and are not readily available. MSHA is particularly interested in data, including specific examples, concerning the practical impact of an ATRS requirement in coal seam heights under 42". Other commenters suggested that the proposal only apply to new or rebuilt machinery.

Also concerning the use of ATRS systems, some commenters suggested that the District Manager be authorized to permit the use of alternatives to ATRS systems, which would be specified in the mine's roof control plan. MSHA solicits comment and testimony on specific alternatives which might be approved. Commenters also requested that the provisions be modified to permit the use of manually installed temporary supports, if approved in the roof control plan, in the event of a mechanical breakdown in the ATRS system.

Comments varied on the delayed effective date provision in the proposal; some commenters suggested a three-year period; others a six-month period and others a two-year period for roof bolting machines and a five-year period for all other machinery.

C. Miner's Participation

One commenter suggested that miners' representatives be allowed to be involved in the approval process of roof control plans. This commenter stated that miners, through their representatives, should be provided a right to be notified of any proposed revisions to plans, and have a right to participate in discussions and investigations regarding approval of roof control plans. In addition, this commenter suggested that miners have the right to request a review of the plan. In support of these suggestions, this commenter stated that miners are often more aware of the roof conditions that actually exist in a mine than the company personnel formulating the roof control plan and MSHA personnel reviewing it.

List of Subjects in 30 CFR Part 75

Mine safety and health, Mandatory safety standards, Underground coal mines, Roof, face and rib support.

Dated: January 10, 1986.

David A. Zegeer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-980 Filed 1-13-86; 8:45 am]
BILLING CODE 4510-43-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-2952-4]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste (Proposal To Deny Petitions and Revoke Temporary/ Informal Exclusions)

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to deny the petitions submitted by 23 petitioners to exclude their waste from the hazardous waste lists. Nineteen (19) of these petitioners presently have temporary or informal exclusions which the Agency is also proposing to revoke. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 and 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 60 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste lists.

Based on an initial review of the petitions submitted by the generating facilities, additional information has been requested to enable the Agency to determine if permanent exclusions should be granted. Most of these petitioners have not provided the requested additional information. For the facilities that provided some information, the Agency has determined that the additional information is insufficient to make a final decision. Our basis, therefore, for denying these petitions and for revoking these temporary and informal exclusions is that all of these petitions are imcomplete *(i.e.,* the Agency does not have sufficient information to determine the hazardous or non-hazardous nature of the waste). The effect of this action, if promulgated, would be to deny the petitions and revoke the temporary and informal exclusions of certain wastes generated at particular facilities from being listed as hazardous waste under 40 CFR 261. Thus, all of the petitioned wastes would then be considered hazardous.

DATES: EPA will accept public comments on our tentative decision to deny these petitions and revoke these

temporary and informal exclusions until February 18, 1986. Any person may request a hearing on these decisions by filing a request with Eileen B. Claussen, whose address appears below, by February 3, 1986. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. 20460. Requests for a hearing should be addressed to Eileen B. Claussen, Director Characterization and Assessment Division, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. 20460. Communications should identify the regulatory docket number "Section 3001-Delisting Petitions (7)".

The public docket for these petitions (including the requests for the additional information that was never submitted) is located in Room S–212, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. 20460, and is available for public viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information, contact Mr. Matthew A. Straus, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. 20460, (202) 475–8551.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 1981, as part of its final and interm final regulations implementing Section 3001 of RCRA, EPA published an amended list of hazardous waste from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 260.32. These wastes are listed as hazardous because they typically and frequently exhibit any of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11(a)(2), or 261.11(a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility, which meets the listing description, may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To be excluded, petitioners must show that a waste generated at their facility does not meet any of the criteria under which the waste was listed. (See 40 CFR 260.22(a) and the background documents for the listed waste.) In addition, the Hazardous and Solid Waste Amendments of 1984 (HSWA) require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.[1]

In evaluating these petitions, the Agency first determines whether the waste (for which the petition was submitted) is non-hazardous based on the criteria for which the waste was originally listed. If the Agency believes that the waste is still hazardous, it will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the criteria for which the waste was listed, it will then evaluate the waste with respect to any other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

In some instances, the Agency has already granted a temporary exclusion for the petitioned wastes pursuant to 40 CFR 260.22(m). In addition, the Agency has also granted what has come to be known as informal exclusions.[2]

Temporary and informal exclusions were granted whenever the petition review concluded that there was a substantial likelihood that the wastes are non-hazardous based on the criteria for which they were listed and that an exclusion will eventually be granted. As will be discussed later, the granting of a temporary or informal exclusion did not relieve the petitioning facility from providing any additional information which may be required by the Agency to complete its evaluation of the petition and make a definitive determination to exclude or deny the petition. The additional information required under Section 222 of HSWA was generally requested from the petitioning facilities through written correspondence. The acquisition and analysis of this additional information by the Agency is necessary before a tentative determination (*i.e.*, a proposal to exclude or deny exclusion) can be made for the petitioned wastes.

Basis for Denying Exclusion Petitions

The Agency has experienced lengthy delays in receiving the additional information requested from petitioning facilities that have been granted temporary or informal exclusions for their wastes. The additional information has been requested because of the Hazardous and Solid Waste Amendments (*i.e.*, the Agency now must consider all factors, if there is a reasonable basis to believe that such factors could cause the waste to be hazardous). Such delays have disrupted the continuity of the petition review process and have created a backlog of petitions awaiting review. In fact, many persons have commented to the Agency that they believe the "delisting process" is non-existent. This is not the case; much of the delay in processing these petitions has been caused by the slowness of petitioners in submitting the additional information. For example, in some instances the Agency has been waiting for years for petitioners to submit the additional information, and still the requested information has not been submitted. In other cases, some information was submitted to the Agency in response to our request for additional information. None of these responses were sufficient to enable the Agency to make a decision on whether or not to grant the exclusion. We do agree with the commenters, however, that due to these long time delays, the delisting process appears to take much too long and appears to be inefficient.

To mitigate the problems that have been created by this situation, the Agency has decided that if a complete petition is not submitted within a reasonable period of time from the date that EPA first requests the additional information, the Agency will propose to deny the petition as incomplete. The Agency today is proposing to deny petitions and to revoke the temporary and informal exclusions granted to certain facilities, since these facilities

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[1] In addition, residues from the treatment, storage, or disposal of listed hazardous wastes are eligible for exclusion. The substantive standard for delisting these wastes is the same as for excluding the listed wastes.

[2] Informal exclusions are those which have been evaluated by the Office of Solid Waste (OSW), and a preliminary decision has been made to grant the petition using the same (pre-HSWA) criteria as applied to those petitioners that were granted temporary exclusions. These decisions for informal exclusions were never published in the Federal Register, however, but rather the petitioners were notified by letter that their waste *would* be delisted. Specifically, the Office of Enforcement informed the Regional enforcement office and petitioners of OWS's findings. These letters requested that some discretion be exercised during the interim period until OSW's decision was published in the Federal Register.

has failed to provide the additional information requested within a reasonable period of time.

In all of these cases, the Agency has made a number of requests for information from these facilities. The Agency made at least two written requests for information indicating the specific type of information the petitioner was to supply in order for the Agency to complete its evaluation. In addition, the Agency published a notice in the **Federal Register** of its intent to collect this information (49 FR 4802–4803, February 8, 1984). More specifically:

- These facilities were initially notified in late 1983 or early 1984 that both Houses of Congress were considering bills that would require EPA to revise its petition review procedure to consider other factors (including additional constituents) before a decision was made to delist a waste. Since both bills were likely to place time limitations on the Agency to process these petitions, we strongly recommended that the petitioners provide the additional information as soon as possible so that the Agency had sufficient time to process the petition.
- The Agency then published a notice in the **Federal Register** on February 8, 1984 (See 49 *FR* 4802–4803) explaining its basis for requesting the information and what informtion was required.
- These facilities were again notified on November 26, 1984 that they still had outstanding requests for information. At that time, the Agency again indicated the specific type of information that was needed from each petitioner. The Agency further explained in that notification that RCRA had been amended and that the information requested in 1983 and 1984 was now required to process their petitions.

These facilities were again informed individually in September 1985 that the additional information requested must be received by November 15, 1985, to permit complete petition processing and final determination (exclusion or exclusion denial) before the Congressionally mandated deadline of November 8, 1986.

In most cases, the Agency has not heard from these petitioners in over a year; in many cases, it has been almost two years. In those few instances where the Agency has received some information, this information was deficient. The Agency believes that we have given these petitioners an adequate period of time to provide this information. Since the necessary information has not been submitted, we are proposing to deny these petitions and to revoke the temporary and informal exclusions and deny these petitions as incomplete.

In addition, the Agency is giving notice to all petitioners who have a temporary or informal exclusion, that the Agency will continue to revoke temporary and informal exclusions and deny petitions (as incomplete) if those petitioners do not submit the requested information within a reasonable period of time. All of these petitioners have been informed of when the information is due. If all the information is not provided by that date, the Agency will propose to deny their petitions.

Today's Proposal

The Agency proposes to make final today's tentative decisions to deny these petitions, unless the petitioner provides the necessary information during the comment period (*i.e.*, The Agency then has a complete petition).

Petitioners

EPA today proposes to deny the following petitioners and to revoke their temporary and informal exclusions:

Petitioners No.	Petitioners name
0033	Woodstock Die Casting, Woodstock, IL.
0045	Michelin Tire Corporation, Sandy Springs, SC.
0050	Reynolds Aluminum, Woodbridge, VA.
0069	Miller Brewing Company, Milwaukee, WI.
0111	Pratt & Whitney Aricraft Group, West Palm Beach, FL.
0125	Chem-Clear, Incorporated, Richmond, VA.
0153	Thermex Energy Corporation (formerly Gulf Oil Chemicals Company) Brooksville, FL; Casper, WY; Parish, AL; Hollowell, KS; McLeansville, NC; Biwabik, MN.
0162	Gulf Oil Company, Cleves, OH.
0183	Hawlett-packard Company, Loveland, CO.
0187	Bethlehem Steel Corporation, Chesterton, IN.
0211	Charter International Oil Company, Houston, TX.
0212	Continental Can Company, Olympia, WA.
0225	Miller Brewing Company, Milwaukee, WI.
0229	Ford Motor Company, Lima, OH.
0235B	Charter Oil Co., Houston, TX.
0237	Rock Island Refining Corporation, Indianapolis, IN.
0244	Murphy Oil Corporation, Superior, WI.
0280	Ball Metal Container Corporation, Westminister, CO.
0288	Aluminum Company of America (ALCOA), Tifton, GA.

EPA today also proposes to deny the petitions of the following petitioners who did *not* have either a temporary or informal exclusion:

Petitioners No.	Petitioners name
0440	Union Carbide, Sisterville, WV.
0557	Hewlett-Packard, Colorado Springs, CO.
0561	Mountain View Fabricating, Mountain View, MO.
0574	Production Plated Plastics, Inc., Richland, MI.

These petitions are being proposed for denial because the Agency has not received the additional information that was requested. This information has been outstanding for over one year. The Agency has previously stated its intention to deny petitions that have exceeded this one year limit. (See 50 FR 47763, November 20, 1985.)

Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal, which would revoke temporary and informal exclusions and would deny the exclusion petitions submitted by certain facilities, is not major. The affect of this proposal would increase the overall costs for the facilities which currently have a temporary or informal exclusion. The actual costs to these companies, however, would not be significant. In particular, in calculating the amount of waste that is generated by the 19 facilities that currently have temporary or informal exclusions and considering a disposal cost of $300/ton, the increased cost to these facilities is approximately $40 million, well under the $100 million level constituting a major regulation. In addition many of these companies are large and, therefore, the impact of this rule will be relatively small. This proposal is not a major regulation; therefore, no Regulatory Impact Analysis is required.

Regulatory Flexibilities 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 a substantial number of small entities.

The amendment will have the effect of increasing overall waste disposal costs. A few of the facilities with temporary or informal exclusions may be considered small entities; however, this rule only effects 19 facilities across wide industrial segments. The overall economic impact, therefore, on small entities is small. Accordingly, I hereby certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Dated: December 26, 1985.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 86-581 Filed 1-16-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6696]

Proposed Flood Elevation Determinations; Alabama et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to quaify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ALABAMA	
Dallas County (Unincorporated Areas)	
Alabama River:	
About 3.0 miles downstream of confluence of Bogue Chitto Creek	*97
At the Dallas-Autauga-Lowndes County line	*136
Bogue Chitto Creek: Within community	*98
White Oak Creek: Within community	*100
Cahaba River:	
At mouth	*112
About 8.4 miles upstream of the Louisville and Nashville Railroad	*129
Childers Creek:	
At mouth	*115
At mouth of Childers Creek Tributary	*168
Childers Creek Tributary:	
At mouth	*168
About 1.3 miles upstream of Persimmon Tree Road	*224
Valley Creek:	
About 1.4 miles downstream of Summerfield Road	*128
About 0.9 mile upstream of County Road 16	*198
Beech Creek: Within community	*122
Maps available for inspection at the Dallas County Commission, Selma, Alabama.	
Send comments to Honorable John W. Jones, Chairman, Dallas County Commission, P.O. Box 947, Selma, Alabama 36702.	
Hollywood (Town), Jackson County	
Dry Creek:	
About 6,000 feet downstream of U.S. Highway 72	*614
Just downstream of Norfolk Southern Railway	*622
The Pit Creek:	
At mouth	*621
About 3,200 feet upstream of Norfolk Southern Railway	*650
Town Creek:	
About 600 feet downsteam of Unnamed Tributary	*602
Just downstream of County Highway 33	*620
Maps available for inspection at the City Hall, Hollywood, Alabama.	
Send comments to Honorable Leroy Hollis, Mayor, Town of Hollywood, P.O. Box 240, Hollywood, Alabama 35752.	
CALIFORNIA	
Desert Hot Springs (City), Riverside County	
Desert Hot Springs Channel: 100 feet upstream from the center of Palm Drive	*1,323
Blind Canyon Channel: At Casa Grande Drive	*1,457
Big Morongo Wash: At the intersection of Buena Vista Avenue and Little Morongo Road	#4
Little Morongo Wash: At the intersection of Hacienda Avenue and West Drive	#4
Mission Creek: At the intersection of Little Morongo Road and the southern-most corporate limits	#3
Unnamed Stream A: At the intersection of 4th Street and Crescent Drive	#1
Unnamed Stream B: At the intersection of Pierson Boulevard and Tamar Drive	#1
Unnamed Stream C: At the intersection of Reech Avenue and Redbud Road	#1
Long Canyon: At the intersection of Hacienda Avenue and easternmost corporate limit	#4
Maps available for inspection at the City Planning Department, 11-711 West Drive, Desert Hot Springs, California.	
Send comments to The Honorable Carl Yoder, Mayor, 11-711 West Drive, Desert Hot Springs, California 93240.	
McFarland (City), Kern County	
Shallow Flooding: Intersection of Browning Road and Perkins Avenue	*350
Maps available for inspection at the Office of the Mayor, 401 West Kern Avenue, McFarland, California.	
Send comments to The Honorable Donnie Campbell, Mayor, P.O. Box 1488, McFarland, California 93250.	
Tulare County, (Unincorporated Areas)	
King River: 50 feet upstream from the center of Southern Pacific Railroad	*288

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
St. Johns River: 100 feet upstream from the center of Friant-Kern Canal	*422
Shallow Flooding: At the center of the intersection of Road 170 and Avenue 304	#1
Lower Kaweah River: 50 feet upstream from the center of Southern Pacific Railroad	*388
Shallow Flooding:	
At the center of the intersection of Road 182 and Avenue 304	#2
100 feet west from the center of the intersection of Avenue 312 and Atchison, Topeka & Santa Fe Railroad	*405
Middle Fork Kaweah River: 10 feet upstream from the center of South Dinely Drive	*996
South Fork Kaweah River: 50 feet upstream from the center of South Fork Drive	*957
North Fork Kaweah River: 50 feet upstream from the center of North Fork Drive	*971
Elk Bayou: 50 feet upstream from the center of State Highway 99	*267
Lower Tule River: 50 feet upstream from the center of Piano Street	*459
Shallow Flooding:	
100 feet west from the center of the intersection of Crestview Street and Putnam Avenue	#
At the center of the intersection of Plano Street and Henderson Avenue	*448
Upper Tule River: 50 feet upstream from the center of Globe Road	*777
Upper Tule River Northern Branch: At confluence with Upper Tule River	*701
Graham Creek: 100 feet upstream from the center of Globe Drive	*890
Campbell Creek: 50 feet upstream from the center of County Highway J28	*744
Fountain Springs Creek: 50 feet upstream from the center of Avenue 88	*515
Sand Creek—Shallow Flooding:	
At the center of the intersection of Avenue 432 and Road 132	#1
100 feet northwest from the center of the intersection of Ione Road and El Monte Avenue	#2
At the center of the intersection of Avenue 408 and Road 120	*359
Alta East Branch—Shallow Flooding:	
At the center of the intersection of Road 136 and Avenue 422	#1
500 feet north from the center of the intersection of Avenue 424 Road 128	#2
Antelope Creek—Shallow Flooding: At the center of the intersection of Road 212 and Avenue 356	*464
East Overflow Antelope Creek—Shallow Flooding: 100 feet north from the center of the intersection of Wutchumna Avenue and City of Woodlake corporate limits	*453
West Overflow Antelope Creek—Shallow Flooding: 150 feet southwest from the center of the intersection of Caion Avenue and Olivera Drive	*456
Lewis Creek—Shallow Flooding: 100 feet northwest from the center of Lindmoe Street crossing of Friant—Kern Canal	*416
Frazier Creek—Shallow Flooding:	
At the center of the intersection of Olive Drive and F Avenue	*420
At the center of the intersection of Ninth Avenue and Road 228	#1
White River—Shallow Flooding: At the center of intersection of Road 136 and White Rock Avenue	*290
Porter Slough—Shallow Flooding:	
100 feet west from the center of the intersection of Crestview Street and Putnam Avenue	#1
At the center of the intersection of Plano Street and Henderson Avenue	*448
Mill Creek—Shallow Flooding: At the intersection of Goshen Avenue and Boyer Lane	#2
Packwood Creek—Shallow Flooding: 100 feet southwest from the intersection of Mainnette Avenue and Oakdale Avenue	#1
Wooten Creek: 100 feet northeast from the intersection of Valley Road and Avenue 464	*439

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Orange Cove Drain: 100 feet southeast from the intersection of Avenue 460 and Valley Road	*434
Maps available for inspection at County Department of Public Works, County Courthouse, Visalia, California.	
Send comments to the Honorable Leroy Swiney, Chairman, Board of Supervisors, County Courthouse, Visalia, California 93277.	

COLORADO

La Veta (Town), Huerfano County

Cucharas River: 50 feet upstream of the center of Francisco Street	7,029
Middle Creek: 50 feet upstream of the confluence with the Cucharas River	*6,976
Cucharas River (Shallow Flooding): 200 feet north of the intersection of Main Street and Ryus Avenue	#1
Maps available for inspection at Town Hall, 204 South Main, La Veta, Colorado.	
Send comments to The Honorable Gary Mayfield, Mayor, 204 South Main, Box 174, La Veta, Colorado 81055.	

Mancos (Town), Montezuma County

Mancos River: Approximately 50 feet upstream from center of Grand Avenue Bridge	*7,033
Chicken Creek: Approximately 600 feet north of the intersection of Monte Street and U.S. Highway 160 along Monte Street Extended	*6,955
Maps available for inspection at Town Hall, Box 487, Mancos, Colorado.	
Send comments to The Honorable Del Beaver, Town Administrator, Box 487, Mancos, Colorado 81328.	

Walsenburg (City), Huerfano County

Cucharas River: At the center of the intersection of 8th Street and Willis Avenue	*6,176
Bear Creek: Approximately 50 feet upstream of the center of U.S. Highway 160	*6,164
North Walsenburg Flood Control Dam Overflow: At the center of the intersection of 4th and Main street	*6,182
Maps available for inspection at the Office of City Building Inspector, 525 South Albert, Walsenburg, Colorado.	
Send comments to The Honorable Betty Ridge, Mayor 525 South Albert, Walsenburg, Colorado 81089.	

GEORGIA

Garden City (City), Chatham County

Atlantic Ocean:	
Along Pipe Makers Canal downstream of State Route 21	*12
At State Route 21 over Dundee Canal	*12
Pipe Makers Canal:	
Just upstream of State Route 21	*12
Just upstream of Dean Forest Road	*14
Dundee Canal:	
Just upstream of Seaboard Coast Line Railroad	*15
About 1.1 miles upstream of Seaboard Coast Line Railroad	*15
Salt Creek Tributary:	
About 0.9 mile downstream of U.S. Route 80	*12
About 1,600 feet upstream of U.S. Route 80	15
Maps available for inspection at City Hall, Garden City, Georgia.	
Send comments to Honorable Ralph O. Kessler, Mayor, City of Garden City, P.O. Box 7548, Garden City, Georgia 31418.	

Port Wentworth (City), Chatham County

Savannah River: Within community	*12
Atlantic Ocean:	
From intersection of U.S. Route 17 and Grange Road to U.S. Route 17 bridge over Savannah River	*11
About 0.5 mile south of intersection of Grange Road and U.S. Route 17	12
Maps available for inspection at the Building Inspector's Office, City Hall, Port Wentworth, Georgia.	
Send comments to Honorable Preston B. Edwards, Jr., Mayor, City of Port Wentworth, P.O. Box 4086, Port Wentworth, Georgia 31407.	

Savannah (City), Chatham County

Pipe Makers Canal:	
Just downstream of Dean Forest Road	*13
About 900 feet upstream of Timber Bridge	*16
Dundee Canal:	
Just upstream of Seaboard Coast Line Railroad (railroad is 2.5 miles upstream of mouth)	*15
Just downstream of Seaboard Coast Line Railroad (railroad is 3.6 miles upstream of mouth)	*15
Springfield Canal:	
Just upstream of Interstate 16	*12
Just upstream of Douglas Street	*15
Springfield Canal Tributary A:	
At mouth	*12
Just upstream of U.S. Route 17 South	*14
Casey Canal:	
Just upstream of confluence with Haneys Creek	*13
About 706 feet upstream of Duffy Street	*14
Harmon Canal:	
Just upstream of Edgewater Road	*12
Just downstream of Montgomery Cross Road	*15
Wilshire Canal:	
Just upstream of Abercorn Street	*12
Just downstream of Mercy Boulevard	*21
Wilshire Canal Tributary A:	
At mouth	*12
Just downstream of Briarcliff Circle	*20
Wilshire Canal Tributary A-1:	
At mouth	*16
Just upstream of Abercorn Street	*20
Atlantic Ocean:	
About 1,000 feet northwest of Alternate U.S. Route 17 over Savannah River	*12
At intersection of Tompkins Road and South Tompkins Road	*12
About 0.5 mile upstream of State Route 359 over Little Ogeechee River	*12
At mouth of Breakfast Creek	*15
Western half of Ella Island	*19
Maps available for inspection at the City Engineer's Office, City Hall, Savannah, Georgia.	
Send comments to Honorable John P. Rousakis, Mayor, City of Savannah, P.O. Box 1027 Savannah, Georgia 31402.	

Thunderbolt (Town), Chatham County

Atlantic Ocean:	
At intersection of Whatley Avenue and Victory Drive	*12
At U.S. Route 80 bridge over Grays Creek	*14
Maps available for inspection at City Hall, Thunderbolt, Georgia.	
Send comments to Honorable James A. Petrea, Mayor, Town of Thunderbolt, 2072 Mechanics Avenue, Thunderbolt, Georgia 31404.	

Vernonburg (Town), Chatham County

Atlantic Ocean: Within community	
Maps available for inspection at the Intendent's Home, 12820 Rockwell Avenue, Savannah, Georgia.	
Send comments to Honorable George Godfrey, Intendent, Town of Vernonburg, 12820 Rockwell Avenue, Savannah, Georgia 31419.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Tybee Island (City), Chatham County	
Atlantic Ocean:	
Along Jones Avenue from 14th Street to 4th Street	*12
At U.S. Route 80 bridge over Lazaretto Creek	*18
Along eastern shoreline	*20
Maps available for inspection at the Building Inspector's Office, City Hall, Tybee Island, Georgia.	
Send comments to Honorable Walter W. Parker, Mayor, City of Tybee Island, P.O. Box 128, Tybee Island, Georgia 31328.	
ILLINOIS	
Chandlerville (Village), Cass County	
Panther Creek:	
About 0.8 mile downstream of State Route 78	*458
About 0.7 mile upstream of Main Street	*472
Sangamon River:	
About 0.5 mile downstream of State Route 78	*458
Just upstream of State Route 78	*460
Maps available for inspection at the Clerk's Office, Chandlerville, Illinois.	
Send comments to Honorable Wayne Atterberry, Village President, Village of Chandlerville, Village Hall, Box 416, Chandlerville, Illinois 62627.	
Cissna Park (Village), Iroquois County	
Pigeon Creek:	
About 2,000 feet downstream of Missouri Pacific Railroad	*661
At confluence of Pigeon Creek Tributary No. 1	*664
Pigeon Creek Tributary No. 1:	
At confluence with Pigeon Creek	*664
About 450 feet upstream of West Street	*665
Maps available for inspection at the Cissna Park News, 119 West Garfield, Cissna Park, Illinois.	
Send comments to Honorable Rick Bayer, Village President, Village of Cissna Park, Village Hall, Cissna Park, Illinois 60924.	
Hull (Village), Pike County	
Mississippi River:	
About 0.8 mile upstream of Dam 22	*472
About 2.1 miles upstream of Dam 22	*473
Maps available for inspection at the Hull Motel-Cafe, Rt. 36, Hull, Illinois.	
Send comments to The Honorable Charles Cress, Village President, Village of Hull, Village Hall, Hull, Illinois 62343.	
Milford (Village), Iroquois County	
Sugar Creek:	
About 3,600 feet downstream of State Route 1	*645
About 2,700 feet upstream of Missouri Pacific Railroad	*651
Maps available for inspection at the Milford Village Hall, South West Avenue, Milford, Illinois.	
Send comments to Honorable Melvin Rieches, Village President, Village of Milford, P.O. Box 137, Milford, Illinois 60953.	
Petersburg (City), Menard County	
Sangamon River:	
About 0.8 mile downstream of State Route 123	*503
About 1.2 miles upstream of State Route 123	*505
Maps available for inspection at the City Water Department, City Hall, Petersburg, Illinois.	
Send comments to Honorable Harold Andreasan, Mayor, City of Petersburg, City Hall, Box 39, Petersburg, Illinois 62675.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Streator (City), La Salle and Livingston Counties	
Vermilion River:	
About 1.2 miles downstream of Main Street	*573
About 0.8 mile upstream of Bridge Street	*580
Prairie Creek:	
About 0.7 mile downstream of Kelly Street	*573
About 0.5 mile upstream of Otter Creek Road	*628
Coal Run Creek:	
At mouth	*579
Just upstream of Otter Creek Road	*617
South Branch Coal Run Creek: Within community	*617
Maps available for inspection at the City Clerk's Office, City Administration Building, 204 South Bloomington, Streator, Illinois.	
Send comments to Honorable Arthur P. Dell, Mayor, City of Streator, City Administration Building, 204 South Bloomington, Streator, Illinois 61364.	
IOWA	
New Hartford (City), Butler County	
Beaver Creek:	
About 0.4 mile downstream of Broadway Street	*896
About 1.2 miles upstream of Broadway Street	*901
Maps available for inspection at the City Hall, 503 Packwaukee, New Hartford, Iowa.	
Send comments to Honorable Mike Luck, Mayor, City of New Hartford, P.O. Box 215, New Hartford, Iowa 50660.	
MARYLAND	
Berlin (Town), Worcester County	
Kitts Branch:	
At downstream corporate limits	*17
Upstream side of Ocean City Boulevard/State Route 346	*21
At upstream corporate limits	*23
Maps available for inspection at the Town Hall, 10 Williams Street, Berlin, Maryland.	
Send comments to Honorable John H. Burbage, Mayor of the Town of Berlin, 10 Williams Street, Berlin, Maryland 21811.	
MISSOURI	
Lake Winnebago (City), Cass County	
Lake Winnebago: Within community	*922
Maps available for inspection at the City Hall, 75 Padricah Lane, Lake Winnebago, Missouri.	
Send comments to Honorable Jerry Gode, Mayor, City of Lake Winnebago, City Hall, 75 Padricah Lane, Lake Winnebago, Missouri 64034.	
Mokane (Village), Callaway County	
Missouri River: Within community	*538
Maps available for inspection at the City Clerk's Office, City Hall, Mokane, Missouri.	
Send comments to Honorable James Dillon, Mayor, Village of Mokane, City Hall, Mokane, Missouri 65059.	
Morrison (City), Gasconada County	
Missouri River: Within community	*528
Maps available for inspection at the City Clerk's Office, Morrison, Missouri.	
Send comments to Honorable Sam Birk, Mayor, City of Morrison, R.R. 1, Box 243, Morrison, Missouri 65061.	
NEBRASKA	
Hall County (Unincorporated Areas)	
Middle Channel Platte River:	
About 600 feet above U.S. Highway 34	*1,840
At western county boundary	*2,010

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
South Channel Platte River:	
About 0.6 mile downstream of State Highway 2	*1,835
About 0.4 mile upstream of County Road 7	*1,963
Prairie Creek:	
About 1.6 miles upstream of U.S. Highway 281	*1,861
About 2.2 miles upstream of Burlington Northern Railroad	*1,901
Silver Creek:	
About 1.0 mile upstream of County Road 141	*1,855
About 2.8 miles upstream of U.S. Government Railroad	*1,899
Moores Creek:	
Just upstream of County Road 141	*1,846
About 0.6 mile upstream of U.S. Highway 281	*1,859
Wood River:	
About 0.6 mile downstream of Shady Bend Road	*1,830
About 4.5 miles upstream of U.S. Highway 30	*1,956
Maps available for inspection at the Regional Planning Commission, City Hall, Grand Island, Nebraska.	
Send comments to Honorable Paul Frauen, Chairman, Board of Supervisors, Hall County, Hall County Administration Building, Grand Island, Nebraska 68801.	
City of Rulo, Richardson County	
Missouri River: Within community	*862
Maps available for inspection at the City Clerk's Office, Rulo, Nebraska.	
Send comments to Honorable Norman Thompson, Mayor, City of Rulo, Box 103, Rulo, Nebraska 68431.	
Wood River (City), Hall County	
Wood River:	
About 0.7 mile downstream of County Highway 36	*1,956
About 1.7 miles upstream of District 83 Road	*1,973
Maps available for inspection at the City Hall, Wood River, Nebraska.	
Send comments to Honorable Richard DeVore, Mayor, City of Wood River, P.O. Box 253, Wood River, Nebraska 68883.	
NEW JERSEY	
Rockaway (Township), Morris County	
Rockaway River:	
At downstream corporate limits	*541
At the first upstream corporate limits	*553
At the second upstream corporate limits	*660
At the third upstream corporate limits	*662
Pequannock River:	
At downstream corporate limits	*744
At upstream side of New York-Susquehanna and Western railroad	*749
At upstream corporate limits	*753
Beaver Brook:	
At downstream corporate limits	*519
At upstream side of Old Beach Glen Road	*523
Approximately 1,000' downstream of Meridan-Lyonsville Road	*536
Green Pond Brook:	
At Confluence with Rockaway River	*612
At downstream side of Interstate Route 80 access ramp to State Route 15	*625
Upstream side of CONRAIL culvert	*644
At upstream corporate limits	*684
Hibernia Brook:	
At confluence with Beaver Brook	*521
At upstream side of Green Pond Brook	*548
White Meadow Brook:	
At confluence with Beaver Brook	*519
At upstream side of dam located between Green Pond Road and Omaha Avenue	*573
At upstream side of Omaha Avenue	*630
At upstream side of Upper Mountain Avenue	*713
At upstream side of White Meadow Lake Dam	*753
At upstream side of South Brookside Drive	*781
At upstream side of Mount Hope Lake Dam	*801

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Tributary to Pequannock River:	
At confluence with Pequannock River	*749
At upstream side of Green Pond Road	*765
Tanglewood Brook:	
At corporate limits	*575
At upstream side of Mekiel Drive	*605
Maps available for inspection at 65 Mount Hope Road, Rockaway, New Jersey.	
Send comments to Honorable John Wojtaszek, Mayor of the Township of Rockaway, Morris County, 65 Mount Hope Road, Rockaway, New Jersey 07866.	
NEW MEXICO	
Las Vegas (City), San Miguel County	
Gallinas Creek:	
Downstream corporate limits	*6,378
Upstream side of Grand Avenue	*6,401
Upstream side of National Street	*6,433
Upstream side of Mills Avenue	*6,458
Approximately 700 feet upstream of upstream corporate limits	*6,473
Gallinas Creek shallow flooding area:	
Area from intersection of Lincoln and Tenth Street southeast to Gallinas and Nineth Street intersection	#1
Intersection of Jackson and Tenth Street	#2
Intersection of Bridge and Twelfth	#3
Arroyo Pecos:	
Downstream corporate limits	*6,378
Upstream side of State Routes 65 and 104	*6,392
Upstream side of Interstate 25	*6,427
Approximately 700 feet upstream of Atchison, Topeka, and Santa Fe Railroad bridge	*6,436
Upstream side of U.S. Route 85	*6,451
Approximately 250 feet upstream of U.S. Route 85	*6,455
Arroyo Herranos:	
Confluence with Gallinas Creek	*6,436
Upstream side of North Gonzales Street	*6,445
Upstream side of Church Street	*6,461
40 feet upstream of Lopez Street	*6,491
Arroyo Pajarito:	
Confluence with Gallinas Creek	*6,415
Upstream side of South Pacific Street	*6,428
Upstream side of New Mexico Avenue	*6,446
Downstream side of Salazar Street	*6,473
Maps available for inspection at the City Administration Building, 1700 North Grand, Las Vegas, New Mexico.	
Send comments to the Honorable Dan Bible, City Manager of Las Vegas, San Miguel County, 1700 North Grand, Las Vegas, New Mexico 87701.	
NORTH DAKOTA	
Beach (City), Golden Valley County	
Little Beaver Creek: Approximately 50 feet upstream from the center of State Highway 16 Bridge	*2,746
Main tributary: Approximately 30 feet upstream from the center of Second Street Bridge	*2,769
Northwest tributary: Approximately 50 feet upstream from the center of Fourth Street North Bridge	*2,787
Maps available for inspection at City Hall, East Main Street, Beach, ND.	
Send comments to the Honorable Clayton C. Bartz, Mayor, East Main Street, Beach, ND 58621.	
OHIO	
Evendale (Village), Hamilton County	
Mill Creek:	
About 0.5 mile downstream of Evendale Drive	*557
About 1.2 miles upstream of Glendale-Milford Road	*576

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Sharon Creek:	
At mouth	*570
Just upstream of Conrail	*578
Sharon Creek tributary:	
At mouth	*578
About 0.08 mile upstream of mouth	*579
Maps available for inspection at the Municipal Building, 10500 Reading Road, Evendale, Ohio.	
Send comments to Honorable Gerald C. Vonderhaar, Mayor, Village of Evendale, Municipal Building, 10500 Reading Road, Evendale, Ohio 45241.	
Green Camp (Village), Marion County	
Scioto River:	
About 3,800 feet downstream of State Route 739	*914
About 3,000 feet upstream of Conrail	*915
Maps available for inspection at the Village Hall, Green Camp, Ohio.	
Send comments to Honorable Glenn Decker, Mayor, Village of Green Camp, 417 High Street, Green Camp, Ohio 43322.	
La Rue (Village), Marion County	
Scioto River:	
About 2,500 feet downstream of State Route 37	*926
About 4,000 feet upstream of Conrail	*929
Maps available for inspection at the Village Hall, La Rue, Ohio.	
Send comments to Honorable James L. Rauscher, Mayor, Village of La Rue, 190 East Market Street, La Rue, Ohio 43332.	
Marion County (unincorporated areas)	
Scioto River:	
About 0.9 mile downstream of State Route 47	*907
About 1.0 mile upstream of La Rue-Kenton Road	*932
Maps available for inspection at the County Courthouse, Marion, Ohio.	
Send comments to Honorable Larry J. Adams, President, Marion County Commission, County Courthouse, Marion, Ohio 43302.	
North College Hill (City), Hamilton County	
West Fork Lake tributary:	
About 650 feet downstream of Foxwood Drive	*784
Just downstream of Foxwood Drive	*787
Just upstream of Foxwood Drive	*795
Just upstream of Sundale Avenue	*829
Just downstream of Emerson Avenue	*839
About 300 feet upstream of Emerson Avenue	*845
Tributary A:	
At mouth	*785
Just downstream of Southridge Drive	*802
Shallow flooding (ponding from rainfall): At intersection of Hamilton Avenue and Catalpa Avenue	*829
Maps available for inspection at the Municipal Building, 1665 West Galbraith Road, Cincinnati, Ohio.	
Send comments to Honorable Dan Brooks, Mayor, City of North College Hill, Municipal Building, 1665 West Galbraith Road, Cincinnati, Ohio 45225.	
Prospect (Village), Marion County	
Scioto River:	
About 1,800 feet downstream of State Route 47	*908
About 2,200 feet upstream of State Route 47	*909
Maps available for inspection at the Village Hall, Prospect, Ohio.	
Send comments to Honorable Arnold Joseph, Mayor, Village of Prospect, P.O. Box 127, Prospect, Ohio 43342.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Oklahoma	
Claremore (City), Rogers County	
Dog Creek:	
Approximately 3,900 feet downstream of State Route 20	*585
Upstream side of Blue Starr Drive	*594
Approximately 600 feet upstream of Blue Starr Drive	*595
Cat Creek:	
Upstream side of Will Rogers Turnpike	*580
Downstream side of Muskogee Avenue	*583
Downstream side of U.S. Route 66	*589
Upstream side of Will Rogers Boulevard	*600
Downstream side of Industrial Boulevard	*614
Approximately 1,400 feet upstream of Lowry Road	*621
Maps available for inspection at the City Hall, 104 South Muskogee, Claremore, Oklahoma.	
Send comments to Honorable Stan Thomas, Mayor of the City of Claremore, Rogers County, 104 South Muskogee, Claremore, Oklahoma 74017.	
Coweta (City), Wagoner County	
Coweta Creek:	
At downstream corporate limits	*579
Upstream face of South Street	*600
Downstream face of North Street	*618
Downstream face of 131st Street	*636
Middle Branch:	
At confluence with Coweta Creek	*608
Upstream face of North Street	*620
At upstream corporate limits	*640
South Branch:	
At confluence with Middle Branch	*610
Upstream face of Missouri-Kansas and Texas Railway	*627
Approximately 300 feet upstream of Avenue F	*631
Tributary A:	
At confluence with Coweta Creek	*632
Upstream face of Division Street	*638
Maps available for inspection at the City Hall, 210 Seminole, Coweta, Oklahoma.	
Send comments to Honorable Randall C. Swartwood, Mayor of the City of Coweta, Wagoner County, 210 Seminole, Coweta, Oklahoma 74429.	
Pryor Creek (City), Mayes County	
Pryor Creek:	
Approximately .6 mile downstream of confluence of Park Branch Creek	*600
Approximately .45 mile upstream of 9th Street	*606
Salt Branch Creek:	
At downstream corporate limits	*626
At upstream corporate limits	*626
Park Branch Creek:	
Approximately 1,050 feet downstream of County Road	*606
At downstream side of Missouri-Kansas-Topeka Railroad bridge	*610
At upstream side of Coo-Y-Yah Street	*615
Maps available for inspection at the City Hall, Pryor Creek, Oklahoma.	
Send comments to Honorable Carl C. Curry, Mayor of the City of Pryor Creek, Mayes County, 6 North Adair, Pryor Creek, Oklahoma 74362.	
OREGON	
Clatskanie (City), Columbia County	
Clatskanie River: 200 feet upstream from center of U.S. Highway 30	*16
Conyers Creek: 580 feet east of intersection of Nehalem Street and the southernmost corporate limit	*17

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Office of the City Administrator, City Hall, Clatskanie, Oregon.	
Send comments to The Honorable Elmer Spencer, Mayor, City Hall, P.O. Box 9, Clatskanie, Oregon 97016.	
Hermiston (City)	
Umatilla River: Approximately 770 feet west, then approximately 210 feet south of the center of the intersection of Butter Creek Highway and Umatilla River Road	*419
Maps available for inspection at the City Managers Office, 295 East Main, Hermiston, Oregon.	
Send comments to The Honorable L.T. Harper, City Manager, 295 East Main, Hermiston, Oregon 97838.	
Linn County (Unincorporated Areas)	
Ames Creek: Approximately 250 feet upstream from center of road approximately 200 feet upstream from City of Sweet Home corporate limits	*569
Calapooia River: Approximately 100 feet upstream from center of State Route 99E Bridge	*249
Calapooia River Split Flow: Approximately 1,500 feet upstream from center of 53rd Avenue in the City of Albany	*213
Oak Creek: Approximately 100 feet upstream from center of Columbus Street Bridge	*228
Oak Creek: Approximately 150 feet upstream from center of Vaughn Lane Bridge	*349
Peters Ditch: Approximately 100 feet upstream from center of State Route 226 Bridge	*315
Santiam River: Approximately 50 feet upstream from center of Southern Pacific Railroad Bridge	*220
North Santiam River: At center of Greens Bridge	*256
North Santiam River: Approximately 100 feet upstream of South First Avenue Bridge	*440
North Santiam River: Approximately 100 feet upstream from center of State Highway 226 Bridge	*619
North Santiam River: At center of Sorbin Avenue Bridge	*897
North Santiam River: Approximately 50 feet upstream from center of Blowout Street Bridge	*1,588
South Santiam River: Approximately 250 feet upstream from center of Sanderson Bridge	*267
Thomas Creek: At intersection of SW 6th Avenue and Hawthorne Street	*305
Truax Creek: Approximately 220 feet upstream from center of Clover Ridge Road Bridge	*220
Willamette River: At the intersection of State Highway 34 (Corvallis-Lebanon Highway) and Smith Street	*220
Maps available for inspection at the Linn County Planning and Building Department Courthouse Room 114, Albany, Oregon.	
Send comments to The Honorable Carl J. Stephani, Chairman, Linn County Board of Commissioners, Linn County Courthouse, Albany, Oregon 97321.	
Sisters (City), Deschutes County	
Squaw Creek: Approximately fifty feet upstream from center of U.S. Highway 20	*3,172
Maps available for inspection at City Hall, Sisters, Oregon.	
Send comments to The Honorable Linda Swearingen, Mayor, P.O. Box 39, Sisters, Oregon 97759.	
St. Helens (City), Columbia County	
Columbia River: 1,800 feet east of the center of the intersection of Plymouth Street and 6th Street	*23
Milton Creek: Center of U.S. Highway 30 (Columbia River Highway)	*100
McNulty Creek: Approximately 45 feet upstream of the center of Burlington Northern Railroad	*77

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Office of the City Administrator, City Hall, St. Helens, Oregon 97051.	
Send comments to The Honorable Frank Corsiglia, Mayor, City Hall, P.O. Box 278, St. Helens, Oregon 97051.	
Wilsonville (City), Clackamas and Washington Counties	
Seely Ditch: 10 feet downstream of centerline of Southwest Orepac Road	*137
East Overflow Ditch: 670 feet upstream of centerline of Wilsonville Road	None
Maps available for inspection at City Hall, 30000 SW. Town Center Loop E, Wilsonville, Oregon 97070–0220	
Sent comments to the Honorable William G. Lowrie, P.O. Box 220, Wilsonville, Oregon 97070–0220.	
PENNSYLVANIA	
Windber (Borough), Somerset County	
Paint Creek:	
Downstream corporate limits	*1,670
Downstream side of Graham Avenue	*1,683
Approximately 0.3 mile upstream of Somerset Avenue	*1,700
Upstream side of access road	*1,755
Approximately 0.2 mile upstream of access road	*1,759
Seese Run:	
Confluence with Paint Creek	*1,683
Upstream side of 24th Street	*1,706
Upstream corporate limits	*1,741
Weaver Run:	
Confluence with Seese Run	*1,695
Approximately 0.4 mile upstream of State Route 56	*1,713
Maps available for inspection at the Borough Building, 1409 Somerset Avenue, Windber, Pennsylvania.	
Sent comments to the Honorable George R. Marcinko, Borough Manager of the Borough of Windber, 1409 Somerset Avenue, Windber, Pennsylvania 15963.	
SOUTH CAROLINA	
Beaufort (City), Beaufort County	
Atlantic Ocean:	
Near intersection of Mossy Oaks Road and Battery Creek Road	*13
On Sand Island	*15
Maps available for inspection at the Town Hall, Beaufort, South Carolina.	
Sent comments to the Honorable Jack E. Miller, Town Manager, City of Beaufort, Town Hall, P.O. Box 1167, Beaufort, South Carolina 29901.	
Beaufort County (Unincorporated Areas)	
Atlantic Ocean:	
At the intersection of U.S. Route 17 and County Route 3	*8
On Port Royal Island at Shell Point	*15
Along the shoreline of Dafuskie Island from the mouth of New River to the mouth of Calibogue Sound	*22
Along the shoreline on the northeastern end of Harbor Island	*22
Maps available for inspection at the County Courthouse, Beaufort, South Carolina.	
Send comments to Honorable Martha Baumberger, Chairperson, County Council, Beaufort County, Beaufort County Courthouse, P.O. Drawer 1228, Beaufort, South Carolina.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Bluffton (Town), Beaufort County	
Atlantic Ocean: Within community	
Maps available for inspection at the Town Hall, Bluffton, South Carolina.	
Send comments to Honorable George Heyward, Mayor, Town of Bluffton, P.O. Box 386, Bluffton, South Carolina 29910	
Hilton Head Island (Town), Beaufort County	
Atlantic Ocean:	
Near intersection of Lighthouse Road and Plantation Drive	*14
About 2,000 feet southeast of intersection of Beach City Road and Dillon Road	*14
Along shore from Braddock Point to Port Royal Sound	*22
Maps available for inspection at the Town Hall, Hilton Head Island, South Carolina.	
Send comments to Honorable Michael Malanick, Mayor, Town of Hilton Head Island, Town Hall, P.O. Box 6659, Hilton Head Island, South Carolina 29938.	
Jasper County (Unincorporated Areas)	
Atlantic Ocean:	
About 4,000 feet south of intersection of U.S. Route 17 and U.S. Route 17A	*11
At intersection of State Route 170 and State Route 46	*11
At mouth of Clydesdale Creek	*12
About 3,000 feet east of intersection of State Route 89 and State Route 170	*12
About 4,000 feet east of intersection of U.S. Route 278 and Seaboard Coast Line Railroad	*14
About 1.7 miles south of intersection of State Route 193 and State Route 92	*14
At confluence of Fields Cut with Wright River	*15
About 3,000 feet downstream of confluence of East Branch Creek with Boyd Creek	*16
Along southeast coast of Turtle Island	*22
Savannah River:	
Just upstream of U.S. Route 17	*12
About 5.1 miles upstream of U.S. Route 17	*15
Maps available for inspection at the Jasper County Corthouse, Ridgeland, South Carolina.	
Send comments to Honorable D.P. Lowther, Chairman, County Council, Jasper County, Jasper County Courthouse, P.O. Drawer F, Ridgeland, South Carolina 29935	
Port Royal (Town), Beaufort County	
Atlantic Ocean:	
At intersection of 12th Street and Richmond Avenue	*13
Along Beaufort River about 1,800 feet east of intersection of Ribault Road and Morrall Circle	*14
Maps available for inspection at the Town Hall, Port Royal, South Carolina.	
Send comments to Honorable Bruce Drawdy, City Manager, Town of Port Royal, P.O. Drawer 8, Port Royal, South Carolina 29935.	
Custer County (Unincorporated Areas)	
Battle Creek: Approximately 50 feet upstream from center of State Highway 79 Bridge	*3,307
French Creek:	
Approximately 50 feet upstream from the center of sewage disposal plant road bridge	*5,252
Approximately 50 feet upstream from center of County Road 395 bridge	*5,344
Grace Coolidge Creek: Approximately 50 feet upstream from center of State Highway 36 bridge	*3,379

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Laughing Water Creek: Approximately 950 feet upstream from center of Lincoln Street Bridge in the City of Custer	*5,339
Maps available for inspection at the Office of the District Director, Southwest Emergency and Disaster Services, 420 Mt. Rushmore Road, Custer, South Dakota.	
Send comments to Honorable William Sager, Chairman, Custer County Board of Commissioners, 420 Mt. Rushmore Road, Custer, South Dakota 57730.	
TEXAS	
Canton (City(, Van Zandt County	
Mill Creek:	
Approximately 360 feet downstream of State Route 64	*457
At upstream side of State Route 243	*466
At downstream side of Lake Canton dam	*472
Dry Creek:	
At downstream corporate limits	*461
Approximately 100 feet downstream of State Route 64	*477
Approximately 300 feet upstream of West College Street	*484
At upstream side of State Route 243	*507
At upstream corporate limits	*511
Stream DC-1:	
At confluence with Dry Creek	*465
At upstream side of Edgewood Road	*486
At upstream corporate limits	*487
Stream DC-2:	
At confluence with Dry Creek	*482
At upstream side of City Lake Dam	*493
At upstream corporate limits	*493
Stream DC-2A: At confluence with Stream DC-2	*493
Stream DC-3:	
Approximately 250 feet upstream of confluence with Dry Creek	*490
At upstream side of Towes Drive	*504
At upstream corporate limits	*506
Stream DC-3A:	
At confluence with Stream DC-3	*502
At upstream side of State Route 243	*509
At upstream corporate limits	*511
Maps available for inspection at the City Hall, Canton, Texas.	
Send comments to Honorable Gerald Turner, City Manager of Canton, Van Zandt County, P.O. Box 245, Canton, Texas 75103.	
Double Oak (Town), Denton County	
Timber Creek:	
Approximately 500 feet downstream of Skillern Lusk Road	*616
At upstream corporate limits	*624
Maps available for inspection at the Town Hall, 1100 Cross Timbers Road, Double Oak, Texas.	
Send comments to the Honorable Robert Greer, Jr., Mayor of the Town of Double Oak, Denton County, Town Hall, P.O. Box 1396, Lewisville, Texas 75067.	
Flower Mound (Town), Denton County	
Bakers Branch:	
At downstream corporate limits	*471
Approximately 1.0 mile upstream of corporate limits	*489
Approximately 1,720 feet downstream of Gerault Road	*510
Upstream side Gerault Road	*529
Approximately 0.64 mile upstream of Gerault Road	*550
Sharps Branch:	
At corporate limits	*564
Approximately 0.9 mile upstream of corporate limits	*581
Approximately 1.3 miles upstream of corporate limits	*601

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Stream SB-1:	
At confluence with Sharps Branch	*564
Approximately 0.6 mile upstream of confluence with Sharps Branch	*57E
Stream TC-2:	
At confluence with Timber Creek	*534
Upstream side of Garden Road	*57C
Upstream side of Long Prairie Road	*600
Approximately 0.4 mile upstream of Long Prairie Road	*609
Timber Creek:	
At downstream corporate limits	*533
Approximately 100 feet downstream of Old Abandoned Road	*555
Upstream side of Timber Creek Road South	*567
Upstream side of Morris Road	*573
Upstream side of Mesquite Street	*590
Approximately 2,000 feet upstream of upstream corporate limits	*601
Denton Creek:	
Approximately 1,600 feet upstream of confluence of Bakers Branch	*471
Approximately 0.9 mile upstream of confluence of Bakers Branch	*473
Grapevine Lake: Entire shoreline within community	*564
Maps available for inspection at the Town Hall, 2121 Cross Timbers Road, Flower Mound, Texas.	
Send comments to the Honorable Steve Lewis, Town Manager of Flower Mound, Denton County, 2121 Cross Timbers Road, Flower Mound, Texas 75028.	
Willow Park (City), Parker County	
Clear Fork Tninity River:	
Approximately 260 feet downstream of East Bankhead Drive	*833
At upstream side of Kings Gate Road	*840
At upstream corporate limits	*845
Approximately 2,560 feet downstream from Lake Weatherford Dam	*858
Squaw Creek:	
Approximately 750 feet downstream of Sam Bass Road	*834
At upstream side of Sam Bass Road	*838
At downstream side of Squaw Creek Reservoir Dam	*845
Stream CF(WP)-1:	
At downstream corporate limits	*836
At confluence with Stream CF(WP)-1A	*870
At upstream side of Ranch House Road	*906
At upstream side of Surrey Lane	*936
At downstream side of Valley Court (extended)	*953
Stream CF(WP)-1A:	
At confluence with Stream CF-1	*870
At upstream side of Lariat Court (extended)	*893
At upstream side of Ranch House Road	*917
Lake Weatherford: Entire shoreline affecting community	*909
Maps available for inspection at the City Hall, 101 Stage Coach Trail, Willow Park, Texas.	
Send comments to Honorable M. T. Philpot, Mayor of the City of Willow Park, Parker County, 101 Stage Coach Trail, Willow Park, Texas 76086.	
Utah	
Richfield (City), Sevier County	
Cottonwood Creek: At the center of the intersection of 700 North and 500 East	#1
Dairy Canyon: At the center of the intersection of 960 West and 625 South	#1
Maps available for inspection at the Office of the City Administrator, City Hall, Richfield, Utah.	
Send comments to The Honorable Sue Marie Young, Mayor, Box 250, Richfield, Utah 84701.	
Salina (City), Sevier County	
Salina Creek: At the center of State Street (U.S. Highway 89)	*5,162

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Trashpile Draw and Cemetery Draw: 50 feet west from the intersection of Trunk Ditch	*#1
Maps available for inspection at City Hall, 90 West Main, Salina, Utah.	
Send comments to The Honorable Rusty Albrecht, Mayor, 90 West Main, Salina, Utah 84654	
VERMONT	
Addison (Town), Addison County	
Otter Creek:	
At downstream corporate limits	*145
At upstream corporate limits	*148
Lake Champlain: Entire shoreline within community	*102
Maps available for inspection at the Town Clerk's Office, Vergennes, Vermont.	
Send comments to Honorable John C. Forgues, Chairman of the Board of Selectmen of the Town of Addison, Addison County, R.D. #3, Vergennes, Vermont 05491.	
Ferrisburg (Town), Addison County	
Lake Champlain: Entire shoreline within community	*102
Otter Creek:	
Confluence with Lake Champlain	*102
Approximately .85 mile upstream of corporate limits	*105
Maps available for inspection at the Town Clerk's Office, Ferrisburg, Vermont 05457.	
Send comment to Honorable Al Langeway, Chairman of the Board of Selectmen of the Town of Ferrisburg, Addison County, Town Clerk's Office, Ferrisburg, Vermont 05457.	
Panton (Town), Addison County	
Otter Creek:	
Downstream corporate limits	*104
Third corporate limits crossing	*142
At upstream corporate limits	*145
Lake Champlain: Entire shoreline within community	*102
Maps available for inspection at the Town Clerk's Office, Panton Road, Panton, Vermont.	
Send comments to Honorable George Jackson, Chairman of the Board of Selectmen of the Town of Panton, Addison County, R.D. #1, Box 492, Vergennes, Vermont 05491.	
Vergennes (City), Addison County	
Otter Creek:	
Downstream corporate limits	*105
Downstream side of Vergennes Dam	*106
Upstream side of State Route 22A	*141
Upstream corporate limits	*142
Maps available for inspection at the City Hall, Vergennes, Vermont.	
Send comments to Honorable Richard J. Burke, Mayor of the City Vergennes, Addison County, City Hall, Vergennes, Vermont 05491.	
Weybridge (Town), Addison County	
Otter Creek:	
Downstream corporate limits	*148
At State Route 2 bridge	*153
Upstream corporate limits	*179
Maps available for inspection at the Town Clerk's Office, Quaker Village Road, Weybridge, Vermont.	
Send comments to Honorable Michael Claudon, Chairman of the Board of Selectmen of the Town of Weybridge, Addison County, R.D. #2, Box 3550, Middlebury, Vermont 05753.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
WASHINGTON	
Cathlamet (Town), Wahkiakum County	
Columbia River (Cathlamet Channel): 300 feet southwest of the center of the intersection of Division Street and River Street along Division Street	*11
Maps available for inspection at the Town Hall, 100 Main Street, Cathlamet, Washington.	
Send comments to The Honorable William Schwarze, Mayor, Town of Cathlamet Town Hall, 100 Main Street, Cathlamet, Washington 98612.	
Grays Harbor County (Unincorporated Areas)	
Bush Creek: At the downstream road casing of Cloquallum Road	*102
Chehalis River: Approximately 450 feet southwest from the intersection of Fairway Park Road and Montesano-Aberdeen Road	*10
Cloquallum Creek: Approximately 110 feet upstream from the centerline of State Highway 8	*68
Grays Harbor (backwater on Chehalis River): At the intersection of Wagar Street and Geddes Street	*10
Harris Creek: Approximately 70 feet upstream from the centerline of Elma Gate Road East	*79
Newman Creek: At the western road casing of O'Neill Road approximately 2,170 feet north of the intersection of Montesano Road and O'Neill Road	*43
Shallow Flooding on Newman Creek: At Montesano-Elma Road	#1
Pacific Ocean at Moclips: Wishkan Avenue extended at shoreline	*22
Pacific Ocean at Pacific Beach: Main Street extended at shoreline	*25
Pacific Ocean at Copalis Head over Copalis River at Copalis Beach: Approximately 1.5 miles north of bridge along State Highway 109, then west approximately 350 feet along centerline of unnamed road	*20
Pacific Ocean at Copalis Beach: Second Avenue extended at shoreline	*21
Pacific Ocean at Grayland: Approximately 300 feet west from the center of the intersection of Marine Drive and Salt Aire Boulevard	*26
Pacific Ocean at South Bay: Approximately 1,000 feet west from the intersection of State Highway 105 and Hunt Club Road	*10
Roundtree Creek: At Burlington Northern Railroad	*90
Satsop River: Approximately 200 feet upstream from the centerline of Montesano-Elma Road	*40
Wynoochee River: Approximately 200 feet downstream from the intersection of Wynoochee Road and Mooney Road	*41
Maps available for inspection at the Grays Harbor County Planning Department, P.O. Box 390, Montesano, Washington.	
Send comments to the Honorable William F. Vogler, Chairman, Grays Harbor Board of County Commissioners, P.O. Box 350, Montesano, Washington 98563.	
La Center (City), Clark County	
East Fork Lewis River: At La Center Bridge	*30
Maps available for inspection at The Lewis River News, P.O. Box 39, Woodland, Washington 98674.	
Send comments to the Honorable C.R. Carlson, Mayor, City of La Center, P.O. Box 156, La Center, Washington 98629.	
Pierce County	
Leach Creek: 400 feet upstream from the center of Cirque Drive West	*136
Chambers Creek: 100 feet downstream from the center of Steilacoom Boulevard	*202
Clover Creek: 100 feet upstream from the center of Interstate Highway 5	*269
Shallow Flooding: 200 feet upstream from the center of the Weyerhaeuser Company Railroad	*331
Spanaway Creek: 300 feet upstream from the center of 138th Street South	*293
North Fork Clover Creek: 130 feet upstream from the center of 14th Avenue East	*315
Nisqually River:	
250 feet upstream from the center of State Highway 507	*302
40 feet upstream from the center of Kernahan Road (State Creek Road)	*1,759
Horn Creek: 90 feet upstream from the center of Harts Lake Road South (Harts Lake Loop Road)	*435
Ohop Creek: 50 feet upstream from the center of Clay City Road (Sigmund Road)	*537
Mashel River: 75 feet upstream from the center of Eatonville Cutoff Road	*633
Little Mashel River: 60 feet upstream from the center of State Highway 161 (Eatonville Lagrande Highway)	
Unnamed Creek: 100 feet upstream from the center of Dean Kreger Road	*551
Tanwax Creek: 720 feet upstream from the center of 352nd Street East (Golden Road)	*596
South Creek: 60 feet upstream from the center of 320th Street East (Andrew Christian Road)	*599
South Creek Tributary No. 1: 150 feet upstream from the center of Webster Road	*617
South Creek Tributary No. 2: 60 feet upstream from the center of Webster Road	*623
South Creek Tributary No. 3: 60 feet upstream from the center of State Highway 7	*568
South Creek Tributary No. 4: 600 feet downstream from the center of 46th Avenue East	*521
Muck Creek: 160 feet upstream from the center of 70th Avenue East (Lindberg Road)	*463
Lacamas Creek: 25 feet upstream from the center of 40th Avenue South	*383
Puyallup River:	
660 feet upstream from the center of State Highway 161 (North Meridian Street)	*35
50 feet upstream from the center of Orville Road East (Kapowsin Highway)	*377
Swan Creek: 40 feet upstream from the center of Pioneer Way	*15
Squally Creek: 45 feet upstream from the center of 48th Street East (Gehring Road)	*154
Clear Creek: At the center of Pioneer Way	*14
Wapato Creek I: 630 feet upstream from the center of 82nd Avenue East (Freeman Road)	*29
Wapato Creek II: 200 feet upstream from the center of Spencer Todd Road Northeast	*41
Shallow Flooding: At the center of 115th Avenue East	*50
Hylebos Creek: 40 feet upstream from the center of 12th Street East	*12
White River:	
250 feet upstream from the center of 18th Street East	*66
80 feet upstream from the center of Logging Road No. 197	*1,790
Salmon Creek: 125 feet downstream from the center of North Parker Road	*54
Carbon River-With Consideration of Levees: 40 feet upstream from the center of State Highway 162	*303
Carbon River-Without Consideration of Levees: 525 feet southwest from the intersection of Burlington Northern Railroad and State Highway 162 along Burlington Northern Railroad	*281
South Prairie Creek: 250 feet southwest from the intersection of State Highway 162 and Kaperak Road along State Highway 162	*353
Greenwater River: 70 feet upstream from the center of State Highway 410	*1,686
Wilkerson Creek: 80 feet upstream from the center of State Highway 165	*815
Fennel Creek: 30 feet upstream from the center of Sumner-Buckley Highway	*476
Debra Jane Creek: 40 feet downstream from the most downstream corporate limit	*487
Bonney Lake Outflow: 15 feet upstream from the most downstream corporate limit	*538
Kreger Lake: Along entire shoreline	*532
Silver Lake: Along entire shoreline	*607
Rapjohn Lake: Along entire shoreline	*636
American Lake: Along entire shoreline	*236
Gravelly Lake: Along entire shoreline	*220
Spanaway Lake: At the intersection of Lake Side Drive And Sheppard-Simmonds Road	*324
Ohop Lake: Along entire shoreline	*525
Tanwax Lake: Along entire shoreline	*602
Lake Louise: Along entire shoreline	*226
Lake Kapowsin: 600 feet south from the intersection of Burlington Northern Railroad and Election Road along Burlington Northern Railroad	*584
Steilacoom Lake: 800 feet northeast from the intersection of Interlaken Drive Southwest and Steilacoom Drive along Interlaken Drive Southwest	*210
Harts Lake: Along entire shoreline	*349
Little Lake: Along entire shoreline	*349
Puget Sound:	
1,000 feet west from the intersection of Mounds Road and Burlington Northern-Union Pacific Railroad along Mounds Road extended	*10
300 feet southwest from the intersection of Day Island Boulevard West and East Day Island Boulevard West along Day Island Boulevard West	*9
800 feet east from the intersection of 4th Street East and 57th Avenue East along 4th Street East	*9
Maps available for inspection at Pierce County Commission, County City Building, Room 110, Tacoma, Washington 98402.	
Send comments to the Chief Deputy Officer Ted Rutt, Pierce County Commission, County City Building, Room 110, Tacoma, Washington 98402.	
WEST VIRGINIA	
McDowell County	
Tug Fork:	
Downstream County boundary	*920
At confluence with Shortpole Branch	*945
At upstream corporate limits of the City of Iaeger	*986
At confluence of Snipe Branch	*1,023
Upstream side of County Route 52-1	*1,092
Upstream side of County Route 69	*1,157
At upstream corporate limits of the Town of Davy	*1,200
Upstream side of Elm Street	*1,289
At upstream corporate limits of the City of Welch	*1,317
At downstream corporate limits of the City of Gary	*1,371
Downstream side of State Route 161	*1,505
At downstream corporate limits of the Town of Anawalt	*1,640
At upstream corporate limits of the Town of Anawalt	*1,703
Dry Fork:	
At upstream County boundary	*985
Downstream side of County Route 80-2	*1,007
Downstream side of County Route 2	*1,140
At confluence of Little Slate Creek	*1,200
Upstream side of County Route 83-14	*1,279
At downstream corporate limits of the Town of War	*1,326
Approximately 280 feet upstream confluence with Big Branch	*1,466
Elkhorn Creek:	
Downstream County boundary	*1,321
Downstream side of State Route 52	*1,368
Downstream corporate limits of the Town of Kimball	*1,478
At confluence with Bottom Creek	*1,513
At downstream corporate limits of the Town of Keystone	*1,623
Approximately 680 feet upstream corporate limits of the Town of Northfork	*1,733
Bottom Creek:	
At confluence with Elkhorn Creek	*1,512

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Upstream side of Bottom Creek Road (4th upstream crossing)	*1,581
Approximately 125 feet upstream of Bottom Creek Road (7th upstream crossing)	*1,701
Browns Creek:	
Approximately 400 feet downstream confluence with Puncheoncamp Branch	*1,427
Approximately 0.6 mile upstream confluence with Puncheoncamp Branch	*1,510
Davy Branch:	
Approximately 1 mile upstream confluence with Tug Fork	*1,281
Approximately 1.1 miles upstream confluence with Tug Fork	*1,290
Maps available for inspection at the County Courthouse, Welch, West Virginia.	
Send comments to Honorable Ebb K. Whitley, President of the McDowell County Board of Commissioners, P.O. Box 967, Welch, West Virginia 24801.	
WISCONSIN	
Fitchburg (City), Dane County	
Nine Springs Creek:	
About 0.9 mile downstream of County Highway MM	*851
About 1.0 mile upstream of Syene Road	*854
Maps available for inspection at City Hall, 2377 South Fishhatchery Road, Fitchburg, Wisconsin.	
Send comments to Honorable Jeanie Sieling, Mayor, City of Fitchburg, City Hall, 2377 South Fishhatchery Road, Fitchburg, Wisconsin 53711.	
Kendall (Village), Monroe County	
Main Branch Baraboo River:	
About 2,400 feet downstream of State Highway 71	*1,005
About 1,700 feet upstream of County Highway P	*1,018
West Branch Baraboo River:	
At mouth	*1,015
About 600 feet upstream of West Street	*1,025
North-west Branch Baraboo River:	
At mouth	*1,020
About 500 feet upstream of Spring Street	*1,024
Maps available for inspection at the Municipal Building, Kendall, Wisconsin.	
Send comments to Honorable Richard Martin, Village President, Village of Kendall, Municipal Building, P.O. Box 175, Kendall, Wisconsin 54638.	
Madison (City), Dane County	
Starkweather Creek:	
At mouth	*848
At confluence of East Branch Starkweather Creek	*849
West Branch Starkweather Creek:	
At confluence of East Branch Starkweather Creek	*849
About 0.5 mile upstream of U.S. Highway 51	*861
East Branch Starkweather Creek:	
At mouth	*849
About 1,000 feet upstream of Lien Road	*855
Portage Road Tributary:	
At mouth	*860
About 1,350 feet upstream of Hayes Road	*891
Unnamed Tributary to Lake Waubesa:	
About 1,000 feet downstream of U.S. Highway 51	*850
About 0.6 mile upstream of Marsh Road	*860
Milwaukee Street Tributary:	
Just upstream of mouth	*850
About 0.7 mile upstream of mouth	*853
Yahara River:	
Just upstream of Chicago Milwaukee St. Paul and Pacific Railroad	*848
About 2 miles upstream of State Highway 113	*854
Nine Springs Creek:	
At mouth	*848

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
About 800 feet upstream of Syene Road	*854
Murphy Creek: Within corporate limits	*848
Lake Mendota: Along shoreline	*852
Lake Monona: Along shoreline	*848
Lake Waubesa: Along shoreline	*847
Maps available for inspection at the Planning and Zoning Department, City County Building, Madison, Wisconsin.	
Send comments to Honorable F. Joseph Sensenbrenner, Jr., Mayor, City of Madison, City County Building, Room 403, 215 Monona, Madison, Wisconsin 53710.	

Issued: December 30, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 86-1073 Filed 1-16-86; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

Federal Acquisition Regulation (FAR); Selling costs

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule (extension of comment period).

SUMMARY: The due date for public comments on the proposed revision of FAR 31.205-38, Selling costs, that was published in the **Federal Register** on December 24, 1985 (50 FR 52727) is extended to February 10, 1986. Since the proposed revision of FAR 31.205-38 makes direct reference to an as yet unpublished final rule on Advertising and public relations costs (FAR 31.205-1), a copy of the draft final rule on the latter cost principle is being made available to members of the public who desire to comment on the FAR 31.205-38, Selling costs, proposal.

Copies of the draft final rule on FAR 31.205-1, (on which public comments were already solicited and considered) may be obtained from the FAR Secretariat at the address and telephone number shown below. Additional comments on this draft are not being solicited at this time.

DATE: Comment date extended to February 10, 1986.

ADDRESS: Interested parties may obtain copies of the draft final rule on FAR 31.205-1, Advertising and public relations costs, from: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523-4755.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: January 13, 1986.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

[FR Doc. 86-1147 Filed 1-16-86; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85-15; Notice 3]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of request for comments; correction.

SUMMARY: This document corrects a notice of request for comments regarding possible revisions in the headlighting requirements of Federal Motor Vehicle Safety Standard No. 108 that appeared on Tuesday, October 22, 1985.

DATE: Comments are due March 6, 1986.

ADDRESS: Comments should refer to the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to: National Highway Traffic Safety Administration, Docket Section, Room 5109, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Deborah L. Parker, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202-426-2264).

SUPPLEMENTARY INFORMATION: On October 22, 1985 (50 FR 42735), NHTSA published a notice requesting comments

on possible revisions to the headlighting requirements of Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment.* On page 42738, the notice discussed a number of the current requirements for headlamp systems, including the issue of whether headlamp covers are permitted. The word "not" was inadvertently omitted from the final sentence in the third full paragraph on that page. The sentence should read: "Headlamp covers are not permitted." (103, 119, Pub. L. 89–563, 80 Stat 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 501.8.)

Issued on January 13, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86–816 Filed 1–16–86; 8:45 am]

BILLING CODE 4910–59–M

Notices

Federal Register
Vol. 51, No. 12
Friday, January 17, 1986

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.

NATIONAL COMMISSION ON AGRICULTURAL TRADE AND EXPORT POLICY

January 14, 1985.

Meeting

The next meeting of the National Commission on Agricultural Trade and Export Policy will be held at 9:00 a.m. on Friday, February 14, 1986, in the State Room of The Mayflower Hotel, Washington, DC.

The meeting agenda will cover general communication activities. The meeting will be open to the public.

Information about the meeting is available from the Commission staff at (202) 488–1961.

Kenneth L. Bader,

Chairman.

[FR Doc. 86–1145 Filed 1–16–86; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF COMMERCE

Presidential Board of Advisors on Private Sector Initiatives; Open Meeting

AGENCY: Office of the Secretary, Office of the General Counsel and Office of Business Liaison, Commerce.

SUMMARY: The Board of Advisors was established on August 8, 1985 to advise the President and Secretary of Commerce, through the White House Office of Private Sector Initiatives, with respect to the objectives and conduct of private sector initiative policies. This includes methods of increasing public awareness of the importance of public/private partnerships; removing barriers to development of effective social service programs which are administered by private organizations; strengthening the professional resources of the private social service sector; and studying options for promoting the long-term development of private sector initiatives in the United States.

Time and place: Wednesday, January 22, 1986 from 10:00 a.m.—11:15 a.m., National Headquarters of the Red Cross Building, 18th and E Streets, NW., Washington, DC 20006.

Note.—Due to scheduling arrangements 15 days prior notice for the meeting was unable to be given.

Agenda: The purpose of the meeting is to swear in the Board members.

FOR FURTHER INFORMATION CONTACT: The Committee Control Officer, Mr. Robert H. Brumley, Deputy General Counsel, U.S. Department of Commerce (202/377–4772), or the Alternate Control Officer, Nancy J. Olson, Director, Office of Business Liaison, U.S. Department of Commerce (202/377–3942), Main Commerce Building, Washington, DC 20230.

Dated: January 14, 1986.

Nancy J. Olson.

Director, Office of Business Liaison.

[FR Doc. 86–1111 Filed 1–16–86; 8:45 am]

BILLING CODE 3510-BW-M

International Trade Administration

Subcommittee on Export Administration of the President's Export Council; Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration will be held February 6, 1986, 9:00 a.m. to 3:30 p.m., Herbert Hoover Building, Room 4830, 14th and Constitution Avenue, NW., Washington, DC.

The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Amendments Act of 1985 that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations, and of controlling trade for national security and foreign policy reasons.

General Session: 9:00–11:30. Status reports by Ad Hoc Chairmen and various developments at Commerce in the International Trade area.

Executive Session: 1:30–3:00. Discussion of matters properly classified under Executive Order 12356 dealing with matters pertaining to the control of exports for national security, foreign policy or short supply reasons under the Export Administration Amendments Act of 1985. A Notice of Determination to close meetings or portions of meetings of the Subcommittee to the public on the basis of 5 U.S.C. 522b(c)(1) was approved October 17, 1985 in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377–3205.

Dated: January 14, 1986.

Willard A. Workman,

Director, Strategic Policy and Planning Division, Export Administration.

[FR Doc. 86–1116 Filed 1–16–86; 8:45 am]

BILLING CODE 3810-DT-M

National Bureau of Standards

National Conference on Weights and Measures; Meeting

Notice is hereby given that the Interim Meeting of the National Conference on Weights and Measures will be held January 21 through January 25, 1986, at the National Bureau of Standards, Gaithersburg, Maryland. The meeting is open to the public.

The National Conference on Weights and Measures is an organization of weights and measures enforcement officials of the States, counties, and cities of the United States, and private sector representatives. The interim meeting of the Conference, as well as the annual meeting to be held next July (a notice will be published in the **Federal Register** prior to such meeting), brings together enforcement officials, other government officials, and representatives of business, industry, trade associations, and consumer organizations to discuss subjects that relate to the field of weights and measures technology and administration.

Pursuant to section 2(5) of its Organic Act (15 U.S.C. 272(5)), the National Bureau of Standards acts as a sponsor of the National Conference on Weights and Measures in order to promote uniformity among the States in the complex of laws, regulations, methods, and testing equipment that comprises regulatory control by the States of commercial weighting and measuring.

For further information contact Albert D. Tholen, Exceutive Secretary, National Conference on Weights and Measures,

P.O. Box 3137, Gaithersburg Maryland 20878; telephone: (301) 921–2401.

Dated: January 13, 1986.

Ernest Ambler,

Director.

[FR Doc. 86–1055 Filed 1–16–86; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Final Policy on Foreign Investment in U.S. Fishing Companies

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Repeal of Policy Published 39 FR 33812.

SUMMARY: Notice is given that NMFS will no longer routinely consider applications and recommend action to the U.S. Maritime Administration (MARAD) for approval to transfer U.S. documented fishing vessels to foreign ownerships and/or registries.

SUPPLEMENTARY INFORMATION: On September 20, 1974, the Administrator of the National Oceanic and Atmospheric Administration (NOAA) issued a final policy concerning the considerations by and manner in which the NMFS, a part of NOAA and the Department of Commerce, would review applications made to MARAD, then also a part of the Department of Commerce, for its approval to transfer fishing vessels owned by U.S. fishing companies to foreign control. Since that time, MARAD, which has the sole authority to approve or disapprove such actions pursuant to Section 9 of the Shipping Act, 1916, 46 U.S.C. 808, has been referring such applications to NMFS for recommendation in accordance with this policy.

After due consideration by both MARAD and NOAA, it has been decided that MARAD, now a part of the Department of Transportation, will be able in the future to decide on fishing vessel transfers without the routine assistance of NOAA. This will expedite the processing of applications by eliminating intermediary processing time. The NMFS, however, will receive information from MARAD on transfers and continue to provide such response as MARAD may request.

Accordingly, the policy of September 20, 1974, is hereby repealed.

Dated: January 13, 1986.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology.

[FR Doc. 86–1044 Filed 1–16–86; 8:45 am]

BILLING CODE 3510–22–M

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will convene a public meeting, January 21–24, 1986, in Savannah, GA, to discuss the King and Spanish Mackerel and Spiny Lobster Fishery Management Plans, the status of large pelagics, law enforcement, financial matters, as well as other fishery management business. A detailed agenda will be available to the public around January 11, 1986. For further information, contact Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One South Park Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571–4366.

Dated: January 13, 1986.

Joseph W. Angelovic,

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

[FR Doc. 86–1097 Filed 1–16–86; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Singapore, Effective on January 1, 1986; Correction

January 10, 1986.

On December 27, 1985 a notice was published in the **Federal Register** (50 FR 52937) which announced import control limits for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the three-month period which began on January 1, 1986 and extends through March 31, 1986. Reference to a limit of 334,264 pounds for man-made fiber yarn in Category 604 was inadvertently omitted and should have been included in both the notice document and the letter to the Commissioner of Customs which followed that notice.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–1103 Filed 1–16–86; 8:45 am]

BILLING CODE 3510–DR–M

Import Limits for Certain Wool Textile Products Produced or Manufactured in the Philippines

January 10, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 17, 1986. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On December 26, 1985, a notice was published in the **Federal Register** (50 FR 52830) which established import control limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986. In the letter which follows this notice, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to also control imports of wool skirts in Category 442, produced or manufactured in the Philippines and exported during the same period at a limit of 4,888 dozen. The new limit has been adjusted to account for overshipments in the amount of 1,694 dozen. These overshipments are based on import data through October 31, 1985. Further charges will be made to the 1986 limit for the category in the event that later data reveal additional overshipments.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 10, 1986.

Commissioner of Customs,

Department of the Treasury, Washington, DC. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 20, 1985 which directed you to prohibit entry of certain cotton, wool and man-made fiber textile products produced or manufactured in the Philippines.

Effective January 17, 1986, the directive of December 20, 1985 is hereby amended to include a limit of 4,888 dozen for wool textile products in Category 442.[1]

Textile products in Category 442 which have been exported to the United States prior to January 1, 1986 shall not be subject to this directive.

Textile products in Category 442 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreement.

[FR Doc. 86-1104 Filed 1-16-86; 8:45 am]

BILLING CODE 3510-DR-M

Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of South Africa

January 14, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on January 21, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

On November 21 and 22, 1985, the Governments of the United States and the Republic of South Africa exchanged diplomatic notes establishing a new Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement. The new agreement establishes, among other things, specific limits for Categories 335, 347/348, 433 and 604 and 604pt. (only T.S.U.S.A. number 310.5049), produced or manufactured in South Africa and exported during the twelve-month period beginning on September 1, 1985 and extending through August 31, 1986. The letter from the Chairman of the Committee for the Implementation of Textile Agreements published below directs the Commissioner of Customs to prohibit entry for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made textile products in the foregoing categories in excess of the designated limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

January 14, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement effected by exchange of notes dated November 22, 1985, between the Governments of the United States and the Republic of South Africa; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 21, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in Categories 335, 347/348, 433 and 604, produced or manufactured in South Africa and exported during the period which began on September 1, 1985 and extends through August 31, 1986, in excess of the following limits:

Category	12-mo restraint limit [1]
335	30,250 dozen.
347/348	273,000 dozen.
433	5,700 dozen.
604	1,200,000 pounds of which not more than 580,000 pounds shall be in T.S.U.S.A. number 310.5049.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Charges made to these limits from September 1, through October 31, 1985 are as follows:

Category	Amount to be charged
335	2,700 dozen.
347/348	1,992 dozen of which 1,684 dozen shall be charged to Category 347 and 308 dozen shall be charged to Category 348.
433	23 dozen.
604	0
604pt.[1]	64,295 pounds.

[1] In Category 604, only T.S.U.S.A. number 310.5049.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-1105 Filed 1-16-86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Defense Nuclear Agency

Scientific Advisory Group on Effects, Meeting

AGENCY: Defense Nuclear Agency.

ACTION: Change in Date and location of Advisory Group Meeting Notice.

SUMMARY: The meeting of the Committee of the Scientific Advisory Group on Effects (SAGE) scheduled in closed session for March 4 and March 5, 1986 as published in the **Federal Register** (Vol. 51, No 4, Tuesday, January 7, 1986, FR Doc. 86-673) has been changed to February 4 and February 5, 1986. The new location is Kaman Sciences Corporation, 2560 Huntington Avenue, First Floor, Alexandria, VA 22303.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

January 10, 1986.

[FR Doc. 86-932 Filed 1-16-86; 8:45 am]

BILLING CODE 3810-01-M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1985.

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee, Strategic Defense and Naval Warfare Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Strategic Defense and Naval Warfare Task Force will meet February 4–5, 1986, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to assess the Navy's potential role in strategic defense architecture, and related intelligence. The entire agenda for the meeting will consist of discussions of key issues regarding strategic defense systems in support of U.S. national security. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 928, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: January 14, 1986.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 86–1099 Filed 1–16–86; 8:45 am]

BILLING CODE 3810-AE-M

Chief of Naval Operations Executive Panel Advisory Committee, Pacific Basin Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Pacific Basin Task Force will meet February 13–14, 1986, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to examine the broad policy issues related to maritime aspects in the Pacific. The entire agenda for the meeting will consist of discussions of key issues related to United States national security interests and naval strategies in the Pacific and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee; 4401 Ford Avenue, Room 928, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: January 14, 1986.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 86–1100 Filed 1–16–86; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

National Direct Student Loan Program

AGENCY: Department of Education.

ACTION: Notice of Closing Date for Filing Report of Defaulted Loans for the period ending December 31, 1985 (Form E40–1P; formerly ED Form 574).

The Secretary gives notice of the deadline for filing the National Direct Student Loan (NDSL) Program Report of Defaulted Loans for the period ending December 31, 1985 (Form E40–1P; formerly ED Form 574) (Report). The Secretary takes this action under section 463(a)(4) of the Higher Education Act of 1965, as amended (20 U.S.C. 1087cc(a)(4)) which provides that an institution participating in the NDSL Program shall report to the Secretary at least semi-annually the total number of loans it made under the NDSL Program that are in default. The institution shall not include in the Report defaulted loans which have already been assigned to and accepted by the Department of Education. An institution shall file this Report if it is participating in the National Direct Student Loan Program, regardless of whether it is currently making loans under the Program. An institution shall submit the original Report and one copy of the Report.

Closing Date: The Report must be mailed or hand-delivered by February 17, 1986.

Reports Delivered By Mail: A Report sent by mail must be addressed to the Department of Education, Office of Student Financial Assistance, Campus-Based Programs Branch, DPO, 400 Maryland Avenue, SW., Washington, DC 20202.

An institution must show proof of mailing consisting of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (2) A legibly dated U.S. Postal Service postmark; (3) A dated shipping label, invoice, or receipt from a commercial carrier; (4) Any other proof of mailing acceptable to the Secretary of Education.

If a Report is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. An institution is encouraged to use certified or at least first-class mail.

Reports Delivered By Hand: A Report that is hand delivered must be taken to the Department of Education, Office of Student Financial Assistance, Division of Program Operations, Campus-Based Programs Branch, 7th and D Streets, SW, Room 4613, Regional Office Building 3, Washington, DC. The Campus-Based Programs Branch will accept hand-delivered Reports between 8:00 a.m. and 4:30 p.m. daily (Washington, DC time), except Saturdays, Sundays and Federal holidays. A Report that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

FOR FURTHER INFORMATION CONTACT: Program Services Section, Division of Program Operations (202) 245–2991.

(Catalog of Federal Domestic Assistance No. 84.038, National Direct Student Loan Program)

(20 U.S.C. 1087cc[a][4])

Dated: January 15, 1986.

C. Ronald Kimberling,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 86–1192 Filed 1–16–86; 8:45 am]

BILLING CODE 4000-01-M

Assessment Policy Committee, National Assessment of Educational Progress (NAEP); Meeting

AGENCY: Department of Education.

ACTION: Notice of Meeting.

SUMMARY: The Secretary of Education has scheduled a meeting of the Assessment Policy Committee of the National Assessment of Educational Progress (NAEP). The purpose of the meeting is to provide guidance and direction to the Office of Educational Research and Improvement supported NAEP project. The entire meeting will be open to the public.

DATE: February 1, 1986, 8:30 a.m. to 3:00 p.m.

Location: Inter-Continental Hotel, 135 South Port Royal Drive, Hilton Head, South Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Barton, Liaison–APC, National Assessment of Educational Progress, CN 6710, Princeton, NJ 08541–6710, telephone: (800) 233–0267.

SUPPLEMENTARY INFORMATION: One of the primary purposes of NAEP is to assess the performance of children and young adults in the basic skills of reading, mathematics, and communication. The Assessment Policy Committee (APC) is established by section 405(k)(2)(A) of the General Education Provisions Act, 20 U.S.C. 1221e(k)(2)(A). The committee is responsible for the design of NAEP, including the selection of learning areas to be assessed, the development and selection of goal statements and assessment items, the assessment methodology, and the form and content of the reporting and dissemination of the assessment results.

The committee is also responsible for the implementation of studies to evaluate and improve the form and utilization of the National Assessment.

The Agenda for the meeting includes—

- Planning for the future of NAEP;
- Status of State Assessment efforts;
- Status of release of report on writing;
- Status of the adult assessment study.

To assure adequate seating arrangements, and to obtain an advance copy of the final agenda, individuals wishing to attend the meeting may contact Mr. Paul Barton at the address above.

(Catalog of Federal Domestic Assistance Number 84.117, Educational Research and Improvement)

Dated: January 14, 1986.

Chester E. Finn, Jr.,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 86–1115 Filed 11–16–86; 8:45 am]

BILLING CODE 4000–01–M

National Council on Educational Research, Meeting

ACTION: Full Council Meeting of the National Council on Educational Research.

Matters to be Discussed: Receive Committee Reports, update on OERI activities from the Assistant Secretary of OERI, Council business.

DATE: January 30th and 31th, 1986.

ADDRESS: U.S. Department of Education, Advisory Committees' Conference Room, 2000 L Street, NW., Suite 500, Washington, DC 20036.

Status: Open.

Time: Thursday, January 30, 1986, 9:00 a.m.–5:00 p.m.; Friday, January 31, 1986, 9:00 a.m.—Noon.

FOR FURTHER INFORMATION CONTACT: Patricia Hines, National Council on Educational Research, 2000 L Street, NW., Suite 617–B, Washington, DC 20036, 202–254–7490.

SUPPLEMENTARY INFORMATION: The National Council on Educational Research is established under Section 405 of the General Education Provisions Act.

The meetings of the Council are open to the public, unless otherwise stated.

Dated: January 14, 1986.

Patricia Hines,

National Council on Educational Research.

[FR Doc. 86–1129 Filed 1–14–86; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA–FC–85–36]

Acceptance of Certification and Issuance of Proposed Prohibition Orders Pursuant to the Powerplant and Industrial Fuel Use Act of 1978 to the City of Dover, Delaware

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice.

ERA Case No.	Generating station	Powerplant No.	Megawatt capacity	Location
50807-9291-01-82	McKee	1	16.5	Dover, Delaware.
50807-9291-02-82	McKee	2	16.5	Dover, Delaware.
50807-9291-03-82	McKee	3	110	Dover, Delaware.

SUMMARY: The Economic Regulatory Administration (ERA) hereby gives notice of its acceptance of a certification from the City of Dover, Delaware (Dover), concerning its McKee Run Generating Station Units 1, 2 and 3 (McKee) pursuant to section 301 of the Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95–620 (FUA or the Act), as amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35 (OBRA or the Act). ERA has reviewed and proposes to concur in Dover's certification of August 21, 1985, which addressed the technical capability and financial feasibility of the powerplants to use an alternate fuel, coal, as a primary energy source in a mixture with natural gas or petroleum in amounts in excess of the minimum amounts necessary to maintain reliability of operation of the units consistent with maintaining reasonable fuel efficiency. The exact proportions of the fuel mixture will be determined at a later date and specified in the final prohibition order.

Accordingly, pursuant to the authorities contained in FUA as amended, ERA is issuing proposed prohibition orders which, if finalized, will prohibit the use of petroleum or natural gas as a primary energy source in these powerplants.

As provided for in section 701(c) and (d) of FUA and 10 CFR §§ 501.31 and 501.33 of the final rule, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E–190, Washington, D.C. 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m.

DATES: Written comments are due on or before March 3,1986. A request for public hearing must also be made within this 45-day comment period. A request

for an extension of the 45-day period may be granted at ERA's discretion.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing should be submitted to the Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, Room GA-007, 1000 Independence Avenue, SW, Washington, DC 20585.

Docket No. ERA-FC-85-36 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 100 Independence Avenue, SW., Room GA-045, Washington, DC., 20585, Telephone: (202) 252-4523.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room 6A-113, Washington, DC. 20585, Telephone: (202) 252-6947.

SUPPLEMENTARY INFORMATION: Section 1021 of OBRA amended section 301 of FUA to limit the authority of the Secretary of Energy to prohibit petroleum or natural gas use only where the owner or operator of an existing powerplant has voluntarily certified to the unit's technical capability and the financial feasibility to use an alternate fuel

On August 21, 1985, Dover filed a certification and a request for issuance of prohibition orders in accordance with section 301(c) of FUA as amended for McKee 1, 2 and 3, that would prohibit these units from using petroleum or natural gas, or both, in amounts in excess of the minimum amount necessary to either maintain an economical fuel mix or maintain reliability of operation of the units consistent with maintaining the reasonable fuel efficiency of such mixture. ERA has examined the basis for the certification and the documentation submitted for each powerplant and believes that it will be able to concur in such certification which may result in the ultimate issuance of final prohibition orders. ERA published in the Federal Register on November 27, 1981 (46 FR 58051), its regulations relecting the changes required by section 1021 of OBRA. In accordance with § 502.52 of these regulations, the following procedure for the processing of these proposed orders will be followed:

(1) Pursuant to § 502.52(b)(2), ERA is issuing proposed prohibition orders to McKee 1, 2 and 3. This decision is based on ERA's review of the certification and supporting documents submitted by Dover pursuant to section 1021 of OBRA. ERA is hereby publishing its proposed findings as required by section 701(b) of FUA.

(2) In accordance with § 502.52(b)(3), the publication of this Notice of Acceptance commences a period of 45 days during which interested persons may submit written comments or request a public hearing. During this period, the recipient of the proposed orders and any other interested person may submit any evidence that they have available relating to the proposed orders, the certification, or the concurrence that ERA must make. A request for an extension of the 45-day period may be granted at ERA's discretion.

(3) If a hearing is requested, ERA shall provide interested persons with an opportunity to present oral data, views, and arguments at a public hearing held in accordance with subpart C of 10 CFR part 501. The hearing may consider, among other matters, the sufficiency of the certification that Dover, the owner and operator of McKee 1, 2 and 3, submitted pursuant to section 1021 of OBRA and §§ 504.5, 504.6, and 504.8 of the regulations.

(4) No final prohibition orders may be issued until any necessary environmental review conducted pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA), has been completed. Upon completion of the NEPA review and unless ERA determines on the basis of the information contained in the record of the proceeding that the certification fails to meet the requirements of §§ 504.5, 504.6, and 504.8, ERA may publish final prohibition orders.

Proposed Prohibition Orders: Subject to any further findings that ERA may make, ERA hereby proposes to prohibit the Dover powerplants listed in the table above from burning petroleum or natural gas as a primary energy source. In accordance with section 1021 of OBRA, and §§ 504.6(c), (d), (e), and (f) of the regulations, the proposed prohibition order is based on proposed findings by ERA that each of the powerplants (1) has the technical capability to use coal or another alternate fuel, in a mixture with natural gas or petroleum in excess of the minimum amounts necessary to maintain reliability of operation of the units consistent with maintaining reasonable fuel efficiency, as a primary energy source: and (2) that it is financially feasible to use coal or another alternate fuel as a primary energy source in such powerplants. The exact proportions of the fuel mixture will be determined at a later date and specified in the final prohibition order. These findings are based on the certification and supporting documents submitted by the proposed order recipient.

This order, if finalized, will contain terms and conditions concerning the timing and conditions precedent to the effectiveness of the prohibitions.

Issued in Washington, DC on January 9, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-1141 Filed 1-16-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-C&E-86-08]

[OFP Case No. 67049-9297-21, 22-22]

Order Granting to Thermo Power & Electric, Inc. an Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted to Thermo Power & Electric, Inc. (Thermo) a permanent site limitation exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), for a facility to be located at the University of Colorado (UNC), Greeley, Colorado. The exemption granted permits the use of natural gas as the primary energy source for its proposed gas-fired combustion turbines.

The final exemption order and detailed information on the proceeding are provided in the SUPPLEMENTARY INFORMATION section below.

DATES: The order and its provisions shall take effect on March 16, 1986.

The public file containing a copy of this order and 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, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Myra L. Couch, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-6769.

Steven E. Ferguson, Esq., Office of General Counsel, Department of

Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252–6947.

SUPPLEMENTARY INFORMATION: The facility is a cogeneration powerplant being constructed at UNC in the town of Greeley, Colorado and will sell electricity to Public Service Company of Colorado during its peak demand hours and utilize the waste thermal output of the plant for meeting the heating, cooling and hot water requirements of UNC. The proposed facility will consist of two natural gas fired combustion turbines.

These turbines will be exhausted into two waste heat recovery steam generator units rated for approximately 67,300 pounds per hour of 600 psi/700° F steam at a 60° F ambient condition.

Thermo has certified that due to the specific physical limitations enumerated below, the criteria for a permanent exemption provided for in 10 CFR § 503.33(a) are satisfied. Included in the petition is a description of the physical limitations of the plant that are relevant to the location and operation of the new facility. Evidence of the limited space at and around the site for the planned facility were furnished.

The location of the site is dictated by the nature of the project. The UNC distribution system is uniquely suited for cogeneration because it already operates on high pressure hot water, therefore permitting thermal storage. In order to provide this hot water, the project must be located in close proximity to the existing heating plant to permit interconnection with the existing distribution system.

Use of coal for this facility at this site is not feasible. The primary barriers to the coal at this site is the size and location of the facility. A coal burning plant sized only to meet the maximum hourly demand of UNC (*i.e.* without building in a reserve feature as is available with the gas turbine facility) would require much more land than the approximately three acres that is available for construction. According to independent calculations, a unit of this size with a 30-day supply of coal would require a minimum of (9) acres because of the necessity of constructing fuel unloading, handling, stock out and reclamation facilities.

Thermo certified that:

1. The site limitation criteria contained in 10 CFR § 503.33(a) are satisfied by the turbines for which exemption is sought and the plant where they will be installed;

2. The mixtures use criteria set forth in 10 CFR § 503.9(a) ae satisfied by the turbines for which the exemption is sought and the plant at which it will be installed.

Procedural Requirements

In accordance with the procedureal requirements of section 701(c) of FUA and 10 CFR § 501.3(b), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relative to the proposed facility in the **Federal Register** on November 25, 1985 (50 FR 24022), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act.

During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed January 9, 1986; no comments were received and no hearing was requested.

NEPA Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act (NEPA).

Order Granting Permanent Site Limitation Exemption

Based upon the entire record of this proceeding, ERA has determined that Thermo has satisfied the eligibility requirements for the requested exemption as set forth in 10 CFR § 503.33. Therefore, pursuant to section 212(a) of FUA, ERA hereby grants a permanent site limitation exemption to Thermo to permit the use of natural gas as the primary energy source for its combustion turbines to be located at Greeley, Colorado.

Pursuant to section 702(c) of the Act and 10 CFR § 501.69, any person aggrieved by this action may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, DC, on January 13, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–1140 Filed 1–16–86; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RP86–35–000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

January 14, 1986.

Take notice that on December 31, 1985, Great Lakes Gas Transmission Company (Great Lakes), tendered for filing proposed changes to the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2.

First Revised Volume No. 1

Fifteenth Revised Sheet No. 4
Original Sheet No. 57(i)
Original Sheet No. 57(ii)

Original Volume No. 2

Twentieth Revised Sheet No. 53
Eleventh Revised Sheet No. 77
Tenth Revised Sheet No. 151
Fifth Revised Sheet No. 152
Fourth Revised Sheet No. 183
Fifth Revised Sheet No. 223
Fifth Revised Sheet No. 245
First Revised Sheet No. 269
First Revised Sheet No. 270
Third Revised Sheet No. 294

The proposed tariff changes are based on sales and transportation volumes for the base period (twelve months ended September 30, 1985) as adjusted and would produce increased revenues to the Company of $24,401,794, exclusive of certain amounts refundable or to be deposited in escrow related to Rate Schedules T–6 and T–9 pending final resolution of certain issues on remand. The changes would also establish new Base Tariff Rates for future purchased gas adjustments.

Great Lakes states that the proposed rates are necessary because of increased operating expenses, increased depreciation expense resulting from increased gas plant in service, increased *ad valorem* and other taxes, increased income taxes and reduced transportation service volumes. Great Lakes' proposed rates include an overall return of 12.72% reflecting an imbedded debt cost of 9.60% and a return on equity of 15.50%.

Great Lakes further states that copies of this filing have been served upon its customers and the Public Service Commissions of Minnesota, Wisconsin and Michigan.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 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 January 21, 1986. 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. 86-1113 Filed 1-16-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER86-205-000 et al.]

Appalachian Power Company et al.; Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission:

1. Appalachian Power Company

[Docket No. ER86-205-000]

January 10, 1986.

Take notice that American Electric Power Service Corporation (AEP) on January 7, 1986 tendered for filing on behalf of its affiliate Appalachian Power Company (APCO), which is an AEP affiliated operated subsididary, Modification No. 12 dated August 30, 1985 to the Interconnection Agreement dated February 28, 1949 between APCO and Duke Power Company (DUKE). The Commission has previously designated the 1948 Agreement as APCO's Rate Schedule FERC No. 18.

Sections 1 and 2 of Modification No. 12 increases APCO's transmission demand rate for Third Party Weekly Short Term Power to $0.46 per kilowatt per week and Third Party Daily Short Term Power to $0.092 per kilowatt per day. Section 3 increases the transmission demand rate for Limited Term Power to $2.00 per kilowatt per month. Section 4 increases APCO'S transmission demand rate for Emergency Energy to 2.75 mills per kilowatthour and Section 5 revises the provisions for Economy Energy by adding a 3.75 mills per kilowatthour minimum to APCO's provisions for the transmission of Economy Energy. In addition, Section 7 updates the provisions for Non-Displacement Power and Energy by adding a 2.75 mills per kilowatthour transmission demand charge. These proposed transmission rates, pertaining to APCO, are the same as those established in several agreements which APCO presently has on file with the Federal Energy Regulatory Commission (Commission) which include Dockets ER85-336-000, ER85-605-000 and ER86-19-000.

AEP has requested that the Commission permit this Modification to become effective in two parts, allowing APCO's 2.75 mills per kilowatthour demand charge for the transmission of Non-Displacement Power and Energy and 3.75 mills minimum on Economy Energy to become effective as of August 12, 1985 and the remainder of this Modification to become effective as of November 30, 1985. This request has been made so that APCO could participate in multi-party opportunity sales to DUKE that would not have otherwise been made.

Copies of the filing were served upon Duke Power Company, North Carolina Utility Commission, South Carolina Public Service Commission, Public Service Commission of West Virginia, and the Virginia State Corporation Commission.

Comment date: January 24, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Power Corporation

[Docket No. ER86-234-000]

January 13, 1986.

Take notice that on January 7, 1986, Florida Power Corporation (Florida Power) tendered for filing a Letter of Commitment dated December 23, 1985 providing for 25 MW of firm interchange service between Florida Power and the Kissimmee Utility Authority. Florida Power states that the Letter of Commitment is executed pursuant to Service Schedule D of the Contract for Interchange Service dated December 1, 1981 between Florida Power and the Kissimmee Utility Authority, which contract is designated as Florida Power's Rate Schedule FERC No. 94. The Letter of Commitment is submitted for inclusion as a supplement to Service Schedule D.

Florida Power requests that the Letter of Commitment be permitted to become effective January 1, 1986, and therefore, requests waiver of the sixty day notice requirement. Copies of this filing have been served upon the Kissimmee Utility Authority and the Florida Public Service Commission.

Comment date: January 24, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Kansas Gas and Electric Company

[Docket Nos. ER83-628-006, ER83-628-007, ER85-432-001]

January 13, 1986.

Take notice that on December 5, 1985, Kansas Gas and Electric Company tendered for filing the original and fifteen copies of the following:

(1) ER83-628 Final Settlement Amendment to:

Customer	FPC rate sch. no.	Service schedule
City of Chanute, KS	128	E—Transmission.
City of Fredonia, KS	87	E—Transmission.
City of Iola, KS	89	E—Transmission.

(2) Rate design derivation is not included as there is no change from the rate design as submitted in Docket No. ER83-628-006 on May 31, 1985.

(3) A revenue estimate reflecting the final settlement rates for the above customers for the twelve months succeeding the initiation of service under Service Schedule E. The month of March 1985 is not prorated but is placed entirely under the proposed rates for purposes of comparison only.

(4) Cost of electric service and associated workpapers are not included as there is no change from the cost of electric service as submitted in Docket No. ER83-628-006 on May 31, 1985.

Comment date: January 24, 1986, in accordance with Standard Paragraph H at the end of this notice.

4. Pacific Gas and Electric Company

[Docket No. ER 86-232-000]

January 10, 1986.

Take notice that on January 7, 1986, Pacific Gas and Electric Company (PGandE) tendered for filing changes to the rate schedules under the "Interconnection Agreement Between Pacific Gas and Electric Company and the Northern California Power Agency, City of Biggs, City of Gridley, City of Healdsburg, City of Lodi, City of Lompoc, City of Palo Alto, City of Roseville, City of Ukiah and Plumas Sierra Rural Electric Cooperative" (Interconnection Agreement).

The Interconnection Agreement was filed initially under Docket No. ER 83-683-000 and was assigned FERC Rate Schedule No. 84. The Parties have agreed to revise two of the exhibits to the Appendix A of the Interconnection Agreement. Specifically, the Parties wish to revise Exhibits A-1 andA-4 (Exhibit(s)). None of these revisions involves a change in the level of any rate.

Comment date: January 24, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Portland General Electric Company

[Docket No. ER 86-233-000]

January 10, 1986.

Take notice that on January 7, 1986, Portland General Electric Company (PGE) tendered for filing its Average System Cost (ASC) as calculated by PGE and examined by the Bonneville Power Administration under the revised ASC Methodology which became effective on October 1, 1984. This filing includes PGE's revised Appendix 1, Exhibit C of the Residential Purchase and Sale Agreement.

PGE states that the revised Appendix 1 shows the base ASC, as determined by the Bonneville Power Administration, to be 34.06 mills/kWh. In addition the Bonneville Power Administration finds the interim phase-in rate for PGE to be 35.99 mills/kWh. This phase-in rate includes the effects of the second quarter Power Cost Adjustment and is effective May 1, 1985.

Comment date: January 24, 1986, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraphs:

E. 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 NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. 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.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-1112 Filed 1-16-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. P-9197-000 et al.]

Wayne J. Krieger et al.; Environmental Assessment Notices

January 13, 1986.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and has assessed the environmental impacts of the proposed developments.

1

Wayne J. Krieger.....Project No. 9179-000
Jared E. & Pamela Holve...Project No. 8960-000
L. Maurice Baker.....Project No. 5074-001
Miller Hydro Group.....Project No. 3428-001
Douglas County...Project No. 7161-002

Project No.	Project name	State	Water body	Nearest town	Applicant
			Exemptions		
9179-000	Skyview Hydro	OR	Unnamed tributary of Coy Creek.	Ophir	Wayne J. Krieger.
8960-000	Bear Creek	CA	Bear Creek	Springville	Jared E. & Pamela Holve.
			Licenses		
5074-001	Mill Creek	OR	Mill Creek	Reedsport	L. Maurice Baker.
3428-001	Worumbo	ME	Androscoggin	Durham & Lisbon.	Miller Hydro Group.
7161-002	Galesville	OR	N/A	Glendale	Douglas County.

2

Donald R. Heald.....Project No. 9102-000
Northern States Power Company...Project No. 9002-000
Turlock Irrigation and District and Modesto Irrigation District...Project No. 2299-007
The Town of New Roads...Project No. 2908-001
Glen Hydro, Inc.....Project No. 9252-000

Project No.	Project name	State	Water Body	Nearest town	Applicant
			Exemptions		
9102-000	Holmes	ME	Passagassawaukeag River	Belfast	Donald R. Heald.
9002-000	Apple River Hydro	WI	Apple River	Somerset	Northern State Power Co.
			Licenses		
2299-007	Don Pedro Hydro	CA	Tuolumne River	Modesto/ Turlock.	Turlock Irrigation District and Modesto Irrigation District.
2908-001	Red River Lock and Dam No. 3.	LA	Red River	Natchitoches Parish.	The Town of New Roads.
9252-000	Scytheville	NH	Mascoma River	Lebanon	Glen Hydro, Inc.

3

Cottrell Paper Company...Project No. 9297-000
Gerald & Glenda Ohs.....Project No. 7805-001
Gerald & Glenda Ohs.....Project No. 7804-001

Project No.	Project name	State	Water body	Nearest town	Applicant
			Licenses		
9297-000	Rock City Falls	NY	Kayaderosseras Creek	Rock City Falls.	Cottrell Paper.
			Exemptions		
7805-001	Cataract Creek	MT	Cataract Creek	Pony	Gerald & Glenda Ohs.
7804-001	North Willow	MT	North Willow Creek	Pony	Gerald & Glenda Ohs.

4

Morley Hydro Co.....Project No. 8825–001
City of Monore, Utah.....Project No. 632–000
City of Monroe, Utah.....Project No. 1517–000
Umetco Minerals Corp.....Project No. 8418–000

Project No.	Project name	State	Water body	Nearest town	Applicant
			Exemptions		
8825–001	Morley Dam	MI	Little Muskegon River	Aetna	Morley Hydro Co.
			Licenses		
632–000	Lower Monroe Canyon	UT	Monroe Creek	Monroe	City of Monroe.
1517–000	Upper Monroe Canyon	UT	Monroe Creek	Monroe	City of Monroe.
8418–000	Pine Creek Sites	CA	Morgan Creek	Bishop	Umetco Minerals Corp.

5

Twin Falls Canal Company...Project No. 8961–000
George Douglass.....Project No. 8597–000
B.M.B. Enterprises, Inc.....Project No. 8192–000
Androscoggin Water Power Company.....Project No. 4787–007
Long Lake Energy Corporation...Project No. 4113–001

Project No.	Project name	State	Water body	Nearest town	Applicant
			Exemptions		
8961–000	Lower Low Line	ID	Low Line Canal	Kimberly	Twin Falls Canal, Co.
8597–000	Granite Creek/Deep Creek Mountains Ranch.	UT	Granite Creek	Callao	George Douglass.
8192–000	Granite Creek	UT	Granite Creek	Callao	B.M.B. Enterprises, Inc.
			Licenses		
4787–007	Pejepscot	ME	Androscoggin River	Topsham, Brunswick, Durham & Lisbon.	Androscoggin Water.
4113–001	Phoenix	NY	Oswego River	Phoenix	Long Lake Energy Corp.

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements for these projects will not be prepared.

Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–1114 Filed 1–16–86; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $68,172.54 obtained as a result of a consent order which the DOE entered into with James Petroleum Corporation, a reseller-retailer of motor gasoline formerly located in Bakersfield, California. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDDRESS: Applications for refund of a portion of the James Petroleum consent order funds must be filed in duplicate and must be received within 90 days of publication of this notice in the **Federal Register.** All applications should refer to Case Number HEF–0099 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Nancy Kestenbaum, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to a consent order entered into by the DOE and James Petroleum Corporation, which settled possible pricing violations in James Petroleum's sales of motor gasoline during the consent order period, January 1, 1980, through April 30, 1980. A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the James Petroleum consent order funds was issued on October 3, 1985. 50 FR 41566 (October 11, 1985).

The Decision sets forth procedures and standards that the DOE has formulated to distribute the contents of an escrow account funded by James Petroleum pursuant to the consent order. The DOE has decided that the consent order funds should be distributed to individuals and firms which purchased motor gasoline from James Petroleum during the consent order period, provided each files an application for refund and makes any necessary showing of injury. These purchasers will be required to provide specific documentation concerning the volume and price of motor gasoline purchased, the date of purchase, and the extent of any injury alleged. Any applicant claiming $5,000 or less, however, may simply submit evidence of its purchase volumes to document its injury.

As the Decision and Orde published with this Notice indicates, applications for refunds may now be filed by customers who purchased motor gasoline from James Petroleum during the consent order period. Applications will be accepted provided they are filed in duplicate and received no later than 90 days after publication of this Decision and Order in the **Federal Register.** The specific information required in an Application for Refund is set forth in the Decision and Order.

Dated: January 10, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: James Petroleum Corporation
Date of Filing: October 13, 1983
Case Number: HEF–0099

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with James Petroleum Corporation (James Petroleum).

I. Background

James Petroleum is a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31, and is located in Bakersfield, California. Following an audit of James Petroleum's records, ERA issued a Notice of Probable Violation (NOPV) in which it alleged that the firm had violated the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. The NOPV originally alleged that between January 1, 1980, and April 30, 1980, James Petroleum overcharged by $60,433.68 in its sales of motor gasoline.

In order to settle all claims and disputes regarding the firm's sales of motor gasoline during the audit period, James Petroleum and the DOE entered into a consent order on November 10, 1981. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. The consent order also states that James Petroleum does not admit to any violations of the regulations. Under the terms of the consent order, James Petroleum was required to deposit $60,433.68 into an interest-bearing escrow account for ultimate distribution by the DOE. James Petroleum remitted this sum on October 25, 1983.[1]

On October 3, 1985, we issued a proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of refunds to parties who were injured by James Petroleum's alleged violations in its sales of petroleum products. 50 FR 41566 (October 11, 1985). In the PD&O we described a two-stage process for distributing the James Petroleum consent order funds. We proposed to disburse funds in the first stage to claimants who could demonstrate that they were adversely affected by James Petroleum's alleged overcharges in its sales of motor gasoline during the consent order period. We also solicited comments regarding the disbursement of any funds remaining after all meritorious claimants had received appropriate refunds.

The purpose of this decision is to establish procedures to be used for filing claims in the first stage of the James Petroleum refund process. Since no comments were received concerning first stage procedures, we will employ the procedures suggested in the PD&O. Since our determination concerning the final disposition of any remaining funds will necessarily depend on the amount of money remaining in the escrow account, it would be premature for us to address the issues raised by commenters concerning a second-stage proceeding.[2] *See Office of Enforcement*, 9 DOE ¶ 85,208 (1981) (*Coline*).

II. Refund Procedures

The procedural regulations of the DOE set forth general guidelines which may be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who might have been injured by alleged overcharges or to ascertain readily the amount of any such injury. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

The use of presumptions in refund cases is specifically authorized by applicable DOE procedural regulations. The presumptions we are adopting in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. First, we will adopt a presumption that the alleged overcharges were dispersed evenly among all sales of products made during the consent order period. In the past, we have referred to a refund process that uses this presumption as a volumetric system. Second, we will adopt a presumption of injury with respect to small claims. Third, we will adopt a presumption that spot purchasers were not injured by the alleged overcharges. As a separate matter, we find that end users of James Petroleum products were injured by James Petroleum's pricing practices.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges by a consent order firm were spread equally over all gallons of product marketed by that firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. This presumption is rebuttable, however. A claimant that believes that it absorbed a disproportionate amount of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984), and cases cited therein at 88,164.

Under the volumetric system we are adopting, a claimant will be eligible to receive a refund equal to the number of gallons purchased from James Petroleum times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $.019937 per gallon.[3] In addition, successful claimants will receive a proportionate share of the accrued interest.

The second presumption we will use is that purchasers of James Petroleum's motor gasoline seeking small refunds were injured by James Petroleum's pricing practices. There are a number of bases for this presumption. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). Firms which will be eligible for refunds were in the chain of distribution where the alleged overcharges occurred and therefore experienced some impact of the alleged overcharges. In order to support a specific claim of injury, a firm would have to compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive. With small claims, the cost to the firm of gathering the necessary information and the cost to OHA of analyzing it could easily exceed the expected refund. Consequently, without simplified procedures, some

[1] The total consent order payment including installment interest amounted to $68,172.54. We have used this figure as the principal amount. As of December 31, 1985, the escrow account contained $92,277.86 including accrued interest.

[2] Comments concerning the second stage were filed collectively on behalf of the states of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia.

[3] This figure is derived by dividing the $68,172.54 settlement amount by the 3,419,394 gallons of products sold by James Petroleum during the consent order period.

injured parties would be effectively denied an opportunity to receive a refund. This presumption eliminates the need for a claimant to submit and OHA to analyze extensive, detailed proof of what resulted from the initial impact of the alleged overcharges.

Under the small-claims presumption, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Several factors determine the value of this threshold. Principal among these factors is the concern that the cost to the applicant and to the government of compiling and analyzing information sufficient to show injury does not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984), and cases cited therein.

Unlike threshold-type claimants, an applicant which claims a refund in excess of $5,000 will be required to provide a detailed demonstration of its injury. A reseller will be required to demonstrate that it maintained a "bank" of unrecovered product costs in order to show that it did not pass along the alleged overcharges to its own customers.[4] In addition, a reseller claimant must show that market conditions would not permit it to pass through those increased costs. *See, e.g., Triton Oil & Gas Corp./Cities Service Co.*, 12 DOE ¶ 85,107 (1984); *Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982).

Retailer claimants will be subject to a different requirement for demonstrating injury from that outlined above for reseller applicants. A modification of the injury requirement for retailers is justified because during the James Petroleum consent order period retailers of motor gasoline were not required to compute MLSPs with reference to May 15, 1973 selling prices and increased costs. *See* 10 CFR 212.93; 45 FR 29546 (1980). Instead, effective July 16, 1979, a retailer was required to calculate its MLSP under a fixed-margin approach set forth in the new rule. Unrecouped increased product costs could no longer be banked for later recovery. *Id.* Consequently, retailers were not required to maintain or compute "cost banks" during this period. As a result, any requirement that a retailer claimant make a demonstration of injury like that contemplated for resellers, *i.e.*, based on unrecovered "cost banks," would effectively eliminate all retailer claimants for the bulk of the consent order period. Therefore, in this proceeding, since the consent order period is after July 16, 1979, retailers may apply for refunds above the $5,000 threshold without demonstrating that they had cost banks.[5] Like resellers, retailers will still be required to show that market conditions prevented them from recovering those increased product costs, *e.g.*, based upon a demonstration of lowered profit margins, decreased market shares, or depressed sales volumes.[6]

If a reseller or retailer made only spot purchases, we believe that it should not receive a refund since it is unlikely to have experienced injury. This is true because [t]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. The same principles apply in this case. Therefore, firms which made only spot purchases from James Petroleum will not receive refunds unless they present evidence which rebuts the spot purchaser presumption and establishes the extent to which they were injured as a result of their purchases of motor gasoline from James Petroleum during the consent order period.

In addition, we find that end user—or ultimate consumer—purchasers whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, and analysis of the impact of the alleged overcharges on the final price of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983) (*PVM*); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. We have concluded that end users of James Petroleum motor gasoline need only document their purchase volumes from James Petroleum to make a sufficient showing that they were injured by the alleged overcharges.

In addition, firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement will not be required to demonstrate that they absorbed the alleged motor gasoline overcharges. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of James Petroleum's alleged violations of the DOE regulations would routinely be passed through to the firms' customers. Consequently, we will add such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 (1982) (*Tenneco*), *and Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Instead, those firms should provide with their application a full explanation of the manner in which refunds would be passed through to their customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 will be processed. We have found through our experience in prior refund cases that the cost of processing claims for refunds of less than $15 outweighs the benefits of restriction in those situations. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

III. Applications for Refund

We have determined that by using the procedures described above, we can distribute the James Petroleum consent

[4] This injury requirement reflects the nature of the petroleum price regulations in effect beginning on August 19, 1973, and ending on July 16, 1979 for retailers, and on May 1, 1980 for resellers. Under the original rules, a reseller or retailer of motor gasoline was required to calculate its maximum lawful selling price (MLSP) by summing its selling price on May 15, 1973 with increased costs incurred since that time. A firm which was unable to charge its MLSP in a particular month could "bank" any unrecovered increased product costs, so that those could be recouped in a later month, if possible. *See* 10 CFR 212.93; 45 FR 29546 (1980).

[5] The cost bank requirement has been relaxed in other instances reflecting the change in the pricing regulations for motor gasoline. *See* Tenneco Oil Co./United Fuels Corp., 10 DOE ¶ 85,005 at 88,017 n. 1 (1982) (Tenneco).

[6] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury beyond purchase volumes. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,125 (1982) (Ada).

order funds as equitably and efficiently as possible. Accordingly, we will now accept applications for refund from individuals and firms who purchased motor gasoline from James Petroleum between January 1, 1980 and April 30, 1980.

There is no specific application form which must be used. In order to receive a refund, each claimant must submit the following information:

(1) A schedule of monthly purchases from James Petroleum;

(2) whether the applicant has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA NOPV underlying this proceeding;

(3) whether there has been a change in ownership of the firm since the consent order period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund;

(4) whether the applicant is or has been involved as a party in DOE enforcement or private, Section 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d); and

(5) The name and telephone number of a person who may be contacted by this Office for additional information.

Finally, each application must include the following statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

All applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision and Order in the **Federal Register**. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant which believes that its application contains confidential information must indicate this and submit two additional copies of its application from which the information has been deleted. All applications should refer to Case No. HEF–0099 and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

It is Therefore Ordered That:

(1) Applications for refunds from the funds remitted to Department of Energy by James Petroleum Corporation pursuant to the consent order executed on November 10, 1981, may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Date: January 10, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86–1133 Filed 1–16–86; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $258,367 obtained as a result of a consent order which the DOE entered into with Oceana Terminal Corp., *et al.* (Cibro), a reseller-retailer of petroleum products with its home office located in the Bronx, New York. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund of a portion of the Cibro consent order funds must be filed in duplicate and must be received within 90 days of publication of this notice in the **Federal Register.** All applications should refer to Case Number HEF–0142 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Sharon Dennis, Office of hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252–6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. the Decision relates to a consent order entered into by the DOE and Oceana Terminal Corp., *et al.*, (Cibro) which settled possible pricing violations in Cibro's sales of No. 6 fuel oil during the consent order period, November 1, 1973, through April 30, 1974. A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Cibro consent order funds was issued on November 12, 1985. (50 FR 47425, November 18, 1985).

The Decision sets forth procedures and standards that the DOE has formulated to distribute the contents of an escrow account funded by Cibro pursuant to the consent order. The DOE has decided that the consent order funds should be distributed to individuals and firms which purchased No. 6 fuel oil from Cibro during the consent order period, provided each files an application for refund and makes any necessary showing of injury. These purchasers will be required to provide specific documentation concerning the volume and price of fuel oil purchased, the date of purchase, and the extent of any injury alleged. Any applicant claiming $5,000 or less, however, may simply submit evidence of its purchase volumes to document its injury.

As the Decision and Order published with this Notice indicates, applications for refunds may now be filed by customers who purchased No. 6 fuel oil from Cibro during the consent order period. Applications will be accepted provided they are filed in duplicate and received no later than 90 days after publication of this Decision and Order in the **Federal Register.** The specific informaton required in an Application for Refund is set forth in the Decision and Order.

Dated: January 10, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Oceana Terminal Corp., *et al.*

Date of Filing: October 13, 1983.

Case Number: HEF–0142.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund

Procedures in connection with a consent order entered into with Oceana Terminal Corp., Cibro Sales Corp., Cibro Petroleum Products, Inc., Cibro Terminal, Inc., Cibro Petroleum-Bronx, Inc., Cibro Petroleum/Brooklyn, Inc., Cibro Petroleum/L.I., Inc., Cibro Gasoline Corp., and Cibro Petroleum/Westchester, Inc. (hereinafter all of the above companies will be referred to collectively as "Cibro").

I. Background

Cibro is a "reseller-retailer" of No. 6 fuel oil as that term was defined in 10 CFR 212.31 with its home office located in the Bronx, New York. A DOE audit of Cibro's records revealed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR Part 212, Subpart F. The audit alleged that between November 1, 1973, and April 30, 1974, Cibro committed possible pricing violations with respect to its sales of No. 6 fuel oil.

In order to settle all claims and disputes between Cibro and the DOE regarding the firm's sales of No. 6 fuel oil during the period covered by the audit, Cibro and the DOE entered into a consent order on August 22, 1979. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. Additionally, the consent order states that Cibro does not admit that it violated the regulations.

The consent order required that Cibro deposit $258,367 into an interest-bearing escrow account for ultimate distribution to its reseller and retailer customers by the DOE.[1] Cibro remitted this amount on August 19, 1980.[2]

II. Jurisdiction and Authority to Fashion Refund Procedures

The general guidelines which the OHA may use to formulate and implement a plan to distribute funds received as a result of a consent order are set forth in 10 CFR Part 205, Subpart V. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

On November 12, 1985, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of refunds to parties that can make a reasonable showing of injury as a result of Cibro's alleged violations in its sales of No. 6 fuel oil during the consent order period. 50 Fed. Reg. 47,425 (November 18, 1985). The PD&O stated that the basic purpose of a special refund proceeding is to make restitution for injuries that were experienced as a result of actual or alleged violations of the DOE regulations.

The PD&O also indicated that the distribution of refunds in this proceeding would take place in two stages. In the first stage, we will accept claims from identifiable purchasers of No. 6 fuel oil who may have been injured by Cibro's pricing practices during the period November 1, 1973, through April 30, 1974. If any funds remain after all meritorious first-stage claims have been paid, they may be distributed in a second-stage proceeding. *See e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

In order to give notice to all potentially affected parties, a copy of the Proposed Decision was published in the **Federal Register** and comments regarding the proposed refund procedures were solicited. In addition, a copy of the PD&O was mailed to each purchaser identified in the audit file whose address was available. Copies were also sent to various petroleum marketers' associations. Two of Cibro's customers, Trump Village Section 3, Inc., and Trump Village Section 4, Inc., (Trump Village) submitted joint comments on the proposed procedures. Trump Village, a housing cooperative, requested that residential housing cooperatives receive the same treatment as agricultural cooperatives in refund proceedings.

It has been this Office's consistent position that cooperatives be considered as end user applicants in refund proceedings. In this sort of an enterprise, the owners and members are one and the same, and consequently, overcharges would have been passed on to and absorbed by a cooperative's members. Sales to non-members, however, would place a cooperative in the reseller category. *See Aminoil USA, Inc./Farmers Union Central Exchange, Inc.*, 13 DOE ¶ 00,000 (RF139-25) (December 5, 1985) n.3. Therefore, provided Trump Village meets the definition of a cooperative, and its sales of No. 6 fuel oil are confined to member-customers, Trump Village will be treated like an agricultural cooperative.

III. Refunds to Identifiable Purchasers

In the first stage of the Cibro refund proceeding, we will distribute the funds currently in escrow to claimants who demonstrate that they were injured by Cibro's alleged overcharges. In order to be eligible to receive a refund, claimants must file an application and, with three exceptions which will be discussed later in this Decision, show the extent to which they were injured by the alleged overcharges.

In this case we will adopt three rebuttable presumptions regarding injury. These presumptions have been used in many previous special refund cases. First, we will not require a detailed demonstration of injury from regulated utilities or cooperatives that purchased Cibro No. 6 fuel oil and passed the alleged overcharges associated with that product through to their end user members. Second, we will presume that purchasers of Cibro No. 6 fuel oil who are claiming small refunds ($5,000 or less) were injured by the alleged overcharges. Lastly, in the absence of compelling material, we will adopt a presumption that spot purchasers were not injured. In addition to these presumptions, we find that end users or ultimate consumers of Cibro products whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges. Prior OHA decisions provide detailed explanations of the bases of these presumptions and the end user finding. *E.g., Peterson Petroleum, Inc.*, 13 DOE ¶ 85,191 at 88,508-510 (1985). The rationale for these presumptions and the end user finding was also fully explained in the PD&O. 50 Fed. Reg. 47,425 at 47,427-428 (1985). These presumptions will permit claimants to apply for refunds without incurring disproportionate expenses and will enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

As we proposed in the PD&O, a demonstration of "banks" of unrecovered product costs, along with information showing a competitive disadvantage in its local market, will be a sufficient showing of injury for reseller-retailer applicants claiming refunds above the $5,000 threshold. *See, e.g., Triton Oil and Gas Crop./Cities Service Company*, 12 DOE ¶ 85,107 (1984); *Tenneco Oil Company/Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982).[3]

[1] The settlement amount totalled $600,000. This amount was divided according to the amount of restitution due Cibro's different purchaser categories. Cibro's "consumer barge class" was awarded $341,633 of the settlement amount. Sales to that class and that settlement amount are not involved in this Proposed Decision.

[2] As of December 31, 1985, the Cibro escrow account contained $481,271.18, representing $258,367.00 in principal and $222,904.18 in accrued interest.

[3] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they

Continued

A. Calculation of Refund Amounts

We will use a volumetric method to divide the settlement monies among applicants who demonstrate that they are eligible to receive refunds. This method presumes that the alleged overcharges were spread equally over all the gallons of No. 6 fuel oil which Cibro sold. We have calculated by the volumetric refund amount by dividing the consent order amount by the approximate number of gallons of No. 6 fuel oil which Cibro sold to its customers (other than its "consumer barge class") during the period covered by the consent order. Successful claimants will receive refunds based on their purchase volumes multiplied by the volumetric refund amount. We have set the Cibro volumetric refund amount at $0.002618 per gallon.[4] In addition, successful claimants will receive a proportionate share of the accrued interest.

We recognize that a particular purchaser could have suffered a disproportionate share of the injury. Any purchaser who can make a showing of disproportionate overcharge may file a refund applicaiton based on such a claim.

As in previous cases, only claims for at least $15 will be processed. We have found through our experience in prior refund cases that the cost of processing claims for refunds of less than $15 outweights the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b). The same principle applies here.

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

IV. Applications for Refund

We have determined that by using the procedures described above, we can distribute the Cibro consent order funds as equitably and efficiently as possible. Accordingly, we will now accept applications for refunds from individuals and firms who purchased No. 6 fuel oil from Cibro during the period November 1, 1973, through April 30, 1974.

In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of No. 6 fuel oil from Cibro. Purchasers will be required to provide specific information as to the volume of product purchased, the date of purchase, and the extent of any injury alleged. Applicants should also provide all relevant information necessary to support their claim in accordance with the presumptions stated above.

In addition, all applications must state:

(1) Whether the applicant has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding;

(2) Whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund;

(3) Whether the applicant is or has been involved as a party in DOE enforcement or private, section 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep the OHA informed of any change in status while its application for refund is pending. *See* 10 CFR 205.9(d); and

(4) The name and telephone number of a person who may be contacted by this Office for additional information.

Finally, each application must include the following statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 19 U.S.C. 1001.

All applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision and Order in the **Federal Register**. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant which believes that its application contains confidential information must indicate this and submit two additional copies of its application from which the information has been deleted. All applications should refer to Case No. HEF–0142 and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

It is Therefore Orderd That:

(1) Applications for Refunds from the funds remitted to the Department of Energy by Oceana Terminal Corporation pursuant to the Consent Order executed on August 22, 1979, may be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Date: January 10, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86–1134 Filed 1–16–86; 8:45 am]

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did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit evidence of injury beyond purchase volumes. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,122 (1982) (Ada).

[4] The volumetric factor is derived by dividing the principal amount by the total number of gallons sold by the consent order company during the consent order period. In this case ERA's audit workpapers lacked any volume figures for Cibro's sales of No. 6 fuel oil. Accordingly, we contracted a representative of the company who supplied us with these sales volumes for a portion of the consent order period. *See* September 18, 1985 Memorandum concerning telephone conversation between Mr. Bill Scott, legal counsel to Cibro, and Ms. Sharon Dennis, OHA staff analyst. From these figures we extrapolated Cibro's total sales to its reseller/retailer customers for the entire consent order period (98,688,519.4 gallons). We then divided this amount into the portion of the consent order funds available to these customers ($258,367) to obtain the volumetric factor of $.002618.

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $61,889.83 obtained as a result of a consent order which the DOE entered into with Malco Industries, Inc., a reseller-retailer of refined petroleum products located in Cleveland, Ohio. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund of a portion of the Malco consent order funds must be filed in duplicate and must be received within 90 days of publication of this notice in the **Federal Register**. All applications should refer to Case Number HEF–0121 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000

Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Walter J. Marullo, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to a consent order entered into by the DOE and Malco Industries, Inc. (Malco) which settled possible pricing violations in Malco's sales of motor gasoline during the consent order period, April 1, 1979, through January 31, 1980. A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Malco consent order funds was issued on September 11, 1985. (50 FR 38181, September 20, 1985).

The Decision sets forth procedures and standards that the DOE has formulated to distribute the contents of an escrow account funded by Malco pursuant to the consent order. The DOE has decided that a portion of the consent order funds should be distributed to 16 first purchasers which the DOE's audit of Malco indicated may have been overcharged, provided each files an Application for Refund. Applications for Refunds will also be accepted from first purchasers and downstream customers not identified by the DOE audit. In order to receive a refund, an unidentified claimant will be required to submit a schedule of its monthly purchases of Malco motor gasoline and to demonstrate that it was injured by Malco's pricing practices. A downstream purchaser must also submit the name of its immediate supplier and indicate why it believes the motor gasoline was originally sold by Malco.

As the accompanying Decision and Order indicates, Applications for Refunds may now be filed by customers that purchased motor gasoline from Malco during the consent order period. Applications will be accepted provided they are filed in duplicate and received no later than 90 days after publication of this Decision and Order in the **Federal Register**. The specific information required in an Application for Refund is set forth in the Decision and Order.

Dated: January 10, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Petitioner: Malco Industries, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF–0121.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Malco Industries, Inc. (Malco). This Decision and Order contains the procedures which the OHA has formulated to distribute the funds received pursuant to that consent order.

I. Background

Malco is a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31 and is located in Cleveland, Ohio. A DOE audit of Malco's records revealed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR Part 212, Subpart F. The audit alleged that between April 1, 1979, and January 31, 1980 (consent order period), Malco committed possible pricing violations amounting to $162,867.97 with respect to its sales of motor gasoline.

In order to settle all claims and disputes between Malco and the DOE regarding the firm's sales of motor gasoline during the period covered by the audit, Malco and the DOE entered into a consent order on November 10, 1981. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. Additionally, the consent order states that Malco does not admit that it violated the regulations.

Under the terms of the consent order, Malco agreed to deposit $61,889.83 into an interest-bearing escrow account for ultimate distribution by the DOE. Malco remitted this sum on November 24, 1981.[1]

On September 11, 1985, a Proposed Decision and Order (PD&O) was issued which set forth a tentative plan for the distribution of refunds to parties that were injured by Malco's alleged violations in its sales of motor gasoline. 50 FR 38181 (September 20, 1985). The PD&O stated that a special refund proceeding is designed to provide restitution for injuries which probably occurred as a result of actual or alleged violations of the DOE regulations. To promote restitution in the proceeding, we tentatively determined that we would rely in part on the information contained in ERA's audit file. We observed that in similar cases, the refund process was facilitated by the use of audit data which, for example, assigned specific alleged overcharges to all or most of the purchasers of a firm's product. *See, e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). At the same time, we recognized that there may have been other purchasers that were allegedly overcharged during the consent order period but which were not identified by the ERA audit. Since these purchasers would also be entitled to a portion of the consent order funds, procedures by which they could establish a claim were also proposed.

A copy of the PD&O was published in the **Federal Register** and comments were solicited regarding the proposed refund procedures. In addtiion, a copy of the PD&O was mailed to each purchaser identified in the audit file whose address was available. Copies were also sent to two petroleum dealers associations. Comments were submitted on behalf of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia concerning the distribution of any funds remaining after refunds have been made to injured parties. The purpose of this Decision is to establish procedures for filing and processing claims in the first stage of the Malco refund proceeding. Any procedures pertaining to the disposition, of any monies remaining after this first stage will necessarily depend on the size of the fund. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981). Therefore, it would be premature for us to address the issues raised by the states' comments at this time. Since no comments were reviewed concerning the first-stage procedures, they will be adopted as proposed.

[1] As of December 31, 1985, the Malco escrow account contained $92,397.12, including accrued interest.

II. Refund Procedures

The general guidelines which the OHA may use to formulate and implement a plan to distribute funds received as the result of a consent order are set forth in 10 CFR Part 205, Subpart V. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981); and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

A. Refunds to Identified Purchasers

In the PD&O we stated that during the DOE's audit of Malco, 21 first purchasers were identified as having been allegedly overcharged. ERA also alleged overcharges to unidentified customers. We recognize that the DOE audit files do not necessarily provide conclusive evidence regarding the identity of all possible refund recipients or the appropriate refund for a particular firm. However, the information contained in those audit files may reasonably be used for guidance. *See Armstrong and Associates/City of San Antonio*, 10 DOE ¶ 85,050 at 88,259 (1983). In *Marion*, we stated that "the information contained in the . . . audit file can be used for guidance in fashioning a refund plan which is likely to correspond more closely to the injuries probably experienced than would a distribution plan based solely on a volumetric approach." 12 DOE at 88,031. In previous cases, the funds in the escrow account have been apportioned among (i) the first purchasers identified by the audit, (ii) other injured first purchasers, and (iii) subsequent repurchasers that can also show injury. *See, e.g., Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Richards Oil Company*, 12 DOE ¶ 85,150 (1984). The first purchasers identified by the audit, with the share of the settlement allotted to each by ERA, are listed in Appendices 1 and 2.[2]

On the basis of the information in the record at this time, we will distribute a portion of the escrow funds to the eligible firms listed in Appendices 1 and 2 that file refund applications and demonstrate injury in accord with the presumptions and findings outlined in Section C below. Refunds will be authorized for those firms in the amounts indicated, plus accrued interest to the date they receive refunds.[3] However, we have been unable to directly solicit applications from the firms listed in Appendix 2 since their addresses are presently unknown. In an attempt to locate these firms, we will provide Malco and various petroleum dealers associations with copies of this Decision and will publish a notice in the **Federal Register**. Information regarding the identity and location of each of these firms will be accepted for a period of 90 days following the date of publication of notice in the **Federal Register** of this final Decision and Order.[4]

B. Refunds to Unidentified Purchasers

As noted above, this Decision concerns the distribution of the entire $61,889.83 that Malco deposited into the escrow account, plus accrued interest to date. Since the refunds tentatively allotted to identified purchasers total only $3,047.13, the remaining portion of the Malco consent order funds may be distributed among first purchasers other than those identified by the ERA audit, as well as to downstream purchasers which may have been injured by the alleged overcharges.

Since it was impossible for ERA to assign specific overcharges to unidentified customers and repurchasers, we will use a volumetric method to determine the potential refunds of these applicants. This method presumes that the unassigned alleged overcharges were spread equally over all the gallons of motor gasoline sold by Malco to unidentified purchasers during the consent order period. Under the volumetric method, a previously unidentified claimant that adequately demonstrates injury (*see* Section C below) will be eligible to receive a refund equal to the number of gallons it purchased from Malco times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $0.001323.[5] In addition, successful claimants will receive a proportionate share of the accrued interest.

We recognize that a particular unidentified purchaser could have suffered a disproportionate share of the alleged overcharges. Any purchaser who can make a showing of disproportionate overcharge may file a refund application based on such a claim.

C. Demonstration of Injury

The assignment of overcharge amounts to both identified and unidentified purchasers is only the first step in the distribution process. We must also determine whether these claimants were injured or were able to pass through the alleged overcharges. In order to be eligible to receive a refund, all claimants will have to file an application and, with the three exceptions discussed below, show the extent to which they were injured by the alleged overcharges. To the extent that any individual or firm can establish injury, it will be eligible for a share of the consent order fund.

In this case we will adopt two rebuttable presumptions as well as two findings regarding injury. These presumptions and findings have been used in many previously special refunds cases. First, we will presume that purchasers of Malco motor gasoline which are claiming small refunds ($5,000 or less) were injured by the alleged overcharges. Second, in the absence of compelling material, we will adopt a presumption that spot purchasers were not injured. Third, we will make a finding that end-users or ultimate consumers of Malco motor gasoline whose business operations are unrelated to the petroleum industry were injured by the alleged overchanges. Lastly, we will not require a detailed demonstration of injury from regulated utilities or agricultural cooperatives that purchased Malco motor gasoline and passed the alleged overcharges associated with that product through to their end-user members. Prior OHA decisions provide detailed explanations of the bases of these presumptions and findings. *E.g., Peterson Petroleum, Inc.*, 13 DOE ¶ 85,191 at 88,508–10 (1985). The rationale for their use was also fully explained in the PD&O. 50 FR 38181 at 38,182–84 (September 20, 1985). These presumptions and findings will permit claimants to apply for refunds without incurring disproportionate expenses and will enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

[2] Appendix 1 contains the names and addresses of identified first purchasers; Appendix 2 contains the names of additional identified first purchasers for which we have no addresses.

[3] The share of the Malco escrow fund allocated to each firm listed in Appendices 1 and 2 represents 38 percent of the amount each was allegedly overcharged. This figure is consistent with the terms of the Malco consent order which settled for 38 percent of the total amount of alleged overcharges. However, purchasers identified in the ERA audit as having allegedly been overcharged may attempt to show that they should receive refunds larger than those indicated.

[4] If we are unable to locate any firm listed in Appendix 2, we will reserve any funds allocated to that firm for distribution in a subsequent proceeding.

[5] This per gallon factor is computed by dividing the $58,842.70 available for distribution to unidentified purchasers under the Malco consent order by the 44,468,071 gallons which Malco sold to those purchasers during the consent order period.

In the PD&O we proposed that a demonstration of "banks" of unrecovered product costs, along with information regarding an applicant's competitive disadvantage in its local market, would be a sufficient showing of injury for reseller-retailer applicants claiming refunds above the $5,000 threshold.[6] *See, e.g., Triton Oil and Gas Corp./Cities Service Company,* 12 DOE ¶ 85, 107 (1984); *Tenneco Oil Company/Mid-Continent Systems, Inc.,* 10 DOE ¶ 85,009 (1982). We will continue to use this requirement for non-threshold reseller applicants, but we will use a modified requirement for retailers.

A modification of the injury requirement is justified because for 6½ months of the 10 month Malco consent order period, retailers of motor gasoline were not required to compute MLSPs with reference to May 15, 1973 selling prices and increased costs. *See* 10 CFR 212.93; 45 FR 29546 (1980). Instead, effective July 16, 1979, a retailer was required to calculate its MLSP under a fixed-margin approach set forth in the new rule. Unrecouped increased product costs could no longer be banked for later recovery. *Id.* Consequently, retailers were not required to maintain or compute cost banks during the 6½ month period. As a result, any requirement that a retailer claimant make a demonstration of injury like that contemplated for resellers, *i.e.,* based on unrecovered cost banks, would effectively eliminate all non-threshold retailer claimants for a portion of the consent order period. Therefore, in this proceeding, we will allow retailers which lack banks subsequent to July 16, 1979 to file a claim for a refund which exceeds $5,000.[7] Like resellers, retailers will be required for the entire consent order period to show that market conditions prevented them from recovering those increased product costs, *e.g.,* through a demonstration of reduced profit margins, decreased market shares, or depressed sales volumes.[8]

As in previous cases, only claims for at least $15 will be processed. We have found through our experience in prior refund cases that the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.,* 9 DOE ¶ 82,451 at 85,225 (1982). *See also* 10 CFR 205.286(b). The same principle applies here.

If valid claims exceed the funds available in the escrow account, all refunds will be reduced proportionately. Actual refunds will be determined after analyzing all appropriate claims.

III. Applications for Refund

We have determined that by using the procedures described above, we can distribute the Malco consent order funds as equitably and efficiently as possible. Accordingly, we will now accept applications for refund from individuals and firms who purchased motor gasoline from Malco between April 1, 1979, and January 31, 1980. As we proposed, a portion of the consent order funds will be distributed to the eligible firms listed in Appendices 1 and 2 that file applications for refund. We will also grant refunds to any other eligible purchasers or subsequent repurchasers of Malco motor gasoline which apply for refunds providing they make any necessary demonstrations of injury.

In order to receive a refund, each claimant will be required to submit either a schedule of its monthly purchases of motor gasoline from Malco or a statement verifying that it purchased motor gasoline from Malco and is willing to rely on the data in the audit file. Purchasers not identified by the ERA audit will be required to provide specific information as to the date, place, and volume of motor gasoline purchased, the name of the firm from which the purchase was made, and the extent of any injury alleged.

In addition, all applications must state:

(1) Whether the applicant previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding;

(2) Whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund;

(3) Whether the applicant is or has been involved as a party in DOE enforcement or private, section 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d); and

(4) The name and telephone number of a person who may be contacted by this Office for additional information.

Finally, each application must include the following statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

All applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision and Order in the **Federal Register.** A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals. Any applicant which believes that its application contains confidential information must indicate this and submit two additional copies of its application from which the information has been deleted. All applications should refer to Case No. HEF–0121 and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, D.C. 20585.

It is Therefore Ordered That:

(1) Applications for Refunds from the funds remitted to the Department of Energy by Malco Industries, Inc. pursuant to the Consent Order executed on November 10, 1981, may now filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

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[6] This injury requirement reflects the nature of the petroleum price regulations in effect beginning on August 19, 1973, and ending on July 16, 1979 for retailers, and on May 1, 1980 for resellers. Under the original rules, a reseller or retailer of motor gasoline was required to calculate its maximum lawful selling price (MLSP) by summing its selling price on May 15, 1973, with increased costs incurred since that time. A firm which was unable to charge its MLSP in a particular month could "bank" any unrecovered increased product costs, so that those costs could be recouped in a later month, if possible. *See* 10 CFR 212.93; 45 FR 29546 (1980).

[7] The cost bank requirement has been relaxed in other instances involving the change in the pricing regulations for motor gasoline. *See* Tenneco Oil Company/United Fuels Corporation, 10 DOE ¶ 85,005 at 88,017 n.1 (1982) (Tenneco).

[8] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit evidence of injury beyond purchase volumes. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,122 (1982) (Ada).

Dated: January 10, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appendix 1

FIRST PURCHASERS

First purchaser	Share of settlement [1]
Adams Sewer, 18100 Lanken Avenue, Cleveland, Ohio 44113	$47.79
Bosell Cheese, 17212 Miles Avenue, Cleveland, Ohio 44128	28.23
Bumper & Auto, 1651 E. 81st Street, Cleveland, Ohio 44103	[2] 9.38
Campbell Oil and Supply, 5445 Dunham Road, Maple Heights, Ohio 44137	21.26
Cuyahoga Valley Railroad, 315 Clark Avenue, Cleveland, Ohio 44113	21.15
Erie Distributors, 2020 Center Street, Cleveland, Ohio	101.25
Empire Glass, 7230 Northfield Road, Bedford, Ohio 44146	[2] 8.85
Gillota Industries, 300 Central Viaduct, Cleveland, Ohio 44115	106.56
Honeywell-Morse, 6707 Carnegie Avenue, Cleveland, Ohio 44103	[2] 8.85
Klausner Barrel, 2816 E 51st Street, Cleveland, Ohio 44104	20.62
Morgan Linen, 2013 Columbus Street, Cleveland, Ohio 44146	135.76
O'Brien Cut Stone, 19100 Miles Avenue, Cleveland, Ohio 44128	141.34
St. Clair Auto Body, 13608 St. Clair Street, Cleveland, Ohio 44110	28.23
A. Shaw Company, 940 E. 67th Street, Cleveland, Ohio 44113	79.48
State Fish, 1600 Merwin Avenue, Cleveland, Ohio 44113	52.13
Union Sheet Metal, 16722 Miles Avenue, Cleveland, Ohio 44128	19.38
Willoughby Iron & Waste, 3955 Church Street, Willoughby, Ohio 44094	[2] 10.62

[1] Not including accrued interest.
[2] As noted in the body of the Decision, we do not intend to process claims for less than $15.

Appendix 2

FIRST PURCHASERS, NO ADDRESS AVAILABLE

First purchaser	Share of settlement [1]
Adams Ale	$24.22
CSC	2,116.63
Midwest Marine	62.48
Sachs Brothers Metal	[2] 2.92

[1] Not including accrued interest.
[2] As noted in the body of the Decision, we do not intend to process claims for less than $15.

[FR Doc. 86-1135 Filed 1-16-86; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of December 23 Through December 27, 1985

During the week of December 23 through December 27, 1985, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also lists a submission that was dismissed by the Office of Hearings and Appeals.

Request for Exception

Andi-Co Applicances, Inc., 12/24/85, HEE-0103

Andi-Co Applicances, Inc. filed an Application for Exception from the provisions of 10 CFR Part 430, Subpart B, Appendix C in which the firm sought an exception from the energy test procedure applicable to dishwashers with respect to its AEG model 263i/265i dishwasher. On December 24, 1985, the Department of Energy issued a final Decision and Order concerning Andi-Co's exception request. In that Decision, the DOE stated that since the Office of Conservation had granted a Petition for Waiver which Andi-Co had filed with respect to the AEG dishwasher, the only issue that remained to be determined in the exception proceeding was whether permanent relief should be extended to 100 units of the dishwasher for which Andi-Co had received temporary exception relief. With respect to those 100 units, the DOE stated that the Proposed Decision and Order (PDO) issued to Andi-Co on December 18, 1984 corectly concluded that the regulations caused Andi-Co to experience a gross inequity and that the alternative test procedures set forth in the PDO were appropriate. Exception relief was therefore extended to Andi-Co with respect to 100 units of the AEG dishwasher.

Motion for Discovery

Traco Petroleum Co., 12/26/85, HRD-0237, HRH-0237

Traco Petroleum company filed Motions for Discovery and Evidentiary Hearing in connection with a Proposed Remedial Order (PRO) issued to the firm by the Economic Regulatory Administration (ERA). The discovery motion sought information from administrative records of DOE rulemakings, unofficial contemporaneous agency constructions of the regulations at issue (10 CFR Part 212, Subpart L), and information elaborating on the ERA's contentions in the PRO. In examining the motion, the DOE found that Traco had failed to show that the official record of the disputed regulations was insufficient or that the agency had interpreted the regulations inconsistently. The DOE therefore concluded that discovery of unofficial intra-agency documents would produce no relevant and material evidence. The DOE also pointed out that that PRO must stand or fall based on the specific conclusions of fact and law that it sets forth. Accordingly, the DOE found no basis for any discovery requiring ERA to elaborate on the contentions in the PRO.

The DOE also found that Traco's Motion for Evidentiary Hearing should be denied since Traco had failed to make the requisite showing that the record contained material factual issues in dispute. However, DOE afforded Traco the opportunity to submit additional evidence to support certain claims set forth in the firm's Statement of Objections.

Implementation of Special Refund Procedures

Mobil Oil Corporation, 12/24/85, HEF-0508

The Office of Hearings and Appeals issued a Decision and Order establishing special refund procedures for distributing funds obtained by the DOE through a consent order with Mobil Oil Corporation. As a result of the consent order, $27,000,000 plus interest will be distributed in accordance with the provisions of 10 CFR Part 205, Subpart V, of the DOE regulations to customers that purchased refined petroleum products from Mobil during the period March 6, 1973 through January 27, 1981 and were injured as a result of those purchases. The Decision sets forth specific information that must be included in refund applications. Refund applications must be filed by May 1, 1986.

Refund Applications

Cosby Oil Company/H.D. Distributors, 12/23/85, RF170-1

The DOE issued a Decision and Order concerning an Application for Refund filed by H.D. Distributors (H.D.), a reseller of motor gasoline purchased from Cosby Oil Company. H.D. requested a refund of $9,728, a prorated portion of the alleged overcharges to the firm, but was unable to make a sufficient showing of injury to merit a refund at that level. In accordance with the procedures established in the Cosby Special Refund Proceeding, the DOE determined that H.D. should receive a refund equal to the $5,000 maximum amount for small claims. The total refund amount granted in this Decision is $9,379 ($5,000 principal plus $4,379 interest).

Gulf Oil Corporation/Bob Mossbrooks Gulf and Firestone, 12/24/85, RF40-00302

The DOE issued a Decision and Order concerning an Application for Refund from the Gulf Oil Corporation escrow account filed by Bob Mossbrooks Gulf and Firestone. The refund procedures established in Gulf Oil Corporation, 12 DOE ¶ 85,048 (1984), require that an applicant demonstrate that it would not have been required to pass through to its customers a cost reduction equal to the refund claimed. Mossbrooks Gulf had lowered profit margins in August and September 1973. Beginning in October 1973, however, the firm's profit margins increased such that the gas station had negative cost banks during the entire period November 1, 1973 through January 31, 1976. Accordingly, Mossbrooks Gulf received a refund of $166 ($142 principal plus $24 interest) based on its purchases of 116,186 gallons of Gulf covered products during August and September 1973.

Warren Holding Company Puritan Oil Company, Inc., 12/23/85, RF169-0006

The DOE issued a Decision and Order concerning the Application for Refund filed by Puritan Oil Company, Inc., a reseller of Warren motor gasoline. The DOE denied the application upon a finding that Puritan was a subsidiary of Warren and had participated in some of the transactions in which overcharges were alleged. In considering the application, the DOE concluded that Puritan should be denied a refund under the equitable doctrine of unclean hands.

Dismissal

The following submission was dismissed:

Name and Case No.

Robert R. Supcoe, RF215-4

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: January 9, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86–1139 Filed 1–16–86; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $28,689.48 obtained as a result of consent orders which the DOE entered into with the following parties:

McClure's Service Station of Salisbury, Pennsylvania;

Lucia Lodge Arco of Big Sur, California;

Earl's Broadmoor Texaco Service of Houma, Louisiana.

The funds are being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, with reference to the appropriate proceeding:

McClure's Consent Order Proceeding (Case No. HEF–0128);

Lucia Lodge Consent Order Proceeding (Case No. HEF–0119);

Earl's Consent Order Proceeding (Case No. HEF–0566).

All comments should conspicuously display a reference to the appropriate case number.

FOR FURTHER INFORMATION CONTACT: Sharon Dennis, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to consent orders which settled possible pricing violations with respect to three firms' sales of motor gasoline during the consent order periods listed below. Under the terms of the consent orders each firm remitted a specified sum of money to the DOE. Each fund is being held in an individual interest-bearing escrow account pending determination of its proper distribution.

Consent order firm	Consent order period	Consent order amount
McClure's Service Station, Salisbury, PA.	Apr. 1, 1979–Sept. 30, 1979.	$2,683.66
Lucia Lodge Arco, Big Sur, CA.	Aug. 1, 1976–Aug. 31, 1978.	19, 546.91
Earl's Broadmoor Texaco Service, Houma, LA.	Aug. 1, 1979–Oct. 26, 1980.	6,459.41

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to individuals who purchased motor gasoline from any of the three firms. Since all purchasers were motorists and thus qualify as end users of the motor gasoline they purchased, all purchasers are considered to have suffered injury as a result of those purchases. Therefore, in order to document its injury, an applicant need only submit a schedule of the volumes of motor gasoline purchased during the consent order period relevant to the firm from which it purchased the product.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. The Decision proposes to distribute such funds, if any, to the States in which each firm operated. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in these proceedings will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: January 8, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

January 8, 1986.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: McClure's Service Station, Lucia Lodge Arco, Earl's Broadmoor Texaco Service

Date of Filing: October 13, 1983, October 13, 1983, March 4, 1985

Case Number: HEF–0128, HEF–0119, HEF–0566

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance wtih the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with consent orders entered into with McClure's Service Station (McClure's), and Lucia Lodge Arco (Lucia Lodge), and with Earl's Broadmoor Texaco Service (Earl's) on March 4, 1985 (hereinafter all of the companies referenced above will be collectively referred to as the consent order firms).

I. Background

McClure's Lucia Lodge, and Earl's are all "retailers" of motor gasoline as that term was defined in 10 CFR 212.31. McClure's is located in Salisbury, Pennsylvania, Lucia Lodge is located in Big Sur, California, and Earl's is located in Houma, Louisiana. A DOE audit of each of the firm's records revealed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR Part 212, Subpart F. Subsequently, each firm entered into a separate consent order with the DOE. The consent orders refer to ERA's allegations of overcharges, but note that there were no findings that violations occurred. Additionally, the consent orders state that the consenting firms do not admit that they committed violations. A brief discussion of the pertinent matters covered by each consent order follows.

The McClure's consent order covers the period April 1, 1979 through September 30, 1979. In order to settle all claims and disputes between McClure's and the DOE regarding McClure's compliance with the DOE price regulations in its sales of motor gasoline during the period covered by the audit, the firm entered into a consent order with the DOE on November 3, 1980. In accordance with the consent order, McClure's agreed to remit $2,683.66 to the DOE for deposit into an interest-bearing escrow account pending distribution by the DOE. McClure's paid the $2,683.66 in full on November 14, 1980.[1]

The Lucia Lodge consent order covers the firm's sales of motor gasoline made during the period August 1, 1976 through August 31, 1978. The consent order, which was made effective on September 3, 1981, resolved a Proposed Remedial Order (PRO) issued on November 17, 1978. The consent order required that Lucia Lodge deposit $19,546.41 into an interest bearing escrow account for ultimate distribution by the DOE. Lucia Lodge fulfilled this requirement on September 28, 1981.[2]

The period covered by Earl's consent order runs from August 1, 1979, through October 26, 1980. To settle all claims and disputes between Earl's and the DOE concerning Earl's sales of motor gasoline during the audit period, Earl's and the DOE entered into a consent order on August 31, 1981. The terms of the consent order required Earl's to deposit $5,700.00, plus interest, into an interest-bearing escrow account for ultimate distribution by the DOE. Including installment interest, Earl's actual deposits total $6,459.41. That sum will be considered the principal amount in this case. Earl's completed its payments on January 10, 1983.[3]

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines which may be used by OHA in formulating and implementing a plan of distribution for funds received as a result of enforcement proceedings. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who might have been injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶82,508 (1981), and *Office of Enforcement*, 8 DOE ¶82,597 (1981) (*Vickers*).

As in other Subpart V cases, we believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will attempt to provide refunds to identifiable purchasers of refined petroleum products who may have been injured by the consent order firms' pricing practices during their particular consent order periods. Any funds that remain after all meritorious first-stage claims have been paid may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶82,048 (1982) (*Amoco*).

III. Proposed Refund Procedures

A special refund proceeding is designed to provide restitution to parties that were injured as a result of alleged or actual regulatory violations. We therefore propose to establish a claims procedure in which we will accept applications for refund from customers who can demonstrate that they were injured as a result of any alleged overcharges committed by the firm from which they purchased motor gasoline during the relevant consent order period.

To aid us in the distribution of refunds we propose to adopt certain presumptions. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. 10 CFR 205.282(e). The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

As an initial matter, we will adopt a presumption that the alleged overcharges committed by the consent order firms were dispersed evenly among all sales of motor gasoline made by the firms during their relevant consent order periods. In the past, OHA has used a volumetric refund amount as an equitable means of distributing funds based on this presumption. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

We recognize that the impact on an individual purchaser could have been greater than that estimated by using the volumetric factor, and any purchaser may file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./ Siouxland Propane Co.*, 12 DOE ¶85,054 (1984), and cases cited therein at 88,164.

Using a volumetric approach, a successful claimant's refund is determined by multiplying a factor, or the volumetric refund amount, by the number of gallons of motor gasoline purchased by the claimant. For claimants which purchased motor gasoline from McClure's, the volumetric factor is $0.024116 per gallon.[4] For successful applicants applying for a share of the Lucia Lodge escrow account, the volumetric factor is $0.044747 per gallon.[5] The volumetric factor for successful claimants from the Earl's settlement amount is $0.008058.[6]

In addition to the volumetric presumption, we are making a finding that the consent order firms' customers, all of whom were ultimate consumers of the motor gasoline purchased, were injured by the alleged overcharges settled in the separate consent orders. Obviously, individual, consumer-purchasers absorbed the increased product costs, as distinguished from resellers which may have had the opportunity to pass through those costs to their own customers. *See Thornton Oil Corp.*, 12 DOE ¶85,112 (1984). We propose, therefore, that end users of motor gasoline purchased from the consent order firms need only document their purchase volumes to make a sufficient showing that they were injured by the alleged overcharges.

Purchase documentation may be in the form of credit card or other receipts and, if no gallonage is recorded on the receipt, customers may extrapolate purchase volumes by estimating the per gallon price of the motor gasoline. However, we reason that many potential applicants will no longer have their receipts from purchases of motor gasoline made so many years ago. Therefore, we propose that applicants

[1] As of November 30, 1985, the McClure's escrow account contained $4,740.87, representing $2,683.66 in principal, and $2,057.21 in accrued interest.

[2] As of November 30, 1985, the Lucia Lodge escrow account contained $29,654.93, representing $19,546.41 in principal, and $10,108.52 in accrued interest.

[3] As of November 30, 1985, Earl's escrow account contained $7,118.29, representing $6,459.41 in principal, and $658.88 in accrued interest.

[4] This figure was derived by dividing the $2,683.66 principal amount by the 111,283.5 gallons of motor gasoline sold by McClure's during the consent order period.

[5] This figure was derived by dividing the $19,546.41 principal amount by the 436,823.2 gallons of motor gasoline which the company stated it sold during the consent order period.

[6] This figure was derived by dividing the 801,568.6 gallons of motor gasoline sold by Earl's during the period covered by the consent order, into the $6,459.41 which Earl's deposited into escrow.

may submit estimates of purchases accompanied by a detailed explanation of how the estimated purchase volumes were derived.[7] *Id.* at 88,330.

As in previous cases, only claims for at least $15 plus interest will be processed. In prior refund cases we have found that the cost of processing claims for smaller amounts outweighs the benefits of restitution. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.[8]

Our experience with similar cases concerning the distribution of refunds to customers of retail service stations leads us to believe that although many of the customers from the three consent order firms may have legitimate claims, most of these claims will fall below the $15 threshold, thus leaving most of the funds in escrow. Any funds that remain after all meritorious first stage claims have been paid may be distributed in a number of ways in a subsequent proceeding. Although we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed, we believe that it will be useful to describe proposals for second stage refunds which have been implemented by OHA in the past.

The objective of second stage refund proceedings is to restore the status quo ante by returning the remaining funds obtained by the DOE by those who were injured by the alleged overcharges. For example, in *Windham Gas and Oil Company*, 12 DOE ¶85,172 (1985) (*Windham*), the remaining consent order funds were distributed to the State of Ohio with the understanding that the state was to formulate a plan which would provide effective and efficient restitution to the consumers of motor gasoline living in the region in which Windham operated. *See also Office of Enforcement*, 11 DOE ¶85,174 (1983) (*Nordstrom*). Where channeling refunds to specified customers, to a locality, state or a multi-state area is impractical or impossible, *e.g.*, in certain cases where overcharges had a nationwide impact, a direct refund to the United States Treasury has been utilized. *See Windham*, 12 DOE at 88,537.

The consent order firms in this case are all service stations and as such, we can assume that the effects of their alleged overcharges were generally confined to the local area in which each operated. Therefore, we propose to distribute any funds which remain in each escrow account to the state in which each firm operated. *See Lockeed Air Terminal, Inc.*, HEF–0117 (December 13, 1985) (Proposed Decision). We encourage the submission by interested parties of proposals which address alternative methods of distributing those monies.

It Is Therefore Ordered That:

The refund amounts remitted to the Department of Energy by McClure's Service Station, Lucia Lodge Arco, and Earl's Broadmoor Texaco Service, pursuant to the consent orders executed on November 3, 1980, September 3, 1981, and August 31, 1981, respectively, will be distributed in accordance with the foregoing Decision.

[FR Doc. 86–1136 Filed 1–16–86; 8:45 am]

BILLING CODE 6450–01–M

[7] This information might include the type and number of vehicles owned, the number of miles driven, etc.

[8] Under the volumetric method for allocating refunds in this proceeding, we calculated that a purchaser which files a claim from the McClure's escrow account must have purchased at least 622 gallons of motor gasoline from the station during the 6-month consent order period in order to qualify for the $15 refund. For purchasers which purchased motor gasoline from Lucia Lodge, the volumes of motor gasoline necessary to qualify them for the minimum refund amount is 335.4 gallons over the 25-month consent order period. In addition, a purchaser from Earl's must have bought 1,861.5 gallons over the 15-month consent order period in order to qualify for a $15 refund.

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $45,000 obtained as a result of a consent order which the DOE entered into with Parman Oil Corporation, a reseller-retailer of refined petroleum products located in Nashville, Tennessee. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to case number HEF–0145.

FOR FURTHER INFORMATION CONTACT: Sharon Dennis, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $45,000 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Parman Oil Corporation. The funds were provided to the DOE by Parman to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of motor gasoline and No. 2 fuel oil during the period November 1, 1973, through February 29, 1976.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to firms and individuals who may have been overcharged in their purchases of motor gasoline and/or No. 2 fuel oil from Parman. In order to obtain a refund, a claimant will be required to submit a schedule of its monthly purchases from Parman and to demonstrate that it was injured by Parman's pricing practices. Applicants must submit specific information regarding the date and volume of product purchased, whether the increased costs were absorbed by the claimant or passed through to other purchasers. and the extent of any injury alleged to have been suffered. An applicant claiming $5,000 or less, however, will be required to document only its purchase volumes. Indirect purchasers will also be required to provide the name of the firm from which the purchase was made as well as the reason why it believes the product was initially sold by Parman.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice All

comments received in these proceedings will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: January 8, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

January 8, 1986.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Parman Oil Corporation
Date of Filing: November 23, 1983
Case Number: HEF-0145

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of subpart V, on November 23, 1983, EPA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Parman Oil Corporation (Parman).

I. Background

Parman is a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31 and is located in Nashville, Tennessee. A DOE audit of Parman's records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. Based on the audit, the DOE alleged that between November 1, 1973 and February 29, 1976, Parman committed certain pricing violations with respect to its sales of motor gasoline and No. 2 oil.

In order to settle all claims and disputes between Parman and the DOE regarding the firm's sales of motor gasoline and No. 2 oil during the period covered by the audit, Parman and the DOE entered into a consent order on September 20, 1979. The consent order resolved a Notice of Probable Violation (NOPV) issued on December 2, 1976. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. In addition, the consent order states that Parman does not admit that it violated the regulations.

Under the terms of the consent order, Parman agreed to deposit $5,000 into an interest-bearing escrow account for ultimate distribution by the DOE. The consent order was paid in full on October 26, 1979. This decision concerns the distribution of the funds in the Parman escrow account.[1]

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines which may be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) *Vickers*).

As in other Subpart V cases, we believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will attempt to provide refunds to identifiable purchasers of refined petroleum products that were injured by Parman's alleged pricing practices between November 1, 1973 and February 29, 1976 (the consent order period). Any funds that remain after all meritorious first-stage claims have been paid may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identifiable Purchasers

Identification of first purchasers in only the first step in the distribution process. We must also determine whether the first purchasers were injured or were able to pass through the alleged overcharges. To aid us in our assessment of a purchaser's injury, we propose the adoption of certain presumptions. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The first presumption we plan to use in that claimants seeking small refunds were injured by the pricing practices of the firm from which they purchased products. There are a number of bases for such a presumption. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). The firms that will be eligible for refunds are purchasers that were in the chain of distribution of the products to which the alleged overcharges attached. These purchasers therefore experienced some impact of the alleged overcharges. Without some presumptions as to injury, in order to support a specific claim of injury, a claimant would have to compile and submit very detailed factual information regarding the impact of alleged overcharges which occurred many years ago. This procedure is generally time-consuming and expensive. In the case of relatively small claims, the cost to the claimant of gathering the necessary information and the cost to OHA of analyzing it could certainly exceed the expected refund and whatever benefits are derived from any additional precision. Consequently, without simplified procedures, some potential claimants would be effectively denied an opportunity to seek a refund since it would be uneconomic to do so. As a result, we intend to adopt a small claims presumption which will eliminate the need for a claimant to submit and OHA to analyze extensive, detailed proof of what resulted from the initial impact of the alleged overcharges.

Under the small-claims presumption, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Several factors determine the value of this threshold. Principal among these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low and the consent order period is many years past, $5,000 is a

[1] As of November 30, 1985, the Parman escrow account contained a total of $83,921.72, representing $45,000 in principal and $38,921.72 in accrued interest.

reasonable value for the threshod. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984); *Office of Special Counsel*, 11 DOE ¶ 85,226 (1984) (*Conoco*), and case cited therein.

However, a reseller or retailer which seeks a refund of more than $5,000 will be required to document its claim. While there are a variety of methods by which a claimant could show that it did not pass the alleged overcharges on to its customers, the claimant would generally have to show that at the time of the alleged overcharges, it maintained a "bank" of unrecovered costs, and that market conditions would not permit it to pass through those increased costs.[2]

In addition, we will adopt a presumption that the alleged overcharges were dispersed evenly among all sales of motor gasoline and No. 2 oil made by Parman during the consent order period. In the past, OHA has used a volumetric refund amount as an equitable means of distributing funds based on this presumption. In the absence of better information, the volumetric presumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Using a volumetric approach means that a portion of the Parman consent order amount would be allocated to each gallon of product which a successful claimant purchased from the consent order firm. The average per gallon refund, or volumetric refund amount, in this proceeding is $0.001227 per gallon.[3]

We recognize that the impact on an individual purchaser could have been greater than that estimated by using the volumetric factor, and any purchaser may file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See Sid Richardson Carbon & Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984), and cases cited therein.

In addition, we are making a proposed finding that end users whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges. These entities were not subject to DOE regulations during the relevant period, and are thus outside our inquiry about pass-through of injury. *See Office of Enforcement* 10 DOE ¶ 85,072 (1983) (*PVM*); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. Therefore, we propose that for end users of motor gasoline and No. 2 oil sold by Parman, documentation of purchase volumes will provide a sufficient showing of injury.

Finally, if a reseller or a retailer made only spot purchases, we propose that it should not receive a refund since it is unlikely to have been injured. As we previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. We believe the same rationale holds true in the present case. Therefore, we propose that firms which made only spot purchases from Parman not receive refunds unless they present evidence which rebuts the spot purchaser presumption and establishes the extent to which they were injured as a result of their purchases of motor gasoline and No. 2 oil from the firm during the consent order period.

In addition, we propose that firms whose prices and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to provide a detailed demonstration that they absorbed the alleged overcharges associated with Parman's sales of motor gasoline and No. 2 oil. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 (1982) (*Tenneco*), and *Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Those firms should provide with their applications a full explanation of the manner in which refunds would be passed through to their customers and of how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 plus interest will be processed. In prior refund cases we have found that the cost of processing claims for smaller amounts outweights the benefits of restitution. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

B. Applications for Refund

Any purchaser claiming a portion of the consent order funds should file an Application for Refund pursuant to 10 CFR 205.283. In its application, a claimant must include a schedule of its monthly purchases of motor gasoline and/or No. 2 oil from Parman. Applicants should also provide all relevant information necessary to support their claim in accordance with the presumptions stated above. A claimant must also indicate whether it has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a charge in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in any DOE enforcement or private, § 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any charge in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

C. Distribution of Remaining Consent Order Funds

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Parman Oil Corporation pursuant to the consent order executed on September 20, 1979,

[2] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit evidence of injury beyond documentation of volumes purchased. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,125 (1982) (Ada).

[3] This per gallon factor is computed by dividing the $45,000 principal amount by the 36,683,588 gallons of motor gasoline and No. 2 oil which Parman sold throughout the consent order period.

will be distributed in accordance with the foregoing decision.

[FR Doc. 86-1137 Filed 1-16-86; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $12,486.57 obtained as a result of a consent order which the DOE entered into with Post Petroleum Company, a reseller-retailer of petroleum products located in West Sacramento, California. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund of a portion of the Post consent order funds must be filed in duplicate and must be received within 90 days of publication of this notice in the **Federal Register.** All applications should refer to Case Number HEF-0154 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Walter J. Marullo, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The decision relates to a consent order entered into by the DOE and Post Petroleum Company which settled all claims and disputes between Post and the DOE regarding the manner in which Post applied the federal price regulations with respect to its sales of motor gasoline during the period April 1, 1979, through September 30, 1979 (consent order period). A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribuition of the Post consent order funds was issued on September 10, 1985. 50 FR 38,189 (September 20, 1985).

The Decision sets forth procedures and standards that the DOE has formulated to distribute the contents of an escrow account funded by Post pursuant to the consent order. The DOE has decided to accept Applications for Refund from firms and individuals that purchased motor gasoline sold by Post during the consent order period. Eligible applicants include downstream customers as well as first purchasers. In order to receive a refund, a claimant will be required to submit a schedule of its monthly purchases of Post motor gasoline and to demonstrate that it was injured by Post's pricing practices. A downstream purchaser must also submit the name of its immediate supplier and indicate why it believes the motor gasoline was originally sold by Post.

As the accompanying Decision and Order indicates, applications for refunds may now be filed by customers who purchased motor gasoline sold by Post during the consent order period. Applications will be accepted provided they are received no later than 90 days after publication of this Decision and Order in the **Federal Register.** The specific information required in an Application for Refund is set forth in the Decision and Order.

Dated: January 9, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

January 9, 1986.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Petitioner: Post Petroleum Company.

Date of Filing: October 13, 1983.

Case Number: HEF-0154.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Post Petroleum Company (Post). This Decision and Order contains the procedures which the OHA has formulated to distribute the funds received pursuant to that consent order.

I. Background

Post is a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31 and is located in West Sacramento, California. A DOE audit of Post's records revealed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR Part 212, Subpart F. The audit alleged that between April 1, 1979, and September 30, 1979 (consent order period), Post committed possible pricing violations amounting to $13,710 with respect to its sales of motor gasoline.

In order to settle all claims and disputes between Post and the DOE regarding the firm's sales of motor gasoline during the period covered by the audit, Post and the DOE entered into a consent order on September 29, 1981. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. Additionally, the consent order states that Post does not admit that it violated the regulations.

Under the terms of the consent order, Post was required, in a series of installments, to deposit $10,680, plus interest, into an interest-bearing escrow account for ultimate distribution by the DOE. Post made its final payment on June 7, 1983.[1]

II. Jurisdiction and Authority to Fashion Refund Procedures

The general guidelines which the OHA may use to formulate and implement a plan to distribute funds received as the result of a consent order are set forth in 10 CFR Part 205, Subpart V. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement,* 9 DOE ¶82,508 (1981); and *Office of Enforcement,* 8 DOE ¶82,597 (1981).

On September 10, 1985, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of refunds to parties that can make a reasonable showing of injury as a result of Post's alleged violations in its sales of motor gasoline during the consent order period. 50 FR 38189 (September 20, 1985). The PD&O stated that the basic purpose of a special refund proceeding is to make restitution for injuries that were experienced as a result of actual or alleged violations of the DOE regulations.

In order to give notice to all potentially affected parties, a copy of

[1] Post paid $12,486.57, including installment interest into the escrow account. This amount represents the principal which will form the basis for refund calculations. The total value of the Post account stood at $16,561.79 as of November 30, 1985.

the Proposed Decision was published in the **Federal Register** and comments regarding the proposed refund procedures were solicited. In addition, a copy of the PD&O was mailed to each purchaser identified in the audit file whose address was available. [2] Copies were also sent to various petroleum dealers associations. Since no comments were received, the procedures outlined in the PD&O will be adopted.

III. Refunds to Identifiable Purchasers

In the first stage of the Post refund proceeding, we will distribute the funds currently in escrow to claimants that demonstrate that they were injured by the alleged overcharges. In order to be eligible to receive a refund, claimants will have to file an application and, with the three exceptions discussed below, show the extent to which they were injured by the alleged overcharges. To the extent that any individual or firm can establish injury, it will be eligible for a share of the consent order fund.

In this case we will adopt two rebuttable presumptions as well as two findings regarding injury. These presumptions and findings have been used in many previous special refund cases. First, we will presume that purchasers of Post motor gasoline who are claiming small refunds ($5,000 or less) were injured by the alleged overcharges. Second, in the absence of compelling material, we will adopt a presumption that spot purchasers were not injured. Third, we will make a finding that end-users or ultimate consumers of Post motor gasoline whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges. Lastly, we will not require a detailed demonstration of injury from regulated utilities or agricultural cooperatives that purchased Post motor gasoline and passed the alleged overcharges associated with that product through to their end-user members. Prior OHA decisions provide detailed explanations of the bases of these presumptions and findings. *E.g., Peterson Petroleum, Inc.*, 13 DOE ¶85,191 at 88,508–10 (1985). The rationale for their use was also fully explained in the PD&O. 50 Fed Reg. 38,188 at 38,190–91 (September 20, 1985). These presumptions and findings will permit claimants to apply for refunds without incurring disproportioate expenses and will enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

In the PD&O we proposed that a demonstration of "banks" of unrecovered product costs, along with information regarding an applicant's competitive disadvantage in its local market, would be a sufficient showing of injury for reseller-retailer applicants claiming refunds above the $5,000 threshold. [3] *See, e.g., Triton Oil and Gas Corp./Cities Service Company*, 12 DOE ¶ 85,107 (1984); *Tenneco Oil Company/Mid-Continent Systems, Inc.*, 10 DOE ¶85,009 (1982). We will continue to use this requirement for non-threshold reseller applicants, but we will use a modified requirement for retailers.

A modification of the injury requirement is justified because for 2½ months of the 6 month Post consent order period, retailers of motor gasoline were not required to compute MLSPs with reference to May 15, 1973 selling prices and increased costs. *See* 10 CFR § 212.93; 45 FR 29546 (1980). Instead, effective July 16, 1979, a retailer was required to calculate its MLPS under a fixed-margin approach set forth in the new rule. Unrecouped increased product costs could no longer be banked for later recovery. *Id.* Consequently, retailers were not required to maintain or compute cost banks during the 2½ month period. As a result, any requirement that a retailer claimed make a demonstration of injury like the contemplated for resellers, *i.e.*, based on unrecovered cost banks, would effectively eliminate all retailer claimants for a portion of the consent order period. Therefore, in this proceeding, we propose that retailers which lack banks subsequent to July 16, 1979 may still file a claim for a refund which exceeds the small claim refund. [4] Like resellers, retailers will be required for the entire consent order period to show that market conditions prevented them from recovering those increased product costs, *e.g.*, through a demonstration of reduced profit margins, decreased market shares, or depressed sales volumes. [5]

A. Calculation of Refund Amounts

We will use a volumetric method to determine the refunds of eligible applicants. This method presumes that the alleged overcharges were spread equally over all the gallons of motor gasoline sold by Post during the consent order period. Under the volumetric method, a claimant will be eligible to receive a refund equal to the number of gallons of Post motor gasoline it purchased times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $0.017153. [6] In addition, successful claimants will receive a proportionate share of the accrued interest.

We recognize that a particular purchaser could have suffered a disporprotionate share of the alleged overcharges. Any purchaser who can make a showing of disproportionate overcharge may file a refund application based on such a claim.

As in previous cases, only claims for at least $15 will be processed. We have found through our experience in prior refund cases that the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 85,541 at 85,225 (1982). *See also* 10 CFR 205.286(b). The same principle applies here.

If valid claims exceed the funds available in the escrow account, all refunds will be reduced proportionately. Actual refunds will be determined after analyzing all appropriate claims.

IV. Applications for Refund

We have determined that by using the procedures described above, we can

[2] Appendix A lists customers for which we have complete addresses. Customers for which we have city or town locations but are lacking street addresses are contained in Appendix B. Finally, Appendix C lists customers for which we have no addresses at all. We will accept information regarding the identity and present locations of the purchasers listed in Appendices B and C for a period of 90 days following publication of this final Decision and Order.

[3] This injury requirement reflects the nature of the petroleum price regulations in effect beginning on August 19, 1973, and ending on July 16, 1979 for retailers, and on May 1, 1980 for resellers. Under the original rules, a reseller or retailer of motor gasoline was required to calculate its maximum lawful selling price (MLSP) by summing its selling price on May 15, 1973, with increased cost incurred since that time. A firm which was unable to change its MLSP in a particular month could "bank" any unrecovered increased product cost, so that those costs could be recouped in a later month, if possible. *See* 10 CFR 212.93; 45 FR 29546, (1980).

[4] The cost bank requirement has been relaxed in other instances involving the change in the pricing regulations for motor gasoline. *See* Tenneco Oil Company/United Fuels Corporation, 10 DOE ¶ 85,005 at 88.017 n.1 (1982) (Tenneco).

[5] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit evidence of injury beyond purchase volumes. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,122 (1982) (Ada).

[6] This figure is derived by dividing the $12,486.57 principal amount by the 727,934 gallons of motor gasoline estimated to have been sold by Post between April 1, 1979 and September 30, 1979. The estimated volume of motor gasoline sold during the six month consent order period was extrapolated from the sales of the four months for which we have actual data.

distribute the Post consent order funds as equitably and efficiently as possible. Accordingly, we will now accept applications for refunds from individuals and firms who purchased motor gasoline sold by Post between April 1, 1979, and September 30, 1979. Eligible applicants include downstream customers as well as first purchasers.

There is no specific application form which must be used. In order to receive a refund, each claimant must submit the following information

(1) A schedule of its monthly purchases of Post motor gasoline along with any relevant information necessary to support its claim in accordance with the presumptions and findings outlined above. If the applicant was a downstream purchaser it must also submit the name of its immediate supplier and indicate why it believes the motor gasoline was originally sold by Post;

(2) Whether the applicant has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding;

(3) Whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund;

(4) Whether the applicant is or has been involved as a party in DOE enforcement or private, section 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d); and

(5) The name and telephone number of a person who may be contacted by this Office for additional information.

Finally, each application must include the following statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

All applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision and Order in the **Federal Register**. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals. Any applicant which believes that its application contains confidential information must indicate this and submit two additional copies of its application from which the information has been deleted. All applications should refer to Case No. HEF–0154 and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

It Is Therefore Ordered That:

(1) Applications for refunds from the funds remitted to Department of Energy by Post Petroleum Company pursuant to the consent order executed on September 29, 1981, may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: January 9, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appendix A—Post Petroleum Company, First Purchasers

Mr. Peter Amourso, 3460 Amourso Way, Roseville, CA 95678
Mr. Lowell, Burnet & Sons, Post Office Box 1646, Sacramento, CA 95808
Mr. Ralph Martson, C & R News, Post Office Box 2401, Sacramento, CA 95811
Ms. Nancy Cox, Calvada Sales, Post Office Box 13159, 444 Richards Boulevard, Sacramento, CA 95813
Mr. Bill Christophel, 2400 Orchard Lane, Sacramento, CA 95813
Mr. S. R. Dewsnup, Route Box 2255, Davis, CA 95616
Mr. Michael Dutra, 8000 Pocket Road, Sacramento, CA 95831
Mr. Tony Dutra, 8000 Pocket Road, Sacramento, CA 95831
Mr. Austin Carroll, 6200 Green Back Lane, Citrus Heights, CA 95610
Mr. John Gill, John Gill Livestock, 4315 Rand Lane, Sacramento, CA 95825
Mr. Roger Griess, 8022 Pocket Road, Sacramento, CA 95822
Mr. Charlie Haight, Haight Nursery, Route Box 990, Roseville, CA 95678
Ms. Karon Gutierrez, La Fiesta Mexican Foods, 910 X Street, Sacramento, CA 95818
Mr. Munger, El Macero, Post Office Box 2005, El Macero, CA 95811
Mr. Gabe Machado, 2651 El Centro Road, Sacramento, CA 95833
Mr. Ben McIntyre, McIntyre Turkey Farm, 9150 Sierra College Boulevard, Roseville, CA 95895
Mr. C.R. Mortensen, 2390 Elverta Road, Elverta, CA 95626
Swallows Nest, 2245 Orchard Lane, Sacramento, CA 95833
Mr. Joe Valine, Joe Valine, Farmer, 5985 Riverside Boulevard, Sacramento, CA 95831
Mr. Floyd Gentle, Wood Products, 2225 Evergreen, Sacramento, CA 95815
Howard & Son Automotive Repair, 1900 L Street, Sacramento, CA 95814
Coffee Break Service, 6316 27th Street, Sacramento, CA 95822
Rainbow Liquor Co., Inc., 3840 Pell Circle, Sacramento, CA 95838
Camellia Carpet Co., Inc., 6300 27th Street, Sacramento, CA 95824
Eastman Building Products, 8191 Elder Creek Road, Sacramento, CA 95824
Weatherite Insulation, 7364 LaTour Drive, Sacramento, CA 95842
O'Neal Plumbing, 1804 Eldridge Avenue, Sacramento, CA 95815
AAA Crane Inc., 2445 Harvard, Sacramento, CA 95815
Modern Construction, Inc., 1345 Silica Avenue, Sacramento, CA 95815
Warren Electric Company, 6390 Freeport B1, Sacramento, CA 95822
Labrie's Waterbeds, 1908 El Camino Avenue, Sacramento, CA 95815
BZ Service Station Maintenance, 1700 South River Road, West Sacramento, CA 95691
Capital City Automotive, 1770 36th Street, Sacramento, CA 95816
Backyard Pools of California, 5700 Garfield Avenue, Sacramento, CA 95841
Pete's Mobile Home Sales, 1101 El Camino Avenue, Sacramento, CA 95815
AAA Tile Contractors Inc., 2635 47th Avenue, Sacramento, CA 95822
Steve Anderson's Plumbing, 5930 Stanley Avenue, Carmichael, CA 95608
Curtis Roofing, 7475 14th Avenue, Sacramento, CA 95820
California Builders Supply, 1201 Blumenfeld Drive, Sacramento, CA 95815
O'Dell's Pump & Motor Service, 796 Del Paso Boulevard, Sacramento, CA 95815
Davison Iron Works, 7500 14th Avenue, Sacramento, CA 95820
Zenith Construction, 4801 24th Street, Sacramento, CA 95822
Bob Frink Chevrolet, 4811 Madison Avenue, Sacramento, CA 95841
New Roma Bakery, 1800 E Street, Sacramento, CA 95814
Mario's Landscaping, 6140 Marysville Boulevard, Rio Linda, CA 95673
Cultured Marble Products, 1630 Kathleen Avenue, Sacramento, CA 95815
Wing Lee Meats Inc., 3075 West Capitol Avenue, West Sacramento, CA 95691
Cahill Fiberglass Co., Inc., Post Office Box 20038, Sacramento, CA 95820

Golsong W. B. Plumbing & Heating, Post Office Box 947, Carmichael, CA 95608
Delta Pest Control, Post Office Box 22689, Sacramento, CA 95822
Sacramento Construction, 2635 47th Avenue, Sacramento, CA 95822
Allen's Drilling & Pump Service, 2329 Elkhorn Boulevard, Rio Linda, CA 95673
Best Pipe & Steel Inc., 4049 Channel Drive, West Sacramento, CA 95691
General Roofers, 2451 26th Avenue, Sacramento, CA 95822
G.B.C. Realtors, 6001 Folsom Boulevard, Sacramento, CA 95819
Ray Cook, 5800 Warehouse Way, Sacramento, CA 95826
Bill Rusher, 2200 Garden Highway, Sacramento, CA 95833
Lloyd Lee, 112 Q Street, Sacramento, CA 95673
John F. Otto, 1717 2d Street, Sacramento, CA 95814
Glen Emmerton, 3100 Ozzie Court, Carmichael, CA 95608
Frank D. Machado, 3600 Airport Road, Sacramento, CA 95834
John Sing, Jr., 3590 Airport Road, Sacramento, CA 95834

Appendix B—Post Petroleum Company, First Purchasers, No Street Address Available

Firm	City
Anderson's Plumbing	Carmichael, CA.
Golsong Plumbing	Carmichael, CA.
Oleta Wendall	Citrus Heights, CA.
Passmore & Arrister	Citrus Heights, CA.
B.K. Howard Ranch	Davis, CA.
Davis Rental Center	Davis, CA.
West-Pak, Inc.	Emeryville, CA.
Jack Matney Ranch	Elk Grove, CA.
L&M Liquor	El Macero, CA.
Jerrold Dairby	Elverta, CA.
Naumann Construction	Fair Oaks, CA.
Sierra View Chapel	Fair Oaks, CA.
Agate Sales	Grass Valley, CA.
Jim Nurmera	Latrobe, CA.
Lloyd Hodge	Orangevale, CA.
Art Lund	Orangevale, CA.
J-Bar-A Ranch	Pleasant Grove, CA.
Jake Hanford	Pleasant Grove, CA.
Jerold Dailey	Pleasant Grove, CA.
Joe Glover	Pleasant Grove, CA.
R.W. Lutz	Pleasant Grove, CA.
Arnold Varti	Rio Linda, CA.
Bill Hackett	Rio Linda, CA.
Comerine Concrete	Rio Linda, CA.
Dick Hendrix	Rio Linda, CA.
Ottis Happer	Rio Linda, CA.
Parchal and Tanaka	Rio Linda, CA.
Wayne McCammand	Rio Linda, CA.
Gene Backhoe	Rocklin, CA.
Sunset-Whitney	Rocklin, CA.
Bill Harke	Roseville, CA.
Crabtree Painting	Roseville, CA.
Dan Riolo	Roseville, CA.
Dennis Marling	Roseville, CA.
Dorman's Backhoe	Roseville, CA.
Frank Riolo	Roseville, CA.
Jack Brezendine	Roseville, CA.
Marling Window Treatments	Roseville, CA.
Richard Riola	Roseville, CA.
Ron Riolo	Roseville, CA.
Shiloh Ranch	Roseville, CA.
Terry Taylor	Roseville, CA.
V.W. Zymalt	Roseville, CA.
Virgil Zumwalt	Roseville, CA.
Woody Wilson	Roseville, CA.
California Concrete	Roseville, CA.
Terry Taylor	Roseville, CA.
ABC Service	Sacramento, CA.
Amos J. Walker Electrical	Sacramento, CA.
Arlin Damion	Sacramento, CA.
Art Hatton	Sacramento, CA.
B&D Industries	Sacramento, CA.
Barberian Bros	Sacramento, CA.
Belmont Bob's	Sacramento, CA.
Beneto, Inc	Sacramento, CA.
Betty Palmeroy	Sacramento, CA.
Bob Fray	Sacramento, CA.
Bob Ray	Sacramento, CA.
Building Improvement	Sacramento, CA.
Bunch, Johnson & Guilory	Sacramento, CA.
Capital City Automotive	Sacramento, CA.
Carmichael Honda	Sacramento, CA.
D&L Enterprises	Sacramento, CA.
Diamond Concrete	Sacramento, CA.
Dynamic Research	Sacramento, CA.
Ed Bianchi	Sacramento, CA.
Ed Hada	Sacramento, CA.
Ed Kozloski	Sacramento, CA.
Elvin Christophle	Sacramento, CA.
Farm Air Inc	Sacramento, CA.
Flint Equipment	Sacramento, CA.
George Farr	Sacramento, CA.
George S. Enterprise	Sacramento, CA.
Gocham Excavating	Sacramento, CA.
H&L Enterprises	Sacramento, CA.
Hapsco Company	Sacramento, CA.
Harrison Mechanic	Sacramento, CA.
Hickey & Sons	Sacramento, CA.
Howard & Sons	Sacramento, CA.
I.T.C. Thermadyne	Sacramento, CA.
J.H. Phillips Company	Sacramento, CA.
J.L. Sharkley	Sacramento, CA.
J. Morris & Son	Sacramento, CA.
Jack Bary	Sacramento, CA.
Jimmy Johnson	Sacramento, CA.
Jow Eufrazia	Sacramento, CA.
John Costello	Sacramento, CA.
John Goodrun	Sacramento, CA.
Land Park Kiddie Land	Sacramento, CA.
Larry Raposa	Sacramento, CA.
Lawrence Hickory & Son	Sacramento, CA.
Lucchesi Enterprises	Sacramento, CA.
M.D. Silva	Sacramento, CA.
Manchei Firewood Sales	Sacramento, CA.
Manual Ferreria	Sacramento, CA.
Marrtler Firewood	Sacramento, CA.
Marty Shiro Ranch	Sacramento, CA.
Mary Cufrazia	Sacramento, CA.
Nielsen Nickler	Sacramento, CA.
Northwestern Glass	Sacramento, CA.
P.E. O'Hair	Sacramento, CA.
Pete's Trailers	Sacramento, CA.
R.K. Service	Sacramento, CA.
RJM Enterprises	Sacramento, CA.
Raschal & Tarralia Inc	Sacramento, CA.
Richard Pierce	Sacramento, CA.
Rix Langley	Sacramento, CA.
Robert Walker Mechanical	Sacramento, CA.
Rodney Bovia	Sacramento, CA.
Ron Kitcherside	Sacramento, CA.
Roofer, Inc	Sacramento, CA.
Sacramento Construction	Sacramento, CA.
Sal Gomez	Sacramento, CA.
Schroeder Refrigeration	Sacramento, CA.
Sierra Landworks	Sacramento, CA.
Taylor Manufacturing	Sacramento, CA.
Ted Latuna	Sacramento, CA.
Thomas F. Scollan company	Sacramento, CA.
Tortia, Inc	Sacramento, CA.
Valley Automatic Sprinkler	Sacramento, CA.
Village Auto Mart	Sacramento, CA.
West Dwyer	Sacramento, CA.
William F. Gormley & Sons	Sacramento, CA.
Juarze Concrete Company	San Jose, CA.
Fred Long	Shingle Springs, CA.
Jim Nurmgore	Shingle Springs, CA.
John Gill Ranch	Sloughouse, CA.
Lawrence Hickey & Son	Tucson, Arizona
BZ Service Station Maintenance	West Sacramento, CA.
Camellia Mechanical	West Sacramento, CA.
Dan-Mar	West Sacramento, CA.
Earl Handy	West Sacramento, CA.
McLaughlin Drainline	West Sacramento, CA.
Wing Lee	West Sacramento, CA.
Roy Theep	Wilton, CA.
Schaffer Ranch	Wilton, CA.
John Perry	Woodland, CA.

Appendix C—Post Petroleum Company, First Purchasers, No Address Available

Frank Bamchini
Rodnye Bovia
Mitch Clark
West Dwyer
Garrison Apiaries
John Goodwin
Insulation Professionals
Nancy Moran
Chuck Mueller
Sacramento Fireplace
Sunset Development

[FR Doc. 86-1138 Filed 1-16-86; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OAR-FRL-2956-8]

Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Application for an Equivalent Method Determination

Notice is hereby given that on December 6, 1985, the Environmental Protection Agency received an application from Thermo Electron Instruments, Inc. to determine if its Model 43A Pulsed Fluorescent SO_2 Ambient Air Analyzer should be designated by the Administrator of the EPA as an equivalent method under 40 CFR Part 53 (40 FR 7044, 41 FR 11255). If, after appropriate technical study, the Administrator determines that this method should be so designated, notice thereof will be given in a subsequent issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Frederick Smith at (919) 541-4599.

Donald J. Ehreth,
Acting Assistant Administrator for Research and Development.

January 6, 1986.

[FR Doc. 86-1062 Filed 1-16-86; 8:45 am]
BILLING CODE 6560-50-M

[ER-FRL-2956-7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 30, 1985 through January 3, 1986 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal

Activities at (202) 382–5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. DB–COE–A36264–CA, Rating EC1, Wildcat and San Pablo Creeks Flood Control Plan, Reexamination of Impact, CA. Summary: EPA expressed concerns that the Selected Plan would adversely impact the fish, wildlife, and riparian vegetation of Wildcat Creek. EPA recommended that design features from three alternative plans be incorporated into the Selected Plan to reduce these impacts.

ERP No. D–COE–K35024–CA, Rating EU2, Marathon Industrial and Commercial Businesses Park Development, Fill Permit, Section 10 and 404 Permits, CA. Summary: EPA found the project to be environmentally unsatisfactory because of: 1) The potential for significant degradation to wetlands due to direct project impacts and cumulative impacts, and 2) the inadequacy of the proposed mitigation. EPA also found the DEIS to be inadequate in the analysis of practicable alternatives, endangered species, and air quality impacts.

Final EISs

ERP No. F–BLM–J70004–SD, S. Dakota Resource Area, Resource Mgmt. Plan, SD. Summary: EPA's concerns with water quality and sedimentation issues in the DEIS are generally resolved. EPA is pleased with the Bureau of Land Management's commitment to develop monitoring provisions in the individual activity management plans.

ERP No. F–DOE–J22001–CO, Durango/Vanadium Inactive Uranium/Vanadium Mill Tailing Site, Remedial Actions, Cleanup of Radioactivity Contaminated Material, CO. Summary: EPA's concerns on the DEIS have been adequately addressed. EPA believes the DOE proposal for remedial actions at this site is environmentally acceptable.

ERP No. F–FHW–D40203–VA, VA–164/Western Freeway Construction, I–664 Interchange to the Norfolk and Western Railway, Sect. 10 and 404 Permits, Right-of-Way Acquisition, VA. Summary: EPA concurs with the findings of the FEIS and implementation of the selected alternative.

ERP No. F–NOA–R90006–AL, Weeks Bay Nat'l Estuarine Sanctuary Mgmt. Plan, Designation and Implementation. 404 Permit, AL. Summary: EPA's review concluded that the Nat'l Estuarine Sanctuary designation is the most appropriate way of protecting Weeks Bay. However, close monitoring of water quality coupled with vigorous enforcement of applicable regulations is crucial to ensure that this pristine resource is not degraded by upriver development activities.

ERP No. F–OSM–J01057–WY, Red Rim Area, Petition Evaluation, Designation or Nondesignation of Land Unsuitable for Surface Coal Mining, WY. Summary: EPA has concerns that if a coal lease were granted, per the Preferred Alternative, the lessee could disturb, through permitted mining, up to 3,500 acres of Pronghorn critical winter range without reclamation or habitat rehabilitation. EPA suggested that successful prior reclamation and habitat rehabilitation be demonstrated initially on a pilot scale as a requirement of the mining and reclamation plan.

Amended Notices

The following reviews were completed during the weeks of and should have appeared in the FR Notices published: October 7 through 11, 1985, FR October 25, 1985; November 11 through 15, 1985, FR November 29, 1985; November 18 through 22, 1985, FR December 6, 1985; November 25 through 29, 1985, FR December 13, 1985; and December 23 through 27, 1985, FR January 10, 1986, respectively.

ERP No. D–AFS–L65095–ID, Rating EO2, Clearwater Nat'l Forest, Land and Resource Mgmt. Plan, ID. Summary: EPA commented that the DEIS did not clearly show that the preferred alternative (and therefore the proposed Plan) could comply with the State of Idaho Water Quality Standards, and the potential for serious water quality impacts to occur appears to be substantial. The DEIS also did not address potential impacts to domestic water supplies.

ERP No. F–AFS–L61143–00, Targhee Nat'l Forest, Land and Resource Mgmt. Plan, ID and MY. Summary: EPA made no formal comments. EPA reviewed the FEIS and found the project to be satisfactory.

ERP No. D–USN–D84005–VA, Rating EO2, Empress II Operation, Electromagnetic Pulse Radiation Environment Simulator for Ships, Chesapeake Bay and Atlantic Ocean Off the Coast of VA. Summary: EPA believes the information provided in the DEIS is insufficient in four major areas: (1) Biological and ecological information, (2) alternatives analysis, (3) monitoring, and (4) environmental analysis. EPA recommends the development of a supplement to the DEIS.

ERP No. D–NPS–D40210–00, Rating EC2, George Washington Memorial Parkway, Traffic and Recreational Mgmt. Study, Improvements, Spout Run Parkway to the Theodore Roosevelt Bridge, District of Columbia, VA, and MD. Summary: EPA's review of the DEIS found deficiencies in the applicant's investigation of noise, wetlands, and air quality impacts. Necessary mitigative measures are recommended for these three areas of environmental concern.

ERP No. F–COE–K36071–NV, Truckee Meadows (Reno-Sparks Metropolitan Area) Recreation, Fish and Wildlife Enhancement and Flood Control Plan, NV. Summary: EPA expressed its continuing concern about project impacts, (expecially temperature) in the Truckee River, expressed a desire to review mitigation measures at the project design phase, and to assist the Army Corps in the development of a water quality monitoring plan. The following review was completed during the week of December 23 through 27, 1985 and comments were included in the same letter as DS–AFS–F65008–IN, reported in FR Notice published on January 10, 1986.

ERP No. F–AFS–F65008–IN, Hoosier Nat'l Forest, Land and Resource Mgmt. Plan, IN. Summary: EPA has no objection to the proposed actions.

Dated: January 14, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86–1144 Filed 1–16–86; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–2956–5]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements filed January 6, 1986 Through January 10, 1986 Pursuant to 40 CFR 1506.9.

EIS No. 860002, FSuppl, COE, AL, Upper Mobile Harbor Dredged Material Disposal, Maintenance Dredging, Long Range Disposal Plan, Due: February 18, 1986, Contact: K. Paul Bradley (205) 694–3890.

EIS No. 860003, FSuppl, COE, CA, Upper Santa Ana River Main Stem and Santiago Creek Flood Control Project, Mentone Dam Upstream Flood Storage Alternative, Orange, Riverside and San Bernardino Cos., Due: February 18, 1986, Contact: John Kennedy (213) 894–2314.

EIS No. 860004, Draft, AFS, CA, Tahoe National Forest, Land and Resource Management Plan, Due: April 18, 1986, Contact: Geri Larson (916) 265–4531.

EIS No. 860005, DSuppl, DEA, PRO, Cannabis Eradication Program, New

Information, United States and Hawaii Non-Federal and Indian Lands, Due: March 3, 1986, Contact: Rodolfo Ramirez, Jr. (202) 633–5628.

EIS No. 860006, Draft, CDB, NY, Brooklyn Renaissance Plaza Construction and Operation, UDAG, Kings County, Due: March 3, 1986, Contact: Michael Spies (212) 619–5000.

EIS No. 860007, Final, AFS, FL, Florida National Forests, Land and Resource Management Plan, Due: February 18, 1986, Contact: Ray Mason (904) 681–7265.

EIS No. 860008, Draft, FHW, VA, McIntire Road Extension and Improvement, 250 Bypass to Rio Road, Albermarle County, Due: March 3, 1986, Contact: James Tumlin (804) 771–2371.

EIS No. 860009, DSuppl, FHW, CA, I–8 and CA–125 Interchange Improvement, Fletcher Parkway to Amaya Drive, Revision Change, San Diego County, Due: March 3, 1986, Contact: Michael Cook (916) 551–1307.

EIS No. 860010, Draft, FHW, OH, US 422 Relocation, I–271 to OH–44, Cuyahoga and Geauga Cos., Due: March 3, 1986, Contact: Marvin Espeland (614) 469–6896.

EIS No. 860011, DSuppl, APH, PRO, Rangeland Grasshopper Cooperative Management Program, Updated Information, Due: March 3, 1986, Contact: Charles Bare (301) 436–8295.

EIS No. 860012 , Draft, AFS, AZ, Apache-Sitgreaves National Forests, Land and Resource Management Plan, Due: May 1, 1986, Contact: Nick McDonough (602) 333–4301.

Amended Notice

EIS No. 850553, Draft, MMS, CA, San Miguel Project and Northern Santa Maria Basin Area Study, Lease OCS–P 0409, Outer Continental Shelf (OCS) Development Plan, Due: February 18, 1986, Contact: Mary Elaine Warhurst (213) 894–7234, Published FR 1–3–86, Incorrect area code.

Dated: January 14, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86–1143 Filed 1–16–86; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–2956–6]

Intent to Prepare an Environmental Impact Statement; Residuals Management Plan, Boston Harbor, MA

AGENCY: U.S. Environmental Protection Agency (EPA) Region I.

ACTION: Preparation of a Supplemental Draft Environmental Impact Statement (SDEIS) on the Massachusetts Water Resources Authority (MWRA) Long-Term Residuals (wastewater sludge, scum, grit and screenings) Management Program.

Purpose: In accordance with section 102(2)(c) of the National Environmental Policy Act (NEPA), EPA has identified a need to prepare a SDEIS and therefore publishes this Notice of Intent pursuant to 40 CFR 1507.7. It should be noted that the long-term program may be implemented with a phased approach.

FOR FURTHER INFORMATION CONTACT: Ronald G. Manfredonia, EPA-Water Management Division, John F. Kennedy Federal Building, Boston, Massachusetts 02203, Telephone—(617) 223–5610, FTS 223–5610.

SUMMARY:

A. *Background:* The Metropolitan District Commission (MDC) and MWRA have been discharging sludge from the Deer Island and Nut Island wastewater treatment plants into President Roads Channel of Boston Harbor on the outgoing tide since the completion of these plants. This discharge is in violation of the Clean Water Act (33 U.S.C. 1251 *et seq.*)

Approximately twelve years ago the MDC initiated the development of a facilities plan for the management of sludge from the wastewater treatment plants which would result in cessation of the discharge. Since that time, several studies, evaluations and updates have examined numerous options for the disposal of these sewage sludges.

B. *Description of EPA Action:* EPA actions in connection with the implementation of the residuals management program requiring NEPA compliance are multi-media (air, water, soil) and may include federal grants for the construction of wastewater residuals treatment facilities.

C. *Significant Issues to be Addressed in the SDEIS:*

1. Selection of facilities and appropriate technology required for the recycling or disposal of sludge and other residuals from the metropolitan wastewater treatment facilities.

2. Selection of sites for the placement of these facilities including evaluation of alternative sites and their environmental consequences. This may include site selection for incinerators, composting facilities, landfills, or other residuals processing and disposal facilities. In addition, transport routes and modes will be evaluated and selected.

3. Assessment of social, technical, economic, environmental, political, legal and institutional factors associated with alternative residuals management systems and sites. This will include assessment of the affected environment and environmental consequences of alternatives.

D. *Public and Private Involvement and Participation in the DSEIS Process:* Full public participation by interested Federal, State and local agencies as well as other concerned organizations and private citizens is invited. Citizen advisory groups and committees will be utilized to facilitated effective public participation. A full public participation program will be managed by the MWRA and will be supplemented, as required by EPA.

EPA, Region 1, MWRA, and the Commonwealth of Massachusetts Executive Office of Environmental Affairs will participate in four meetings to ascertain public and agency views on the options, sites, technology, economic and environmental considerations, and legal and institutional and other issues that should be evaluated in the SDEIS. The first three meetings will be for the general public and assist EPA in developing the scope of work for the DSEIS. These meetings will be held on:

Monday, January 27, 1986: Walpole Town Hall, Walpole, MA, 7:30 p.m.

Tuesday, January 28, 1986: Kent School, 50 Bunker Hill Street, Charlestown, MA, 7:30 p.m.

Wednesday, January 29, 1986: Natick Town Hall, Natick, MA, 7:30 p.m.

The fourth meeting will be for Federal and state agencies and public groups on February 4, 1986 in Room 607, K.V. Minihan Hall, Hurley State Office Building, Boston, Massachusetts at 1:00 p.m. An explanatory scope document will be available prior to these scoping meetings. EPA invites written comments on the proposed scope of work for the DSEIS thirty days from the publication of the Notice of Intent. All comments on this notice of intent and the scoping document for the supplemental EIS should be addressed to Director, Water Management Division, EPA, Region I, JFK Federal Building, Boston, Massachusetts 02203. A more detailed notice is available from EPA, Region I.

E. *Request for Copies of the Draft EIS:* All interested persons are encouraged to submit their names and addresses to the person indicated above for inclusion on the mailing list for newletters, the supplemental draft EIS and related public notices.

Dated: January 14, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86–1142 Filed 1–16–86; 8:45 am]

BILLING CODE 6560–50–M

[OPP-00221 FRL-2957-9]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) for review of a set of scientific issues in connection with the preparation of a Registration Standard for glyphosate; a final regulatory action on the non-wood uses of pentachlorophenol; review of a set of scientific issues being considered in connection with the Registration Standards for oryzalin, amitraz, and acephate; and the Agency's proposed Pesticide Assessment Guidelines for Applicator Exposure Monitoring, Subdivision U.

DATES: Tuesday and Wednesday, February 11 and 12, 1986, from 8:30 a.m. to 5 p.m. each day.

ADDRESS: The meeting will be held at: Environmental Protection Agency, Rm. 1112, Crystal Mall, Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–7678).

FOR FURTHER INFORMATION CONTACT:
By mail:
Stephen L. Johnson, Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS–766C), 401 M St., SW., Washington, DC 20460.
Office location and telephone number: Rm. 1121, Crystal Mall Building No. 2, Arlington, VA 22202, (703–557–7695).

SUPPLEMENTARY INFORMATION: The agenda for the meeting is: 1. Review of a set of scientific issues related to apparent oncogenicity being considered by the Agency in connection with the preparation of a Registration Standard for glyphosate

2. A final regulatory action on the non-wood uses of pentachlorophenol as set forth in the Agency's Position Document 4. Although the SAP reviewed certain scientific issues connected with the non-wood uses of pentachlorophenol at its July 1985 meeting, since that time the Agency has decided to cancel additional registrations for these uses based on new information received in public comments on the Position Document 2/3.

3. A set of scientific issues related to apparent oncogenicity being considered by the Agency in connection with the Registration Standards for the following pesticide compounds: oryzalin, amitraz and acephate.

4. The Agency's proposed Pesticide Assessment Guidelines for Applicator Exposure Monitoring, Subdivision U.

5. Completion of any unfinished business from previous Panel meetings.

6. In addition, the Agency may present status reports on other ongoing programs of the Office of Pesticide Programs.

Copies of documents relating to the pesticides glyphosate and oryzalin referenced in item 1 and item 3 above may be obtained by contacting:
By mail:
Robert Taylor, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.
Office location and telephone number: Rm. 245, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1800).

Copies of documents relating to item 2 above may be obtained by contacting:
By mail:
Spencer Duffy, Registration Division (TS–767C), Office of Pesticide Progams, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.
Office location and telephone number: Rm. 711B, Crystal Mall No. 2, Arlington, VA 22202, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–7421).

Copies of documents relating to the pesticide amitraz referenced in item 3 above may be obtained by contacting:
By mail:
Jay Ellenberger, Registration Divison (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.
Office location and telephone number: Rm. 202, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2386).

Copies of documents relating to the pesticide acephate referenced in item 3 above may be obtained by contacting:
By mail:
William Miller, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.
Office location and telephone number: Rm. 211, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2600).

Copies of documents relating to item 4 above may be obtained by contacting:
By mail:
Allen P. Nielson, Hazard Evaluation Division (TS–769C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.
Office location and telephone number: Rm. 809A, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–0267).

Any member of the public wishing to submit written comments should contact Stephen L. Johnson at the address or phone listed above to be sure that the meeting is still scheduled and to confirm the Panel's agenda. Interested persons are permitted to file such statements before the meeting, and may, upon advance notice to the Executive Secretary, present oral statements to the extent that time permits. All statements will be made part of the record and will be taken into consideration by the Panel. Persons wishing to make oral and/or written statements should notify the Executive Secretary and submit 10 copies of written comments and oral written testimony no later than February 3, 1986, in order to ensure appropriate consideration by the Panel.

Dated: January 14, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 86–1216 Filed 1–16–86; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59748; FRL–2956–4]

Acetal Copolymer; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984 (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of one such PMN and provides a summary.

DATES: Close of Review Period: Y 86–53, January 28, 1986.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–611, 401 M St. SW., Washington, DC 20460, (202–382–3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 86–53

Manufacturer. Celanese Engineering Resins, Inc.

Chemical. (G) Acetal copolymer.

Use/Production. (S) Polymer is thermoplastic engineering resin used in many industrial, material handling, automotive, appliance, electrical, plumbing, agricultural, and hardware applications. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. No release.

Dated January 10, 1986.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 86–975 Filed 1–16–86; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51606; FRL–2956–3]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discusses in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-one PMNs and provides a summary of each.

DATES: Close of Review Period:

P–86–350, 86–351, 86–352, 86–353, 86–354, 86–355, 86–356, 86–357, 86–358, 86–359, 86–360, and 86–361; April 1, 1986.

P–86–362 April 2, 1986.

P–86–364, 86–365, 86–366; April 5, 1986.

P–86–367, 86–368, 86–369, 86–370, and 371; April 7, 1986.

Written comments by:

P–86–350, 86–351, 86–352, 86–353, 86–354, 86–355, 86–356, 86–357, 86–358, 86–359, 86–360, and 86–361; March 2, 1986.

P–86–362; March 5, 1986.

P–86–364, 86–365, 86–366, 86–367, 86–368, 86–369; March 6, 1986.

P–86–370, and 86–371; March, 8, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS–51606]" and the specific PMN number should be sent to: Document Control Oficer (TSf–793), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Room E–201, 401 M St. SW, Washington, DC 20460, (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–611, 401 M St. SW, Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address.

P 86–350

Manufacture. E.I. du Pont de Nemours & Company, Inc.

Chemical. (G) Phenolic formaldehyde condensate derivative.

Use/Production. (S) Non-dispersive synthetic fiber finish applied industrially on consumer products, Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 4 workers.

Environmental Release/Disposal. Release to water. Disposal by on site waste water treatment.

P 86–351

Manufacture. Confidential.

Chemical. (G) Carboxyoxyamide sulfate polymer.

Use/Production. (G) Flame retardant. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86–352

Manufacturer. Kenrich Petrochemicals, Inc.

Chemical. (G) Zirconium IV neoalkoxy trisneodecanoato-0.

Use/Import. (S) Industrial enhanced adhesion/dispersion of particulate in polymeric binder and polymers/polymeric composites to solid surfaces. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Ames test: Non-mutagenic.

Exposure. Manufacture and processing: dermal and inhalation, a total of 25 workers, up to 8 hrs/da, up to 25 da/yr.

Environmental Release/Disposal. 0.5 to 20 kg/batch released to land. Disposal by chemical landfill.

P 86–353

Manufacturer. Kenrich Petrochemicals, Inc.

Chemical. (G) Zirconium IV neoalkoxy tris dodecylbenzene sulfonato-0.

Use/Production. (S) Industrial enhanced adhesion/dispersion of particulate in polymeric binder and polymers/polymeric composites to solid surfaces. Prod. range: Confidential.

Toxicity Data. Acute oral: >1 g/kg; Ames test: Non-mutagenic.

Exposure. Manufacture and processing: dermal and inhalation, a total of 25 workers, up to 8 hrs/da, up to 25 da/yr.

Environmental Release/Disposal. 0.5 to 16 kg/batch released to land. Disposal by chemical landfill.

P 86–354

Manufacturer. Kenrich Petrochemicals, Inc.

Chemical. (G) Zirconium IV neoalkoxy tris(diisooctyl) phosphato-0.

Use/Production. (S) Industrial enhanced adhesion/disperson of particulate in polymeric binder and polymers/polymeric composites to solid surfaces. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Ames test: Non-mutagenic.

Exposure. Manufacture and processing: dermal and inhalation, total of 25 workers, up to 8 hrs/da, up to 25 da/yr.

Environmental Release/Disposal. 0.5 to 20 kg/batch released to land. Disposal by chemical landfill.

P 86–355

Manufacturer. Kenrich Petrochemicals, Inc.

Chemical. (G) Zirconium IV neoalkoxy, tris (diisooctyl) pyrophosphato-0.

Use/Production. (S) Industrial enhanced adhesion/dispersion of particulate in polymeric binder and

polymers/polymeric composites to solid surfaces. Prod. range: Confidential.

Toxicity Data. Acute oral: <5.0 but >2.0 g/kg; Ames test: Non-mutagenic.

Exposure. Manufacture and processing: dermal and inhalation, a total of 25 workers, up to 8 hrs/da, up to 25 da/yr.

Environmental Release/Disposal. 0.2 to 20 kg/batch released to land. Disposal by chemical landfill.

P 86-356

Manufacture. Kenrich Petrochemicals, Inc.

Chemical. (G) Zirconium IV neoalkoxy, bis (diisooctyl) pyrophosphato adduct with 2 moles of a methacrylamido amine.

Use/Production. (S) Industrial enhanced adhesion/dispersion of particulate in polymeric binder and polymers/polymeric composites to solid surfaces. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. 20 kg/batch released to land. Disposal by chemical landfill.

P 86-357

Manufacture. Kenrich Petrochemicals, Inc.

Chemical. (G) Zirconium IV neoalkoxy tris isooctanolato.

Use/Production. (S) Site-limited conversation to organozirconium salts. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 3 workers/batch, up to 12 hrs/da, up to 30 da/yr.

Environmental Released/Disposal. 20 kg/batch released to land. Disposal by chemical landfill.

P 86-358

Manufacturer. Kenrich Petrochemicals, Inc.

Chemical. (G) Zirconium neoalkoxy tris 2-ethylenediaminoethanolato.

Use/Production. (S) Industrial enhanced adhesion/dispersion of particulate in polymeric binder and polymers/polymeric composites to solid surfaces. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Ames test: Non-mutagenic.

Exposure. Manufacture and processing: dermal and inhalation, a total of 25 workers, up to 8 hrs/da, up to 25 da/yr.

Environmental Release/Disposal. 0.5 to 16 kg/batch released to land. Disposal by chemical landfill.

P 86-359

Manufacturer. Kenrich Petrochemicals, Inc.

Chemical. (G) Zirconium IV neoalkoxy tris 3-aminophenylato.

Use/Production. (S) Industrial enhanced adhesion/dispersion of particulate in polymeric binder and polymers/polymeric composites to solid surfaces. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Ames test: Non-mutagenic.

Exposure. Manufacture and processing: dermal and inhalation, a total of 25 workers, up to 8 hrs/da, up to 25 da/yr.

Environmental Release/Disposal. 0.5 to 20 kg/batch released to land. Disposal by chemical landfill.

P 86-360

Manufacturer. Confidential.

Chemical. (G) Alkenes, reaction products with 2,5-furandione.

Use/Production. (G) Site limited and industrial chemical intermediate. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 36 workers, up to 8 hrs/da, up to 15 da/yr.

Environmental Release/Disposal. 1.5 to 4.0 kg/batch released to land with 80 kg/batch to water. Disposal by publicly owned treatment works (POTW).

P 86-361

Manufacturer. Confidential.

Chemical. (G) Alkenes, reaction products with 2,5-furandione and substituted alkyl amines.

Use/Production. (G) Surface active agent. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 27 workers, up to 8 hrs/da, up to 15 da/yr.

Environmental Release/Disposal. 1.0 kg/batch released to land with 40 kg/batch to water. Disposal by POTW.

P 86-362

Manufacturer. Confidential.

Chemical. (S) Polymer of isophthalic acid, maleic anhydride, trimethylolpropane, 3-hydroxy-2,2-dimethyl propyl beta-hydroxy pivalete and Wacker SY231.

Use/Production. (G) Open use. Prod. range: 20,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 6 workers, up to 2 hrs/da, up to 12 da/yr.

Environmental Release/Disposal. Minimal release to air. Disposal by biological treatment lagoons.

P 86-364

Importer. Confidential.

Chemical. (S) Aryl substituted lactone.

Use/Import. (S) Dye. Import range: Confidential.

Toxicity Data. Acute oral: >3,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non—irritant; Ames test: Non-mutagenic; Mouse micronueleus test: Negative; Mouse lymphoma assay: Negative; LC_{50} 48 hrs (Rainbow trout): >100 mg/l; EC_{50} 48 hrs (Daphnia magna): >100 mg/l.

Exposure. Use: up to 8 hrs/da, up to 2 da/wk.

Environmental Release/Disposal. No release.

P 86-365

Manufacturer. E.I. du Pont de Nemours & Company, Inc.

Chemical. (G) Ethylene interpolymer.

Use/Production. (G) Molded parts. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-366

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Polyimide.

Use/Production. (S) Industrial laminating resin for printed circuit boards and advanced composites. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 32 workers, up to 8 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. .5 to 3 kg/batch released to land. Disposal by landfill.

P 86-367

Manufacturer. Confidential.

Chemical. (G) Poly-[(alkoxycarbonyl)alkyl] polysulfide.

Use/Production. (G) Additive for fertilizers. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-368

Manufacturer. Confidential.

Chemical. (G) Acrylourethane.

Use/Production. (G) Coatings/adhesives for open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-369

Manufacturer. Confidential.

Chemical. (G) Substituted polyetheramine.

Use/Production. (G) Contained use. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Irritation: Skin—Slight; Eye—Slight.

Exposure. Manufacture: dermal, a total of 48 workers, up to 4 hrs/da, up to 9 da/yr.

Environmental Release/Disposal. No release.

P 86–370

Manufacturer. Confidential.

Chemical. (G) Alkyl fluoroalkyl siloxane.

Use/Production. (G) Siliconized coating. Prod. range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: 2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Negative.

Exposure. Manufacture: dermal, a total of 2 workers, up to 4 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. Less than 1 kg/batch released to land. Disposal by landfill.

P 86–371

Manufacturer. Confidential.

Chemical. (G) Functional polyether of bisphenol alkane.

Use/Production. (G) Industrial coating having an open use. Prod. range: 10,000–100,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 6 workers, up to 8 hrs/da, up to 33 da/yr.

Environmental Release/Disposal. 5 to 100 kg/batch released to land. Disposal by incineration and landfill.

Dated: January 10, 1986.

V. Paul Fuschini,

Acting Director, Information Management Division.

[FR Doc. 86–974 Filed 1–16–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

OMB Rejection

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This Notice summarizes a letter to the Office of Management and Budget which overrides OMB's disapproval, pursuant to the Paperwork Reduction Act, of the Commission's information collection requirements adopted to implement the equal employment opportunity provisions of the Cable Communications Policy Act of 1984. Further, the letter requests that OMB assign control numbers to the forms, valid for three years, so that the forms and procedures previously adopted can be put into immediate use. OMB disapproved the Commission's information collection requirements on the grounds that they imposed unreasonable burdens or lacked practical utility. The Commission believes that the concerns raised by OMB were given full consideration during the rule making process and that that the FCC's requirements balance the need for information to fulfill its statutory obligations to review EEO compliance in the cable industry with a minimum paperwork burden placed on the public.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: William H. Johnson, Mass Media Bureau, (202) 632–6460.

SUPPLEMENTARY INFORMATION: List of Subjects affected in 47 CFR 76: Cable Televisions.

January 6, 1986.

FCC Overrides OMB Rejection of Cable EEO Information Collection Request

The FCC has sent a letter to the Office of Management and Budget overriding OMB's disapproval of the Commission's recently adopted information collection requirements and forms regarding equal employment opportunities in the cable industry. The FCC's letter requests that OMB assign control numbers to the forms, valid for a period of three years.

On September 18, 1985, by *Report and Order* in MM Docket No. 85–61 (50 FR 40836), the Commission adopted new information collection forms to implement the EEO provisions of the Cable Communications Policy Act of 1984. The Cable Act requires the Commission to certify annually that each cable employment unit is in compliance with the EEO provisions of the statute. Also, the FCC must investigate the EEO practices and policies of each employment unit at least once every five years.

These information collection forms were submitted to OMB for review in accordance with the Paperwork Reduction Act. In a letter received by the Commission on December 18, 1985, OMB disapproved the information collection requirement on the grounds that the information collected imposed unreasonable burdens or lacked practical utility.

The Commission believes that the concerns raised by OMB were given full consideration in the rule making process and that there is not basis for revision of these information collection requirements. Further, the Commission believes that the process it has adopted balances the need for information to fulfill its obligations to review EEO compliance under the Cable Act with a minimum paperwork burden placed on the public.

For further information contact William H. Johnson at (202) 632–6460.

Federal Communications Commission.

William J. Tricarico.

Secretary.

[FR Doc. 86–821 Filed 1–16–86; 8:45 am]

BILLING CODE 6712–01–M

Technical Subgroup of Radio Advisory Committee; Resumes Meeting

The technical subgroup of the Advisory Committee on Radio Broadcasting resumes its continuing meeting Wednesday, January 22, 1986, at 10:00 a.m. in the Vincent Wasilewski Room of the National Association of Broadcasters, 1771 N Street NW. Washington, D.C.

The subgroup will continue its consideration of recommendations to the Federal Communications Commission concerning matters pertinent to preparations for the upcoming Region 2 Conference on expansion of the AM band.

In addition, the Subgroup also may consider other relevant matters of concern to the participants at the meeting.

The meeting, a continuing one, will be resumed after the January 22, 1986, session at such time and place as is decided at that session.

All meetings of the Technical Subgroup are open to the public. All interested parties are invited to participate in these meetings.

For further information, please call the Subgroup Chairman, Mr. Wallace E. Johnson, at (703) 841–0500.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–1037 Filed 1–16–86; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and State	File No.	MM Docket No.
A. Dohara Associates, Inc.; Bluffton, SC.	BPH-841015IB	86-6
B. Sharon R. Fulmer; Bluffton, SC.	BPH-841018ID	.....
C. Dora E. Overstreet; Bluffton, SC.	BPH-841018IE	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. (See Appendix), B
2. Air Hazard, B, C
3. Comparative, A, B, C
4. Ultimate, A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

Issue

1. In a final environmental impact statement is issued with respect to B (Fulmer) which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment, to determine:

(a) Whether the proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301-1319 of the Commision's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

[FR Doc. 86-1038 Filed 1-16-86; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
A. Keni Associates; Anchorage, AK.	BPH-831005AA	86-5
B. Aloha Broadcasting Company, Inc.; Anchorage, AK.	BPH-840420IC	
C. Comco Broadcasting, Inc.; Anchorage, AK.	BPH-840420IE	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1963. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Comparative, A, B, C
2. Ultimate, A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street NW, Washington, DC 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86-1040 Filed 1-16-86; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and State	File No.	MM Docket No.
Frank R. Kulisky; Strasburg, VA.	BPH-840807IA	86-4
B. Leigh Sandoz Leverrier; Strasburg, VA.	BPH-850522MC	
C. Kathy G. Root; Strasburg, VA.	BPH-850531MN	

Issue Heading and Applicant(s)

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1963. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

1. Air Hazard, B,C
2. Comparative, A,B,C
3. Ultimate, A,B,C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street NW., Washington, DC 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86-1039 Filed 1-16-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted To OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection: Country Exposure Report.

Background: In accordance with requirements of the Paperork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a form SF-83, "Request for

OMB Review," for the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington, DC 20429.

Comments: Comments on this collection of information should be submitted on or before February 3, 1986.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 389–4351.

SUMMARY: The FDIC has requested OMB approval to revise the quarterly Country Exposure Report (FFIEC 009). The report is required to be submitted to the Federal bank supervisory agencies by (a) insured commercial banks that have foreign offices or an international banking facility (IBF) *and* have claims on residents of foreign countries of more than $30 million, (b) certain bank holding companies, and (c) such other banks with country exposure that is large relative to capital, as determined by the agencies.

The Federal Financial Institutions Examination Council has proposed the revision, which is designed to provide more useful information to regulators, banks, and other officials dealing with foreign debt. The revision would be effective with the reports for March 31, 1986.

In the principal revision, guaranteed claims that are redistributed to country of guarantor are to be shown with detail by sector of guarantor (bank, public, or nonbank private) rather than by sector of obligor as at present. The revision also specifies a treatment of acceptance risk participations and adds a memorandum item to identify trade credits.

It is estimated that the proposed revision would add two hours to the burden of each bank in preparing the FFIEC 009 report each calendar quarter.

Dated: January 13, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86–1067 Filed 1–16–86; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL HOME LOAN BANK BOARD

Manhattan Beach Savings and Loan Association, Manhattan Beach, CA; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, 12 U.S.C. section 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Manhattan Beach Savings and Loan Association, Manhattan Beach, California on January 9, 1986.

Dated: January 14, 1986.

Jeff Sconyers,

Secretary.

[FR Doc. 86–1041 Filed 1–16–86; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on January 3, 1986.

Public Health Service—Food and Drug Administration

Subject: License Applications for the Manufacture of Allergenics and Plasma Derivative Products and General Establishments—Extension (0910–0124)
Respondents: Businesses, non-profit institutions and small businesses
Subject: Temporary Exemption from Food Labeling Requirements for Conducting Authorized Food Labeling Experiments—Extension (0910–0151)
Respondents: Businesses
OMB Desk Officer: Bruce Artim

Health Care Financing Administration

Subject: Medicare Uniform Institutional Provider Bill-HCFA-1450-Revision (0938–0279)
Respondents: Individuals or households, businesses or other for-profit institutions, non-profit institutions
Subject: Long Term Care Survey Report Form, HCFA 519 Through 525, Revision (0938–0400)
Respondents: State or local governments
Subject: Medicaid Contracts with Health Maintenance Organizations and Prepaid Health Plans (42 CFR 434, Subparts A–E, HCFA R–27 and R–28)—Extension (0938–0326)
Respondents: State or local governments
OMB Desk Officer: Fay S. Iudicello

Social Security Administration

Subject: Final Regulation—Information Collection Requirements Contained in Regulations That Implement the Provisions of the Child Support Enforcement Amendment—NEW
Respondents: State or local governments
Subject: Subpoena—Disability Hearing—Existing Collection
Respondents: Individuals or households
OMB Desk Officer: Judy A. McIntosh

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, ATTN: (name of OMB Desk Officer).

Agency Forms Withdrawn From the Office of Management and Budget Clearance Process

The Department of Health and Human Services has withdrawn the following information collection package previously submitted to OMB for approval under the Paperwork Reduction Act.

Public Health Service

Subject: Investigational New Drug Application—Revision (0910–0162)
Reference: **Federal Register**/Volume 51, No.2/Page 253/Friday, January 3, 1986.

Dated: January 13, 1986.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86–1082 Filed 1–16–86; 8:45 am]

BILLING CODE 4150–04–M

Alcohol, Drug Abuse, and Mental Health Administration

Consultation Concerning Assessment of Alternative Alcohol and Drug Treatment Service Coverage Policy, Including Alternative Treatment Settings; Open Meeting

The Office of the Administrator, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), will hold a meeting to discuss assessment of alternative Federal alcohol and drug coverage policy including treatment service setting. Such discussion may assist in the development of recommendations regarding Federal Medicare/Medicaid policy regarding these services. The meeting will include discussion of concepts, scope, and objectives of potential activities. Depending upon the outcome of the meeting, specific project approaches, methodology, and formal solicitations for a Federal contract may be developed.

Invited attendees will include alcohol, drug, and mental health treatment and research experts and Federal staff. Attendance by the public will be limited to space available.

Date: January 27, 1986
Time: 9:00 a.m.–4:00 p.m.
Place: Ramada Inn, 1251 West Montgomery Avenue, Rockville, Maryland 20850
Additional information may be obtained from: John L. Burton, Senior Financing Analyst, Office of the Administrator, ADAMHA, 5600 Fishers Lane, Room 12C–04, Rockville, Maryland 20857, Telephone: (301) 443–4111

Robert L. Trachtenberg,

Acting Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 86–1148 Filed 1–16–86; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

Public Workshop; Bioequivalence of Solid Oral Dosage Forms

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming public workshop to provide a forum to discuss the bioequivalence of solid oral drug dosage forms.

DATE: The workshop will be held on May 7 through 9, 1986, 9 a.m. to 5 p.m.

ADDRESS: The workshop will be held in the first floor auditorium at the Department of Health and Human Services, North Building, 330 Independence Ave. SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steve Moore, Center for Drugs and Biologics (HFN–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6776.

SUPPLEMENTARY INFORMATION: Evidence of bioavailability has been a requirement for several years as a condition for marketing of a drug product posing actual or potential bioequivalence problems when it is the subject of an abbreviated new drug application (ANDA). Under the Drug Price Competition and Patent Term Restoration Act of 1984 (The Waxman-Hatch Act) the results of the bioequivalence trial of a test product against the standard (listed) product is a key feature of an ANDA submitted to the agency by a manufacturer who wishes to produce and market a generic version of the listed product.

Bioequivalence testing based upon pharmacokinetic principles is a comparatively new and evolving area of science and as such, the current methodology employed in the design and evaluation of bioequivalence trials could be further improved. The workshop will provide a forum to discuss:

(1) The design of in vivo bioequivalence testing for conventional release, solid oral dosage forms of drugs;

(2) Quantitative and statistical analysis and evaluation of bioequivalence testing studies for conventional release, solid oral dosage forms of drugs;

(3) In vivo and in vitro data correlation and its implications for bioequivalence; and

(4) Agency procedures and regulatory aspects of bioequivalence.

Dated: January 13, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–1046 Filed 1–16–86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85D-0467]

Draft Guideline for the Organization and Content of the Clinical Section of an Application Notice of Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guideline to supplement the recently published final regulations governing the review and approval of new drug and antibiotic marketing applications. The guideline is intended to assist applicants in presenting the clinical data required as part of an application under the regulations. FDA is making this guideline available in draft to solicit public comments on it. The draft guideline was prepared by FDA's Center for Drugs and Biologics.

DATE: Written comments by April 17, 1986.

ADDRESSES: Requests for copies of the draft guideline may be made in writing to the Support Services Branch (HFN–62), Center for Drugs and Biologics, Food and Drug Administration, Rm. 13B–05, 5600 Fishers Lane, Rockville, MD 20857, or by telephone to 301–443–6060. A request for the guideline should be identified with the docket number found in the heading of this notice.

Written comments regarding the draft guideline may be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Comments should also be identified with the docket number.

FOR FURTHER INFORMATION CONTACT: Howard P. Muller, Center for Drugs and Biologics (HFN–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8049.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 22, 1985 (50 FR 7452), FDA revised the regulations governing the approval for marketing of new drugs and antibiotic drugs for human use. This rule—otherwise known as the NDA Rewrite—was intended to speed up the availability of beneficial drugs to consumers by improving the efficiency of the agency's approval process for new drugs and antibiotic drugs while maintaining the high level of public health protection the previous procedures already provided. The NDA Rewrite was designed to assist drug manufacturers to prepare and submit higher quality applications and permit FDA to review them more efficiently and with fewer delays.

In the NDA Rewrite, FDA stated its intent to supplement the regulations with detailed guidelines intended to provide applicants with guidance on application format and presentation and on other provisions of the regulations. In this notice, FDA is announcing the availability in draft of a guideline for the organization and content of the clinical data section of an application. This

guideline is the last of those promised as part of the NDA Rewrite.

Issuance of this draft guideline follows publication in draft form of nine guidelines on the format and content of an application (notice of availability published in the **Federal Register** of June 26, 1985 (50 FR 26411)):

1. Guideline for the Format and Content of an Application Summary [Docket No. 85D–0247]
2. Guideline for the Format and Content of the Chemistry, Manufacturing, and Controls Section of an Application [Docket No. 85D–0243].
3. Guideline for the Format and Content of the Nonclinical Pharmacology/Toxicology Section of an Application [Docket No. 85D–0244].
4. Guideline for the Format and Content of the Human Pharmacokinetics and Bioavailability Section of an Application [Docket No. 85D–0275].
5. Guideline for the Format and Content of the Microbiology Section of an Application [Docket No. 85D–0245].
6. Guideline for the Format and Content of the Statistical Section of an Application [Docket No. 85D–0246].
7. Guideline for the Formatting, Assembling, and Submitting New Drug and Antibiotic Application [Docket No. 85D–0248].
8. Submission in Microfiche of the Archival Copy of an Application [Docket No. 85D–0250].
9. Guideline for Postmarketing Reporting of Adverse Drug Reactions [Docket No. 85D–0249].

FDA is making the clinical data draft guideline available for public comment before adopting it as the formal position of the agency. FDA considers the proper submission of clinical data crucial to a successful review of marketing applications and therefore strongly encourages comments on this guideline from the pharmaceutical industry and the general public. If, following the agency's consideration of comments received, the agency concludes that the draft guideline, as revised, reflects acceptable criteria for use in submitting clinical data in new drug and antibiotic marketing applications, 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 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.

Interested persons may, on or before April 17, 1986, 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 revision 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.

Dated: January 6, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86–926 Filed 1–16–86; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 76N–0256; DESI 9149]

Drugs for Human Use; Trifluoperazine Hydrochloride; Request for Revised Labeling

Correction

In FR Doc. 85–29523 beginning on page 50964 in the issue of Friday, December 13, 1985, make the following correction:

On page 50964, in the third column, in drug application number six, "ANDA 85–328" should read "ANDA 87–328".

BILLING CODE 1505–01–M

Peripheral and Central Nervous System Drugs Advisory Committee; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced: Peripheral and Central Nervous System Drugs Advisory Committee.

Date, time, and place. February 14, 9 a.m., Conference Rms. G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, February 14, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to conclusion; Frederick J. Abramek, Center for Drugs and Biologics (HFN–120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4020.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational drugs proposed for marketing for use in the treatment of neurological disease.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The committee will discuss the safety and efficacy of thyrotropin releasing hormone (NDA 19–511, Thymone®, Abbott Laboratories) for the symptomatic treatment of muscle weakness secondary to amyotrophic lateral sclerosis (ALS).

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives

of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearings's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: January 10, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–1052 Filed 1–16–86; 8:45 am]

BILLING CODE 4160–01–M

Vaccines and Related Biological Products Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending an advisory committee meeting notice of the Vaccines and Related Biological Products Advisory Committee to reflect a change in the agenda. Notice of the meeting was published in the **Federal Register** of December 24, 1985 (50 FR 52563). The agenda is revised to read as follows:

Type of meeting and contact person. Closed committee deliberations, January 23, 8:30 a.m. to 2:30 p.m.; open public hearing, 2:30 p.m. to 3:30 p.m., unless public participation does not last that long; open committee discussion, 3:30 p.m. to 6 p.m.; open committee deliberations, January 24, 8:30 a.m. to 3:30 p.m.; closed committee deliberations (if necessary), 3:30 p.m. to 4:30 p.m.; Jack Gertzog, Center for Drugs and Biologics (HFN–31), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

Dated: January 10, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–1049 Filed 1–16–86; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85N–0583]

Low Back Referral Criteria Panel; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming meeting of the Low Back Referral Criteria Panel. This notice gives methods for interested persons to submit written data and views to the Panel, to participate in open sessions of the meeting, and to review the report of the Panel.

DATES: Open sessions: February 4, 1986, 8:30 a.m. to 9:30 a.m., and February 5, 1986, 11:15 a.m. to 12 a.m. Written data and views must be submitted to the Panel by February 3, 1986.

ADDRESS: The Panel meeting will be held at the Raddison Hotel in Tucson, AZ. The Panel's report may be reviewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Written submissions must be addressed to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Jay A. Rachlin, Center for Devices and Radiological Health (HFZ–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4600.

SUPPLEMENTARY INFORMATION: Through the Center for Devices and Radiological Health, FDA conducts and supports research, training, and other activities to minimize unproductive radiation exposure from diagnostic radiological examinations. One possible source of unproductive radiation exposure is radiological examinations that are not likely to affect patient management. To minimize the number of requests for ineffective examinations, a referring physician needs to have up-to-date information about when a given radiological study is likely to provide needed diagnostic information. This information, which can take the form of decision guidelines based on patient signs, symptoms, or history, is termed here "referral criteria."

Under one part of a program designed to facilitate the development and testing by the medical profession of patient selection criteria for diagnostic radiological examinations, FDA is providing logistical support through a contractor for the convening of a small panel of clinical and scientific experts to formulate draft patient referral criteria or statements of use. A detailed description of the x-ray referral criteria development process was published in the **Federal Register** of June 9, 1981 (46 FR 30568).

This is the second meeting of the Low Back Referral Criteria Panel. The meeting is being convened to review and edit the first draft of the acute low back imaging strategy for both adult and pediatric patients and to receive and review reports of the individual Panel members.

Interested persons may submit written data and views to the Panel. Any interested person who wishes to request time for oral presentations during the open sessions of the meeting should inform the contact person listed above, either orally or in writing, before the meeting. Any person attending the meeting who does not request time in advance of the meeting date will be permitted to make an oral presentation at the conclusion of the open sessions, time permitting.

A list of committee members, the meeting agenda, and the report of the Panel meeting may be reviewed at the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday. The report of the Panel meeting will contain minutes of the open sessions, copies of written data and views submitted to the Panel in the open sessions, and summaries of the closed sessions. Material will be filed under the docket number appearing in the heading of this notice.

Dated: January 10, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–1050 Filed 1–16–86; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85N-0569]

Study of Certain Effects of Sugar Alcohols and Lactose Observed in Animal Experiments; Request for Additional Information; Closed Meeting of Ad Hoc Expert Panel

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Life Sciences Research Office of the Federation of American Societies for Experimental Biology (FASEB) is undertaking a study, by means of an ad hoc Expert Panel on Sugar Alcohols and Lactose (the Expert Panel), of certain effects that have been observed in animal experiments in which the test animals were fed sugar alcohols and lactose. FASEB is inviting the submission of scientific data, information, and views on these effects. FDA has made available to the Expert Panel the data, reports, and other materials that have been submitted to the agency in support of the safety of the food use of sugar alcohols. Consequently, materials on this subject that have already been submitted to the agency need not be resubmitted. The Expert Panel will provide an opportunity for the oral presentation of information, data, and views at an open meeting. FDA will announce the date, time, and place of this meeting. The Expert Panel also will meet in closed session for organizational purposes and to begin its evaluation of the available scientific data and information.

DATES: The closed meeting of the Expert Panel will be held on February 3 and 4, 1986, at 9 a.m. at the Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814. Relevant scientific data and information may be submitted until March 15, 1986.

ADDRESSES: Relevant information and data should be submitted to both the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4062, 5600 Fishers Lane, Rockville, MD 20857, and the Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814. Two copies of the relevant data and information should be submitted to both the Life Sciences Research Office and to the Dockets Management Branch (addresses above). Requests for information about the study should be made to the individuals listed below.

FOR FURTHER INFORMATION CONTACT:

F.R. Senti, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, 301-530-7030;

or

Particia McLaughlin, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: FDA is announcing that FASEB, under its contract with FDA (No. 223-83-2020), is undertaking, through the Expert Panel established by FASEB's Life Sciences Research Office, a study and evaluation of available information on the following issues: adrenal hyperplasia and related effects observed in certain rat strains fed sugar alcohols; urinary bladder stones and hyperplasia in mouse strains fed xylitol; hepatic response of dogs fed xylitol; and testicular tumors in rats fed high doses of lactitol or lactose.

The Life Sciences Research Office established the Expert Panel on the recommendation of the Scientific Steering Group that FASEB created under its contract with FDA. The panel is composed of members of the Scientific Steering Group and other experts in the several aspects of the study that are outlined above. A list of members of the Expert Panel may be obtained by contacting in writing F. R. Senti (address above).

In accordance with 21 CFR 14.15(b), notice is given that the Expert Panel will hold a closed meeting on February 3 and 4, 1986, to review study objectives, to define the scope of the task, to begin evaluation of available scientific data and information, and to develop plans for an open meeting. FDA will announce the date, time, and place of the open meeting in a future issue of the **Federal Register.**

This notice invites the submission of written scientific information, data, and views on sugar alcohols and lactose for consideration by the Expert Panel. Reports submitted to FDA in support of the safety of sugar alcohols for use as food ingredients need not be submitted again. Two copies of any scientific information or data should be submitted to the Dockets Management Branch (address above) and should be identified with the docket number found in the heading of this document. Two copies of any scientific information or data should also be submitted to the Life Sciences Research Office, Federation of American Societies for Experimental Biology (address above). The deadline for receipt of such information is March 15, 1986.

Dated: January 13, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-1045 Filed 1-14-86; 10:39 am]

BILLING CODE 4160-01-M

[Docket No. 85V-0365 et al.]

Availability of Approved Variances for Sunlamp Products; Heinz Kettler Metall Warenfabrik GmbH & Co. et al.

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that variances from the performance standard for sunlamp products have been approved by FDA's Center for Devices and Radiological Health (CDRH) for certain specified sunlamps and sunlamp products manufactured or imported by two organizations. The intended use of the products is to produce ultraviolet radiation for tanning the skin.

DATES: The effective dates and termination dates of the variances are listed in the table below under **"SUPPLEMENTARY INFORMATION."**

ADDRESS: The applications and all correspondence on the applications have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Tracy Donovan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), CDRH has granted the two organizations listed in the table below a variance from certain requirements of the performance standard for sunlamp products (21 CFR 1040.20). Approval has been granted for the listed products to vary as specified below from that portion of § 1040.20(c)(2)(ii) requiring the maximum timer interval for a sunlamp product to be 10 minutes or less. All other provisions of § 1040.20 remain applicable to the listed sunlamp products and ultraviolet lamps.

Each of the variances for the nominally ultraviolet–A (UVA) sunlamp products permits the listed manufacturer or importer to introduce into commerce sunlamp products that have less than 5 percent of their ultraviolet radiation at wavelengths shorter than 320 nanometers. CDRH's experience with this kind of sunlamp product indicates that the relatively lengthly exposure recommended by the manufacturer does not result in severe, acute skin burns or corneal injury. Therefore, some of the requirements of § 1040.20 are not appropriate for these UVA products. Even though the skin hazard is reduced, there is still a need to wear protective eyewear to eliminate the unnecessary risk of harm to chemically sensitized lenses, or of cornea damage, or of long-term development of lens opacities.

CDRH has determined that suitable or alternate means of radiation protection are provided by (1) constraints on the physical and optical design of the products and (2) warnings in the user manual and on the products. Therefore, on the effective dates specified in the table below, CDRH approved the requested variances by a letter to each manufacturer or importer from the Deputy Director of CDRH.

So that the product may show evidence of the variance approved for the manufacturer or importer of that product, each product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number, and the effective date of the variance as specified in the table below.

Docket No.	Organization granted the variance	Sunlamp product	Effective date/termination date
85V-0365	Heinz Kettler Metallwarenfabrik GmbH & Co., P.O. Box 1020, 4763 Ence — Parsit, West Germany.	UVA sunlamp products manufacted by Heinz Kettler Metallwarenfabrik GmbH & Co.	Oct. 28, 1985–Oct. 28, 1990.
85V-0413	SCA Corporation, 2875 152nd Avenue, N.W., Redmond, Washington 98052.	UVA suntanning products manufactured for SCA Corporation by Lohmann-Werke GmbH and Co.	Nov. 12, 1985–Nov. 12, 1990.

In accordance with § 1010.4, the application and all correspondence on the application have been placed on public display under the designated docket number in the Dockets Management Branch (address above) any may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: January 10, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86–1047 Filed 1–16–86; 8:45 am

BILLING CODE 4160-01-M

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting of the Clinical Applications and Prevention Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Clinical Applications and Prevention Advisory Committee, Division of Epidemiology and Clinical Applications, National Heart, Lung, and Blood Institute, National Institutes of Health, February 24–25, 1986. The meeting will be held in Conference Room 4 (A Wing), Building 31, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on February 24 from 9:00 a.m. to recess and from 8:30 a.m. to adjournment on February 25 to discuss new initiatives, program policies and issues. Attendance by the public is limited to space available.

Ms. Terry Bellicha, Chief, Public Inquiry Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–4236, will provide a summary of the meeting and a roster of committee members upon request. Dr. William Friedewald, Executive Secretary of the Committee, Federal Building, Room 212, Bethesda, Maryland 20892, phone (301) 496–2533, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health.)

Dated: January 10, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86–1110 Filed 1–16–86; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting of Pulmonary Diseases Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Pulmonary Diseases Advisory Committee, National Heart, Lung, and Blood Institute on February 20–21, 1986 at the National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 9, Bethesda, Maryland 20892.

The entire meeting, from 8:30 a.m. on February 20 to adjournment on February 21, will be open to the public. The Committee will discuss the current status of the Division of Lung Diseases' programs and Committee plans for fiscal year 1987. Attendance by the public will be limited to the space available.

Ms. Terry Bellicha, Chief, Public Inquiry Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A–21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Suzanne S. Hurd, Executive Secretary of the Committee, Westwood Building, Room 6A16, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–7208, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.838, Lung Diseases Research, National Institutes of Health)

Dated: January 10, 1986.

Betty J. Beveridge,

Committee Management Officer.

[FR Doc. 86–1058 Filed 1–16–86; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting of the Cardiology Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cardiology Advisory Committee, National Heart, Lung, and Blood Institute, March 24–25, 1986, Building 31C, Conference Room 8, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:00 a.m. on March 24 to adjournment on March 25. Attendance by the public will be limited to space available. Topics for discussion will include a review of the research

programs relevant to the Cardiology area and consideration of future needs and opportunities.

Ms. Terry Bellicha, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Room 4A21, Building 31, National Institutes of Health, Bethesda, Maryland 20892, telephone (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Eugene R. Passamani, M.D., Associate Director for Cardiology, Division of Heart and Vascular Diseases, National Heart, Lung, and Blood Institute, Room 320, Federal Building, Bethesda, Maryland 20892, telephone (301) 496–5421, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: January 10, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86–1064 Filed 1–16–86; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of the Sickle Cell Disease Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, National Heart, Lung, and Blood Institute, February 28, 1986. The meeting will be held at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, Building 31, Conference Room 7, C-Wing. The entire meeting will be open to the public from 9:00 a.m. to 5:00 p.m., to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A–21, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Clarice D. Reid, Chief, Sickle Cell Disease Branch, Division of Blood Diseases and Resources, NHLBI, Federal Building, Room 504, (301) 496–6931, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: January 10, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86–1059 Filed 1–16–86; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Toxicology Program (NTP); Levels of Evidence of Carcinogenicity Used To Describe Evaluative Conclusions for NTP Long-Term Toxicology and Carcinogenesis Studies; Request for Comments

Introduction

A major activity of the NTP is the conduct and interpretation of long-term toxicity and carcinogenicity studies that are usually conducted in rats and mice. It is important to have predefined categories which can be used as common descriptors for patterns of experimental results. They are a way of classifying the results of many experiments into a few well understood categories of varying statistical and biological evidence for the carcinogenicity or noncarcinogenicity. They apply only to the specific NTP experiments under consideration. These "levels of evidence of carcinogenicity" were developed by NTP staff and the NTP Board of Scientific Counselors and have been in use since June 1983. On October 30, 1985, after 2 years experience of using the NTP levels of evidence of carcinogenicity, proposed modifications were discussed in a public session of the NTP Board of Scientific Conselors meeting. Subsequently on December 9, 1985 a revised draft was discussed with the Board's Technical Reports Review Subcommittee and *ad hoc* Panel of Experts in public session. The draft was revised to reflect the discussion at that meeting.

As part of an effort to inform the public and receive all viewpoints, this revised draft is presented here for written comment by any interested party. Comments should be sent within 45 days of publication of this announcement to Dr. Larry G. Hart, Executive Secretary, NTP Board of Scientific Counselors, Office of the Director, National Toxicology Program, P.O. Box 12233, Research Triangle Park, North Carolina 27709.

All comments will be considered by staff and reported to the Board along with recommendations for final wording for their consideration in further review of the draft modifications. These levels of evidence of carcinogenicity along with explanatory or introductory information will be discussed in public session at the next Board of Scientific Counselors' meeting on March 25, 1986. (Details of this meeting will be announced at a later date in the **Federal Register.**)

Background

In June 1983, the National Toxicology Program began using five categories of interpretative conclusions in their Toxicology and Carcinogenesis Studies Technical Report Series. The use of these categories was implemented largely in an attempt to better differentiate and evaluate the "strength of evidence" of the experimental findings and to replace the restrictive classifications in common use that a chemical "was" or "was not" carcinogenic under the conditions of the particular study.

The levels of evidence were formulated with the underlying need to allow scientific flexibility and to promote better understanding not only among the Board of Scientific Counselors Peer Review Panel members and Program Staff but significantly as well for those who subsequently must rely on these findings. Thus, five categories of evidence of carcinogenicity seemed to represent a reasonably optimal number to meet these objectives; that is, two categories for positive results ("Clear Evidence" and "Some Evidence"), one category for uncertain finding ("Equivocal Evidence), one category for no observable effects ("No Evidence"), and one category for experiments considered seriously flawed ("Indequate Study"). As used since June 1983 one of these five categories has been selected to describe the findings for each individual Study. A study has been defined to mean data collected from a single species/sex; thus, in Program studies this usually means four separate experiments: male rats, female rats, male mice, female mice.

The system used in our Program should not be considered either new or fully unique, since others have defined for their own particular needs similar categories of evidence, which have been used by these groups with success. None of these approaches seemed to fit fully our particular needs. Further, the Peer Review Panel and the Program have not attempted to formulate a composite evaluation as is done by the International Agency for Research on Cancer, by the Regulatory Agencies, or by others. These all-available-data-type interpretations that help estimate potential human health risks extend beyond the defined Program purview, or the necessary risk assessment/risk management expertise. Importantly,

however, the Program experimental findings from long-term carcinogenesis studies are most valuable for identifying potential human health hazards, which represents the first step in the risk assessment process.

The Board of Scientific Counselors Ad Hoc Peer Review Panel members who helped evaluate the studies reported using these levels of evidence have given the Program staff considerable insight and constructive comments about the categories of evidence by their indepth discussions during the Panel meetings as well as individually on other occasions. During Peer Review of Draft Technical Reports from June 1983 til now, certain areas seemed to attract the most attention from the Panel and the public regarding the levels of evidence:

(i) Whether benign neoplasia (alone) should be considered as being evidence of carcinogenicity given that cancer means "malignancy";

(ii) Whether "substantial increases" in benign neoplasia was sufficient to evoke the highest level of evidence;

(iii) Whether neoplasia without a "Benign" counterpart per se (that is, leukemia) necessitates "clear evidence";

(iv) Whether "common" or "uncommon" occurring neoplasia should influence the selected level of evidence;

(v) Whether the definitions of "clear evidence of carcinogenicity" and "some evidence of carcinogenicity" were really distinctive.

These comments were studied and resolved largely by adding a paragraph detailing some key items that should be incorporated into the category selection process (see the Proposed Revised Note to the Reader). However, the issue of benign neoplasia in relation to the carcinogenic potential of a chemical remains an area of active discussion among scientists. Rergarding the significance of these lesions the National Cancer Advisory Board stated in 1977 (JNCI, *58*:461–465) that "benign neoplasms may endanger the life of the host by a variety of mechanisms, including hemorrhage, encroachment of a vital organ, or unregulated hormone production" and "benign neoplasms may represent a stage in the evolution of a malignant neoplasm and in other cases they may be "end points" which do not readily undergo transition to malignant neoplisms." This view has been endorsed in 1985 by the American Industrial Health Council (Science 225: 682–687); and the Office of Science and Technology Policy (50 FR 10371–10442, Mar 14, 1985) reported "that truly benign tumors in rodents are rare and that most tumors diagnosed as benign really represent a stage in the progression to malignancy." Further, whether benign neoplasia in rodents corresponds to benign or malignant neoplasia in other species including humans remains unknown. After evaluating this issue, and based on these expert bodies, the NTP proposes to continue using benign neoplasia as a useful biologic indicator for selecting levels of evidence.

The Panel members were in consensus agreement that the levels of evidence of carcinogenicity as used for the more than 45 Technical Reports was a considerable advancement. And the Panel members (and the Board of Scientific Counselors Ad Hoc Panel on Chemical Carcinogenisis Testing and Evaluation) urged continued use of these categories of evidence, with minor adjustments made where necessary to accommodate Panel concerns and advances in knowledge. On 30 October 1985 the Board of Scientific Counselors reviewed this proposal and recommended that certain suggested changes be incorporated, and the revised version was presented to the Peer Review Panel on 9 December 1985 for review and discussion.

Proposed Addition for the Note to the Reader

The major addition proposed for the levels of evidence centers on a more explanatory narrative that should assist Panel members who review the Technical Reports as well as to promote further understanding for those who use these Technical Reports and are not involved as deeply in the overall process. The following proposed revised Note to the Reader, to appear in all Toxicology and Carcinogenesis Studies Technical Reports, attempts to better clarify the category selection process.

Revised Note to the Reader Section

These studies are designed and conducted to characterize and evaluate the toxicologic potential, including carcinogenic activity, of selected chemicals in laboratory animals (usually two species, rates and mice). Chemicals selected for study in the NTP Carcinogenesis Program are chosen primarily on the bases of human exposure, level of production, and chemical structure. Selection per se is not an indicator of a chemical's carcinogenic potential. Negative results, in which the laboratory animals do not have a greater incidence of cancer than control animals, do not necessarily mean that a chemical is not a carcinogen, inasmuch as the experiments are conducted under a limited set of conditions. Positive results demonstrate that a chemical is carcinogenic for laboratory animals under the conditions of the study and indicate that exposure to the chemical has the potential for hazard to humans. The actual determination of risk to humans from chemicals found to be carcinogenic in laboratory animals requires a wider analysis that extends beyond the purview of the evaluation of these studies.

Five categories of evidence of carcinogenicity are used in the Technical Reports series to summarize the strength of the evidence observed in each experiment: Two categories for positive results ("Clear Evidence" and "Some Evidence"), one category for uncertain findings ("Equivocal Evidence"), one category for no observable effects ("No Evidence"), and one category for experiments that because of major flaws cannot be evaluated ("Inadequate Study"). These categories of interpretative conclusions were adopted in June 1983 for use in the Technical Report series to more specifically incorporate the concept of actual weight of evidence of carcinogenicity, as well as to emphasize consistency. For each separate experiment (male rats, female rats, male mice, female mice), one of the following quintet is selected to describe the findings. These categories refer to the strength of the experimental evidence and not to either potency or mechanism.

Clear Evidence of Carcinogencity is demonstrated by studies that are interpreted as showing a dose related (i) increase of malignant neoplasms, (ii) increase of a combination of malignant and benign neoplasms, or (iii) marked increase of benign neoplasms.

Some Evidence of Carcinogencity is demonstrated by studies that are interpreted as showing a chemically related (i) increase of neoplasms (malignant, benign, or combined), (ii) slight increase in neoplasms of several organs/tissues, or (iii) slight increase in uncommon neoplasms.

Equivocal Evidence of Carcinogenicity is demonstrated by studies that are interpreted as showing a marginal increase of neoplasms that may be chemically related.

No Evidence of Carcinogenicity is demonstrated by studies that are interpreted as showing no chemically related increases in malignant or benign neoplasms.

Inadequate Study of Carcinogenicity is demonstrated by studies that because of major qualitative or quantitative limitations cannot be interpreted as valid for showing either the presence or absence of a carcinogenic effect.

While selecting a conclusion statement for a particular experiment,

consideration must be given to key factors that would extend the actual boundary of an individual category of evidence. This should allow for incorporation of scientific experience and current understanding of long-term carcinogenesis studies in laboratory animals, especially for those evaluations that may be on the borderline between two adjacent levels. These considerations should include the adequacy of the experimental design and conduct; occurrence of common versus uncommon neoplasia; progression (or lack thereof) from benign to malignant neoplasia as well as from preneoplastic to neoplastic lesions; combining benign and malignant tumor incidences known or thought to represent stages of progression in the same organ or tissue; the presence or absence of dose response relationships; latency in tumor induction; multiplicity in site specific neoplasia; metastases; supporting information from proliferative lesions (hyperplasia) in the same site of neoplasia or in other experiments (same lesion in another sex or species); the concurrent control tumor incidence as well as the historical control rate and variability for a specific neoplasm; survival adjusted analyses and false positive or false negative concerns; structural activity correlations; and in some cases genetic toxicology. These factors together with the definitions as written should be used as composite guidelines for selecting one of the five categories.

Additionally, the following concepts (as patterned from the International Agency for Research on Cancer Monographs) have been adopted by the NTP to give further clarification of these issues:

The term chemical carcinogenesis generally means the induction by chemicals of neoplasms not usually observed, the induction by chemicals of more neoplasms than are generally found, or the earlier induction by chemicals of neoplasms that are commonly found. Different mechanisms may be involved in these situations. Etymologically, the term carcinogenesis means induction of cancer, that is, of malignant neoplasms; however, the commonly accepted meaning is the induction of various types of neoplasms or of a combination of malignant and benign neoplasms. In the Technical Reports, the words tumor and neoplasm are used interchangeably.

These experiments were initiated by the National Toxicology Program. The studies described in this Technical Report have been conducted under NTP guidelines for animal care and in compliance with NTP chemical health and safety requirements and must meet or exceed all applicable Federal, state, and local health and safety regulations. All NTP toxicology and carcinogenesis studies are subjected to a data audit before being presented for peer review.

Although every effort is made to prepare the Technical Reports as accurately as possible, mistakes may occur. Readers are requestd to identify these so that corrective action may be taken. Further, anyone who is aware of related ongoing or published studies not mentioned in this Technical Report is encouraged to make this information known to the NTP. Comments and questions about the National Toxicology Program Technical Reports on Toxicology and Carcinogenesis Studies should be directed to Dr. J.E. Huff, National Toxicology Program, P.O. Box 12233, Research Triangle Park, NC 27709 (919–541–3780).

These NTP Technical Reports are available for sale from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161 (703–487–4650). Single copies of this Technical Report are available without charge (and while supplies last) from the NTP Public Information Office, National Toxicology Program, P.O. Box 12233, Research Triangle Park, NC 27709.

[This completes the proposed revised Note to the Reader]

Comments

In our experience, the underlying tenet to continued use and acceptance of these categories of evidence centers on scientific and judgemental flexibility; attempts to "spell out" details and specifics quickly dissuades the conceptual (and opinionated) "feeling about the data" and frequently leads to narrow and often obligatory confinement to "definitional boxes". Thus, the words used to render our level of evidence may seem vague in some instances, yet importantly these definitions must remain flexible and should be considered as guidelines to assist in choosing one of the five categories.

To accommodate comments and suggestions about the definitions received since June 1983, some rearrangements or wording modifications have been made in the original individual categories of evidence to allow further clarity of thought, yet continues to maintain flexibility for selection. The comment notations given below are provided here for further exposition, and will not be shown in the Technical Reports.

Clear Evidence of Carcinogenicity

Comment: The weight of evidence in this category indicates an unequivocal carcinogenic response due to chemical exposure. Generally yet not exclusively, this level is reserved for chemicals causing dose related increases in malignant neoplasia.

Some Evidence of Carcinogenicity

Comment: The major differentiation between "clear evidence" and "some evidence" hinges on the degree or strength of the response. Both categories represent positive evidence of carcinogenicity, but separate largely with respect to the nuances of the overall response, with emphasis on dose effect relations: Clear evidence being the "higher degree of evidence" and some evidence being the "lower degree of evidence".

Equivocal Evidence of Carcinogenicity

Comment: The strength of the evidence is considered insufficient to permit a conclusion of a definitive positive association between the neoplastic response and the chemical, yet some correspondence seems to exists that does not permit placement in the "no evidence" category. In essence, the findings are considered somewhat uncertain.

No Evidence of Carcinogenicity

Comment: The "no evidence" level is given to those experiments that exhibit no neoplastic responses as being related to chemical exposure under the conditions of the study. Given the relatively small number of animals used in each control and dose group coupled with a reasonably optimal exposure regimen and the two-year duration, adequate survival is essential.

Inadequate Study of Carcinogenicity

Comment: Assigned to studies primarily on the basis of poor survival, due at times to bacterial/viral influence or the chemical toxicity, resulting in not enough animals surviving long enough with sufficient numbers to be considered "no evidence". Positive studies suffer less from reduced survival. Also, major scientific or technical flaws may render a study uninterpretable.

Please submit all comments and suggestions in writing to Dr. Hart within 45 days of publication of this announcement. Any submissions received after the above date will be accepted and utilized if possible.

Dated: January 8, 1986.

David P. Rall,

Director, National Toxicology Program

[FR Doc. 86-936 Filed 1-16-86; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Utah; Intent To Prepare an Environmental Impact Statement

AGENCY: Bureau of Land Management, Cedar City District, Cedar City, Utah.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS) and to conduct scoping for an analysis of surface and underground coal development in Kane County, Utah.

SUMMARY: The Cedar City District is preparing an Environmental Impact Statement (EIS) on a probable coal development scenerio developed in response to a proposal by L.C. Holdings, Inc. to conduct exploratory drilling and other actions necessary to obtain a preference right coal lease. The 21,000 acre development area is composed of State, private and Federal coal lands. It is located two and one half miles east of Zion National Park.

Probable development would consist of the annual production of 400 thousand tons of coal by both surface and underground mining methods.

A public scoping period is provided to obtain the views of interested individuals and agencies. Comments are solicited to identify major areas of environmental effect, reasonable alternatives and any available data regarding the area of effect.

DATES: Comments must be submitted on or before February 18, 1986.

ADDRESS: Send comments to Cedar City District Office, Bureau of Land Management, 1579 North Main, P.O. Box 724, Cedar City, Utah 84720. See Supplementary Information for locations of public open houses.

FOR FURTHER INFORMATION CONTACT: David Everett, 801-586-2401.

SUPPLEMENTARY INFORMATION: Public Scoping Open Houses will be held on dates and at the locations listed below:

Tuesday, February 11, 1986—Kanab, Utah—Location: Kanab Resource Area. 320 North 1st East, Time: 1:00-4:00 p.m.

Thursday, February 13, 1986—Cedar City, Utah—Location: Cedar City District Office, 1579 North Main, Time: 1:00-4:00 p.m.

Dated: January 9, 1986.

Morgan S. Jensen,

District Manager.

[FR Doc. 86-1085 Filed 1-16-86; 8:45 am]

BILLING CODE 4310-DQ-M

Intent To Prepare EIR/EIS; Proposed San Joaquin Valley Pipeline Project, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an environmental impact report and environmental impact statement (EIR/EIS).

SUMMARY: Notice is hereby given that the Bureau of Land Management and the California State Lands Commission in coordination with other State and Federal agencies will prepare an Environmental Impact Report and Environmental Impact Statement (EIR/EIS) for the proposed San Joaquin Valley Pipeline Project which crosses approximately 2.5 miles of public land managed by the Bureau of Land Management.

SUPPLEMENTARY INFORMATION: The San Joaquin Valley Pipeline Project will run from the oil fields in western Kern County, California to Martinez, California. The EIR/EIS will assess the impacts of constructing a 257-mile pipeline from the grasslands of the Kernridge Oil Fields near Fellows, California north the Interstate Highway Five, then northwest along the western edge of the San Joaquin Valley terminating at a refining area in Martinez, California. The pipeline would be heated and consist of: (1) Approximately eighteen miles of ten-inch diameter buried pipeline, (2) Twenty-one miles of eighteen-inch diameter buried pipeline, (3) Forty-four miles of fourteen-inch diameter buried pipeline and (4) One hundred and seventy-three miles of twenty-four-inch diameter buried pipeline.

The pipeline would carry up to 120,000 barrels of crude oil per day. The EIR/EIS will be prepared by an interdisciplinary team which will consider the following general issues:

1. Geological Hazards.
2. Air Quality.
3. Biological Resources.
4. Cultural Resources (including Native American concerns).
5. Existing Land Uses.
6. Water Quality (including stream crossings).
7. Groundwater.
8. Socioeconomics.
9. Oil spill potential.
10. Visual Resources.
11. Noise level during construction.

DATES: Two scoping meetings will be held to obtain public input on the issues and to see if additional issues need to be addressed. The meetings will be on the dates and at the places listed below from 2:00 p.m. to 4:30 p.m. and from 7:00 p.m. to conclusion of comments:

February 3, 1986—Board of Supervisors, Hearing Room, County Administration Building, 651 Pine Street, Martinez, California.

February 4, 1986—"The Fort" Auditorium, 915 North 10th Street, Taft, California.

FOR FURTHER INFORMATION CONTACT: H. Edward Lynch, Project Manager, Bureau of Land Management, 800 Truxtun Avenue, Bakerfield, California 93301; (805) 861-4191.

Dated: January 13, 1986.

Ron Hofman,

Associate State Director.

[FR Doc. 86-1068 Filed 1-16-86; 8:45 am]

BILLING CODE 4310-40-M

[N-39112]

Realty Action; Exchange of Public and Private Lands in Clark County, Nevada

The following described Federal land in Clark County, Nevada, has been determined to be potentially suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716. The lands will not be offered for exchange until 60 days after the date of publication of this notice in the **Federal Register**:

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E.,
Sec. 24, E½SW¼SW¼NW¼, W½SE¼SW¼NW¼.
Comprising 10 acres, more or less.

In exchange for this land, the United States will acquire the following described private lands also in Clark County from Kenneth R. Gragson:

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E.,
Sec. 24, SE¼SE¼NW¼.
Comprising 10 acres, more or less.

On October 14, 1979, a patent was issued to Kenneth R. Gragson for a 10-acre parcel of land in the Las Vegas Valley. The patent failed to include right-of-way N-18767 which was previously granted to Clark County Department of Public Works for the construction, operation and maintenance of a flood control channel. The flood control channel was constructed subsequent to the time of

patent. Furthermore, the right-of-way grant was not recorded by Clark County as required by Nevada Revised Statute 111.310, *et seq.* Since Mr. Gragson was unaware of the existence of the right-of-way grant, the Bureau of Land Management is proposing an exchange to accommodate the oversight. An exchange would relieve the county from having to relocate the flood control channel which would be very costly to the taxpayers. The public interest will be served by completing this exchange.

The land has not been used and is not required for any federal purpose. The sale is consistent with the Bureau's planning system.

The values of the lands to be exchanged are approximately equal with the final determination to be made by appraisals of both parcels. Full equalization of values, if not equal, will be achieved by payment to the United States by Kenneth R. Gragson of funds in an amount not to exceed 25% of the total value of the land to be transferred out of Federal ownership.

Patent, when issued, will be subject to all prior valid existing rights and will contain the following reservations:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at the Las Vegas BLM office.

And will be subject to:

1. An easement for streets, roads and utilities in accordance with the transportation plan for Clark County.

2. Those rights for powerline purposes which have been granted to Nevada Power Company, its successors or assigns, by Permit No. N–12571, under the Act of March 4, 1911, 36 Stat. 1253.

3. Those rights for flood control channel purposes which have been granted to Clark County Department of Public Works, its successors or assigns, by Permit No. N–18767, under the Act of October 21, 1976, 90 Stat. 2776.

Upon publication of the Notice of Realty Action in the **Federal Register** and subject to all valid existing rights, the above described public land will be segregated from all forms of appropriation under the public land laws and the general mining laws, except for exchange and leasing under the mineral leasing laws, for a period of two (2) years or upon issuance of patent, whichever occurs first.

Detailed information concerning this exchange including the Environmental Assessment Record/Land Report, Cultural Resource Report #5–1336(N) and Mineral Report are available for review at the Bureau of Land Management, Las Vegas District, 4765 Vegas Drive, Las Vegas, Nevada.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 26569, Las Vegas, Nevada 89126–0569. Objections will be reviewed by the State Director 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 the Interior.

Dated: January 8, 1986.

Ben F. Collins,

District Manager.

[FR Doc. 86–1089 Filed 1–16–86; 8:45 am]

BILLING CODE 4310–HC–M

[M 042822]

Montana; Order Providing for Opening of Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening order.

SUMMARY: This order will open lands segregated from appropriation under public land laws by Power Project 2249.

EFFECTIVE DATE: February 17, 1986.

SUPPLEMENTARY INFORMATION: By virtue of the authority contained in section 24 of the Act of June 10, 1920 (41 Stat. 1975 as amended 16 U.S.C. 818) and pursuant to the determination of the Federal Energy Regulatory Commission on November 8, 1985, it is ordered as follows:

1. By order dated November 8, 1985, the Federal Energy Regulatory Commission vacated Power Project 2249 dated February 7, 1961, in its entirety and described as follows:

Principal Meridian, Montana

T. 36 N., R. 31 W. (surveyed);
Sec. 5;
Sec. 6;
Sec. 7;
Sec. 8;
Sec. 17;
Sec. 18;
Sec. 19;
Sec. 20;
Sec. 29;
Sec. 30;
Sec. 31;
Sec. 32.
T. 37 N., R. 31 W. (surveyed);
Sec. 22;
Sec. 23;
Sec. 27;
Sec. 28;
Sec. 29;
Sec. 32;
Sec. 33.
T. 35 N., R. 32 W. (unsurveyed);
Sec. 1;
Sec. 2;
Sec. 3;
Sec. 4;
Sec. 5;
Sec. 9;
Sec. 10;
Sec. 11;
Sec. 12.
T. 36 N., R. 32 W. (unsurveyed);
Sec. 29;
Sec. 32;
Sec. 33;
Sec. 34;
Sec. 35;
Sec. 36.

All portions of the following described subdivisions lying within the project boundaries as delimited on map exhibit "H & I, Sheet 2" (FPC No. 2249–2), entitled "Lower Yaak River Hydroelectric Project, Yaak River, Montana," filed with the Federal Power Commission on November 2, 1959:

T. 33 N., R. 33 W. (unsurveyed);
Sec. 3, NW¼;
Sec. 4, Unpatented portion of E½, SW¼;
Sec. 8, SE¼;
Sec. 9, W½, NE¼;
Sec. 16, NW¼;
Sec. 17, Unpatented portions of E½ and SW¼;
Sec. 18, SE¼;
Sec. 19, All;
Sec. 20, NW¼;
Sec. 30, N½, unpatented portion S½;
Sec. 31, Unpatented portion N½, SW¼.
T. 34 N., R. 33 W. (unsurveyed);
Sec. 27: Unpatented portions S½NE¼ and SE¼;
Sec. 33: Unpatented portion SE¼;
Sec. 34: Unpatented portion N½ and SW¼, SE¼.
T. 32 N., R. 34 W. (surveyed);
Sec. 4: All;
T. 33 N., R. 34 W. (surveyed);
Sec. 36: E½.

2. As a result of withdrawn lands being described from projected surveys or otherwise, discrepancies have developed between lands withdrawn of record and those identified in withdrawal order dated February 7, 1961, paragraph 1. The discrepancy lands are as follows:

(A) Lands withdrawn of record but not included in withdrawal order dated February 27, 1961.

Principal Meridian, Montana

T. 37 N., R. 31 W. (surveyed);
Sec. 21.
T. 35 N., R. 32 W. (unsurveyed);
Sec. 8.

T. 33 N., R. 33 W. (unsurveyed);
Sec. 5.

(B) Lands in withdrawal order dated February 27, 1961, but not noted of record:

T. 36 N., R. 31 W. (surveyed);
Sec. 32.
T. 37 N., R. 31 W. (surveyed);
Sec. 23.
T. 35 N., R. 32 W. (unsurveyed);
Sec. 11;
Sec. 12.
T. 33 N., R. 33 W. (unsurveyed);
Sec. 3;
Sec. 16;
Sec. 20.

3. At 8:00 a.m. on February 17, 1986, the above-described lands shall be open to such forms of appropriation as may by law be made of National Forest land, subject to any existing withdrawals, leases, licenses or permits. Inquiries concerning the land should be addressed to Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107.

Dated: January 9, 1986.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 86-1084 Filed 1-16-86; 8:45 am]

BILLING CODE 4310-DN-M

[M 42165]

Order Providing for Opening of Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening order.

SUMMARY: This order will open lands segregated from appropriation under the public land laws by Power Project 970.

EFFECTIVE DATE: February 17, 1986.

SUPPLEMENTARY INFORMATION: By virtue of the authority contained in section 24 of the Act of June 10, 1920 (41 Stat. 1975, as amended 16 U.S.C. 818) and pursuant to the determination of the Federal Energy Regulatory Commission on December 9, 1985, it is ordered as follows:

1. By order dated December 9, 1985, the Federal Energy Regulatory Commission vacated Project 970 in its entirety and described as follows. These lands are located within the Kootenai National Forest:

Principal Meridian

T. 29 N., R. 31 W.,
Sec. 6, S½SE¼;
Sec. 7, NW¼NE¼, NE¼NW¼, lot 1.
T. 29 N., R. 32 W.,
Sec. 12, NE¼NE¼.

2. At 8:00 a.m. on February 17, 1986, the above-described lands shall be open to such forms of appropriation as may by law be made of National Forest land, subject to any existing withdrawals, leases, licenses or permits. Inquiries concerning the land should be addressed to the Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

January 9, 1986.

[FR Doc. 86-1086 Filed 1-16-86; 8:45 am]

BILLING CODE 4310-DN-M

Recreation Use Permit Systems; Upper Missouri National Wild and Scenic River, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Open season for commercial permit applications on the Upper National Wild and Scenic river.

SUMMARY: This notice establishes an "open season" for applying for Special Recreation Use Permits on the Upper Missouri National Wild and Scenic River in Montana required of all commercial float boating operations. Other requirements of commercial outfitting and guiding operations remains as outlined in the **Federal Register**, Vol. 49, No. 29, Friday, February 10, 1984, entitled "Special Recreation Permit Policy".

ADDRESS AND DATES: Applications must be sent to the Lewistown District, Bureau of Land Management, Airport Road, Lewistown, Montana 59457 between February 8 and March 22, 1986.

FOR FURTHER INFORMATION CONTACT: River Manager, Airport Road, Lewistown, Montana 59457.

Dated: January 10, 1986.

Glenn W. Freeman,

District Manager.

[FR Doc. 86-1088 Filed 1-16-86; 8:45 am]

BILLING CODE 4310-ON-M

Phoenix District, AR; Intent To Prepare a Resource Management Plan and Invitation To Participate in the Identification of Issues and Planning Criteria

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a resource management plan.

SUMMARY: The Burau of Land Management, Phoenix Resource Area, is initiating the preparation of a Resource Management Plan (RMP) which will include an Environmental Impact Statement (EIS). The Plan will guide future management actions on 920,000 acres of public land and 1.9 million acres of subsurface mineral estate administered by BLM's Phoenix Resource Area. The code of Federal Regulations, Title 43, Subpart 1600, will be followed for this planning effort. The public is invited to participate in the planning process, beginning with the identification of issues and planning criteria in January of 1986.

DATE: Comments relating to the identification of issues and planning criteria will be accepted until March 28, 1986.

ADDRESS: Send comments to: Bureau of Land Management, Phoenix District Office, Attn: RMP Team Leader, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

FOR FURTHER INFORMATION CONTACT: Tim Sanders, RMP Team Leader, Phoenix Resource Area, 602-863-4464.

SUPPLEMENTARY INFORMATION: The planning area is located in south central and east central, Arizona. The planning area includes 920,000 acres of scattered public land and 1.9 million acres of mineral estate in portions of Santa Cruz, Pima, Pinal, Gila, Maricopa, Yavapai, Apache and Navajo Counties, Arizona.

Anticipated resource management issues to be addressed in the RMP include, but are not limited to the following: (1) Which public land in the Phoenix Resource Area should be identified for exchange in order to support Arizona BLM's active land repositioning program? Which land should BLM acquire thru exchange to provide the greatest public benefits? (2) Which public land, if any, should BLM designate as utility corridors? (3) Which public land, if any, should BLM designate as communication sites? (4) Which public land should be designated as open, restricted or closed to motorized vehicles? (5) Which public land, if any, should be designated as Areas of Critical Environmental Concern (ACECs) or as special management areas? (6) Which public land will be needed in the future by state, county and city governments for recreation and public purposes? (7) Which public land will be needed in the future by various governmental agencies for withdrawals or other special purposes?

The RMP will be developed by an interdisciplinary team of resource specialists including a team leader, assistant team leader, realty specialist, wildlife biologist, cultural resource specialist, range conservationist, geologist, botanist, recreation specialist,

water resources specialist and economist.

A comprehensive public participation plan has been prepared. It is intended to involve interested or affected parties early and continuously throughout the planning process. The plan emphasizes localized one-to-one contacts, media coverage, direct mailings, and continual coordination with local, state, and other federal agencies. Meetings to determine the scope of the RMP and to obtain input on issues and planning criteria will be held in Tucson, Phoenix, Holbrook and St. Johns, Arizona at the following times and locations.

February 10, 1986—7:00 P.m.—Executive Inn, 333 West Drachman, Tucson, Arizona

February 11, 1986—7:00 p.m.—Embassy Suites Motel, 3210 N.W. Grand Avenue, Phoenix, Arizona

February 12, 1986—7:00 p.m.—Navajo County Complex, Holbrook

February 13, 1986—7:00 p.m.—Apache County Annex Building, St. Johns

Complete records of all phases of the planning process will be available for public review at the Phoenix Resource Area Office, 2015 West Deer Valley Road, Phoenix, Arizona. The Draft and Final RMP/EIS will be published.

Marlyn V. Jones,

District Manager.

[FR Doc. 86-1061 Filed 1-16-86; 8:45 am]

BILLING CODE 4310-32-M

Idaho; Filing of Plats of Survey

The plats of survey of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, on the dates hereinafter stated:

Boise Meridian

T. 9 S., R. 6 W., Accepted October 22, 1985, Officially filed November 5, 1985.
T. 4 N., R. 10 E., Accepted October 22, 1985, Officially filed November 6, 1985.
T. 46 N., R. 5 W., Accepted October 22, 1985, Officially filed November 6, 1985.
T. 32 N., R. 5 E., Accepted November 12, 1985, Officially filed November 26, 1985.
T. 16 N., R. 20 E., Accepted November 12, 1985, Officially filed November 27, 1985.
T. 65 N., R. 2 E., Accepted December 12, 1985, Officially filed December 13, 1985.

The above plats represent surveys, dependent resurveys, subdivisions, and retracements.

Inquiries about these lands should be addressed to Chief, Branch of Cadastral Survey, Idaho State Office, 3380 Americana Terrace, Boise, Idaho, 83706.

Sharron Deroin,

Chief, Land Services Section.

[FR Doc. 86-1053 Filed 1-16-86; 8:45 am]

BILLING CODE 4310-GG-M

[CA-18158]

Proposed Withdrawal and Opportunity for Public Hearing; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: At the request of the Navy, the Department of the Interior has filed application for a protective withdrawal of those public lands and public minerals presently included in the Sea Site—Naval Weapons Center military withdrawal applicati[redacted] which requires Congressional consideration.

This withdrawal is requested for a period of 5 years to protect the reservation while Congress is making a final determination on the military withdrawal.

DATE: Comments or requests for hearing should be received within 90 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: Marie M. Getsman, BLM, California State Office, 916-974-4815.

The Navy proposes that the Secretary of the Interior make a withdrawal for a period of 5 years to protect the Sea Site portion of the Naval Weapons Center military complex pending Congressional determination on whether to approve the military withdrawal. This protective withdrawal will affect the lands described in the following listed Federal Register publication:

January 20, 1984, 49 FR page 2550, FR Doc. 84-1480.

The area describes 8,320 acres of public lands and minerals in San Bernardino County, California.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the State Director, Bureau of Land Management, that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting. The application will be processed in accordance with regulations set forth in Title 43 CFR Part 2300.

For a period of two years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is rejected or the withdrawal is approved prior to that date. The two year segregative period does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining and mineral leasing laws.

All communications in connection with this proposed withdrawal would be addressed to the undersigned officer, Bureau of land Management, California State Office, Room E-2841 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

Ed Hastey,

State Director.

[FR Doc. 86-1091 Filed 1-16-86; 8:45 am]

BILLING CODE 4310-40

Minerals Management Service

Revision to Document Incorporated by Reference in Outer Continental Shelf Order No. 5

AGENCY: Minerals Management Service, Interior.

ACTION: Notice.

SUMMARY: The Minerals Management Service (MMS) incorporates by reference the 1984 Edition of American Petroleum Institute (API) Recommended Practice (RP) 14C, "Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms," into Outer Continental Shelf (OCS) Order No. 5 in lieu of the 1978 Edition.

The 1984 Edition of API RP 14C reflects the latest advances in technology, equipment, and practice, including requirements covering the location of pressure safety sensors and shutdown devices on underwater installations and safety systems and testing procedures for exhaust-heated components (such as storage tanks which are heated by exhaust from engines). The incorporation by reference

brings OCS Order No. 5 up to date with current industry practices.

EFFECTIVE DATE: February 18, 1986.

FOR FURTHER INFORMATION CONTACT: David A. Schuenke; Chief, Rules, Orders, and Standards Branch; Offshore Rules and Operations Division; Minerals Management Service; 12203 Sunrise Valley Drive; Mail Stop 646; Reston, Virginia 22091; Telephone (703) 860–7916, (FTS) 928–7916.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 3, 1985 (50 FR 40405), MMS proposed to incorporate by reference the 1984 Edition of API RP 14C in lieu of the 1978 Edition which was incorporated in Paragraph 3.9, *Additional Safety Equipment,* OCS Order No. 5, "Production Safety Systems," in all OCS Regions.

The API RP 14C concerns the basis surface safety systems of offshore production platforms (of various sizes, designs, and complexities) where liquid and gas hydrocarbons brought from beneath the ocean floor are separated before being transported to storage facilities.

Review by MMS of the 1984 Edition of API RP 14C showed that it reflects the latest advances in technology, equipment, and practice, including requirements covering the location of pressure safety sensors and shutdown devices on underwater installations and safety systems and testing procedures for exhaust-heated components (such as storage tanks which are heated by exhaust from engines). The MMS concluded that these additional requirements increase safety in the operation of production safety systems and keep OCS Order No. 5 up to date with the latest technological advances.

Therefore, MMS proposed to incorporate by reference the 1984 Edition of API RP 14C into OCS Order No. 5.

Since the edition of the API document is currently specified only in paragraph 3.9, MMS revised that paragraph by incorporating by reference the 1984 Edition in lieu of the 1978 Edition currently incorporated and added the words (immediately after the incorporation) "hereinafter referred to as API RP 14C," so that all subsequent references to API RP 14C in other paragraphs of OCS Order No. 5 would apply to the 1984 Edition.

The MMS also proposed to delete the phrase "or subsequent revisions which the Chief, Conservation Division, has approved for use" contained in paragraph 3.9 of OCS Order No. 5. The MMS proposed to revise the wording to clarify that a new edition of API RP 14C will replace the edition previously incorporated only after going through rulemaking procedures.

The MMS requested comments, and three timely comments were received.

Discussion of Comments

All commenters endorsed the incorporation by reference of the 1984 Edition of API RP 14C and agreed that the document brought OCS Order No. 5 up to date with current industry practices.

Comment: One commenter stated that documents incorporated by reference should be incorporated for guidance only and not as "enforceable additions to the regulations" and that API RP 14C had not been "subjected to public scrutiny as required under Section 553 of the Administrative Procedure Act of 1966, as amended."

Discussion: The MMS disagrees with both contentions of the commenter. The requirements contained in documents incorporated by reference are mandatory. The API RP 24C has been subjected to public scrutiny, and commenters had the opportunity to review the document proposed for incorporation through this rulemaking process which conforms to the requirements of the Administrative Procedure Act.

Executive Order 12291

This document is not expected to cause an increase in costs to consumers, industry, or governmental entities. Based on this assessment, the Department of the Interior (DOI) has determined that this document does not constitute a major rule under Executive Order 12291; therefore, a Regulatory Impact Analysis is not required.

Regulatory Flexibility Act

The DOI has also determined that this document will not have significant economic effect on a substantial number of small entities since offshore activities are complex undertakings generally engaged in by enterprises that are not considered small entities.

Paperwork Reduction Act

The information collection requirements contained in OCS Order No. 5 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et. seq. There are no new information collection requirements in this document.

Authors: The principal author of this document was Mario Rivero, Offshore Rules and Operations Division, Minerals Management Service.

Dated: December 11, 1985.

William D. Bettenberg,

Director, Minerals Management Service.

For the reasons set out above, OCS Order No. 5 for all OCS Regions is amended as follows:

1. In paragraph 3.9 of OCS Order No. 5, the phrase "API RP 14C, Second Edition, January 1978, or subsequent revisions which the Chief, Conservation Division, has approved for use" is replaced with the phrase "API RP 14C, Third Edition, April 1984, hereinafter referred to as API RP 14C."

[FR Doc. 86–917 Filed 1–16–86; 8:45 am]

BILLING CODE 4310–MR–M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Intent To Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation is FOSTER WHEELER CORPORATION, whose principal office is located at 110 S. Orange Avenue, Livingston, New Jersey 07039.

2. The names of wholly-owned subsidiaries, together with the state of each subsidiary's incorporation, which will participate in the operations:

(i) Foster Wheeler Energy Corporation—Delaware
(ii) F.W.D.I.S. Corporation—Delaware
(iii) FW Energy Applications, Inc.—Delaware
(iv) Foster Wheeler Boiler Corporation—Delaware
(v) Foster Wheeler Development Corporation—Delaware
(vi) Foster Wheeler Solar Development Corporation—Delaware
(vii) Foster Wheeler Energy Resources, Inc.—Delaware
(viii) Foster Wheeler Trading Company—Switzerland
(ix) Foster Wheeler International Corporation—Delaware
(x) Foster Wheeler Petroleum Development Corporation—Delaware
(xi) F W Management Operations, Ltd. (USA)—Delaware
(xii) F W Management Operations (Italy) SRL—Italy
(xiii) Foster Wheeler Agro Development Co., Ltd.—Bermuda
(xiv) Foster Wheeler Australia Pty.—Australia

(xv) Construcciones F.W.S.A.—Spain
(xvi) Foster Wheeler Intercontinental Corporation—Delaware
(xvii) Foster Wheeler SPEC Inc.—Delaware
(xviii) Foster Wheeler Italiana S.p.A.—Italy
(xix) Foster Wheeler Limited (Canada)—Canada
(xx) Les Chaudieres Foster Wheeler Inc.—Canada
(xxi) Foster Wheeler Limited (England)—England
(xxii) Foster Wheeler Petroleum Development Limited—England
(xxiii) International Management Systems Ltd.—England
(xxiv) Foster Wheeler Energy Limited—England
(xxv) Foster Wheeler (G.B) Ltd.—England
(xxvi) Foster Wheeler (India) Ltd.—England
(xxvii) Foster Wheeler Power Products Limited—England
(xxviii) Foster Wheeler Automated Welding Limited—England
(xxix) Foster Wheeler Power Products (Scotland) Ltd.—England
(xxx) G. & W. Lowe Limited—England
(xxxi) Quality Inspection Services Limited—England
(xxxii) KBC Process Consultants Limited—England
(xxxiii) Tyrolysis Overseas Limited—England
(xxxiv) Foster Wheeler (Process Plants) Limited—England
(xxxv) Foster Wheeler World Services Limited—England
(xxxvi) Operations International Limited—England
(xxxvii) Process Plants Suppliers Limited—England
(xxxviii) Foster Wheeler N.V.—Netherlands & Antilles
(xxxix) Foster Wheeler Ireland Limited—Ireland
(xl) Fosweco, S.p.A.—Italy
(xli) Societe Foster Wheeler Francaise—France
(xlii) Societe Fonciere-Bourdonnais Rivoli, S.A.—France
(xliii) Foster Wheeler Power Corporation—Delaware
(xliv) Foster Wheeler Power Systems, Inc.—Delaware
(xlv) Foster Wheeler Kauai, Inc.—Delaware
(xlvi) Foster Wheeler Weirton, Inc.—Delaware
(xlvii) Foster Wheeler Tennessee—Delaware
(xlviii) Foster Wheeler Synfuels Corporation—Delaware
(xlix) Foster Wheeler Real Estate Development Corp.—Delaware
(l) Foster Wheeler World Services Corporation—Delaware
(li) Foster Wheeler Middle East Services, Inc.—Delaware
(lii) Foster Wheeler Turkey Inc.—Delaware
(liii) Merrimac Construction, Inc.—Delaware
(liv) World Services France, S.A.—France
(lv) Foster Wheeler Egypt Limited—Delaware
(lvi) Belco Pollution Control Corporation—Delaware
(lvii) Belco International, Inc.—Delaware
(lviii) Belco Pollution Control of Canada, Ltd.—Canada
(lix) Energy Plant Constructors, Inc.—Delaware
(lx) Forney Engineering Company—Texas
(lxi) Control Applications, Inc.—Texas
(lxii) Forney International, Inc.—Texas
(lxiii) Forney Australasia Pty. Limited—Australia
(lxiv) Ingenieursbureau Rodenhuis en Verloop, B.V.—Netherlands
(lxv) Forney International Sales Corporation—Texas
(lxvi) SIE Forney S.p.A.—Italy
(lxvii) Forney Engineering Canada Ltd.—Canada
(lxviii) Forty-Eight Insulations, Inc.—Illinois
(lxix) Glitsch, Inc.—Delaware
(lxx) Glitsch, Canada, Ltd.—Canada
(lxxi) Glitsch, Field Services, Inc.—Texas
(lxxii) Glitsch, Italiana S.p.A.—Italy
(lxxiii) Glitsch, Monterrey S.A.—Mexico
(lxxiv) Glitsch, Special Products, Inc.—Texas
(lxxv) Otto H. York Company—Delaware
(lxxvi) Petrochemical Consultants Canada Limited—Delaware
(lxxvii) Thermacote Welco Company—California
(lxxviii) Ullrich Copper, Inc.—Delaware
(lxxx) YarGo, Inc.—Minnesota
(lxxxi) York Jersey Liability Ltd.—Bermuda
(lxxxii) Conergics Corporation—Delaware
(lxxxiii) Airport Maintenance and Consulting Company—Delaware
(lxxxiv) Arrowhead Conveyor Company, Inc.—Delaware
(lxxxv) Baker Erection Company, Inc.—Missouri
(lxxxvi) Con-Cal Inc.—Delaware
(lxxxvii) Conerec Corporation—Delaware
(lxxxviii) Conergics International Inc.—Delaware
(lxxxix) Conveyor Corporation of America, Inc.—Delaware
(xc) Conveyor Sales and Manufacturing Company—Delaware
(xci) Mayfran International, Incorporated—Delaware
(xcii) Mid-West Conveyor Company, Inc.—Delaware
(xciii) Stearns Block Equipment Company, Inc.—Delaware
(xciv) Versa Corporation—Ohio
(xcv) Mayfran GMBH—Germany
(xcvi) Mayfran Limburg, B.V.—Netherlands
(xcvii) Mayfran France, S.A.—France
(xcviii) Mayfran U.K. Ltd.—England
(xcix) Foster Wheeler Capital Investment Corporation—Delaware
(c) Western American Specialized Transportation Services, Inc.—Texas

1. Parent Corporation—

HMI Holdings, Inc. (Delaware)
1700 S. Wolf Road, Des Plaines, Illinois 60018
10150 Lower Azusa Road, El Monte, California 91731

2. Directly or indirectly wholly-owned subsidiaries of HMI Holdings, Inc. which will participate in the operations, and the addresses of their respective principal offices:

A. T. G. & Y. Holdings, Inc. (Delaware), 1700 S. Wolf Road, Des Plaines, Illinois 60018
B. Coast-to-Coast Holdings, Inc. (Delaware), 1700 S. Wolf Road, Des Plaines, Illinois 60018
C. B. F. Acquisition, Inc. (Delaware), 1700 S. Wolf Road, Des Plaines, Illinois 60018
D. Household Merchandising, Inc. (Ohio), Ben Franklin Division (Ben Franklin Stores), 1700 S. Wolf Road, Des Plaines, Illinois 60018
E. Coast-to-Coast Stores (Central Organization), Incorporated (Delaware), 10801 Red Circle Drive, Minnetonka, Minnesota 55343
F. Coast-to-Coast Stores, Inc. (Delaware), 10801 Red Circle Drive, Minnetonka, Minnesota 55343
G. Total Hardware, Inc. (Delaware), 10801 Red Circle Drive, Minnetonka, Minnesota 55343
H. Twenty One — Fifty Olympic, Inc. (Oregon), 10801 Red Circle Drive, Minnetonka Minnesota 55343
I. T. D. S. Transportation, Inc. (Delaware), 1700 S. Wolf Road, Des Plaines, Illinois 60018
J. T. G. & Y. Stores Co. (Delaware), 3815 North Santa Fe, Oklahoma City, Oklahoma 73125
K. Central Sales Promotions, Inc. (Oklahoma), 130 N. E. 50th Street, Oklahoma City, Oklahoma 73125
L. Household Merchandising Overseas, Inc. (Delaware), 1700 S. Wolf Road, Des Plaines, Illinois 60018
M. T. D. S. Brokerage, Inc. (Delaware), 1700 S. Wolf Road, Des Plaines, Illinois 60018

N. Gosselin Stores Co., Inc. (Kansas), 1700 S. Wolf Road, Des Plaines, Illinois 60018
O. Crest Stores Company (North Carolina), 1700 S. Wolf Road, Des Plaines, Illinois 60018
P. Vons Grocery Co. (Delaware), 10150 Lower Azusa Road, El Monte, California 91731
Q. Foods, Incorporated (California), 10150 Lower Azusa Road, El Monte, California 91731
R. Expo Stores, Inc. (California), 10150 Lower Azusa Road, El Monte, California 91731

James H. Bayne,

Secretary.

[FR Doc. 86-1074 Filed 1-16-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30754]

Huron and Eastern Railway Company; Exemptions

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from: (1) 49 U.S.C. 10901, the acquisition and operation by Huron and Eastern Railway Company (HERC), a noncarrier, of 82.59 miles of rail line currently owned and operated by The Chesapeake and Ohio Railway Company in Huron and Sanilac Counties, MI; (2) 49 U.S.C. 11301, the issuance by HERC of 100,000 shares of $1 par value common stock and 30,000 shares of $10 par value preferred stock; and (3) from 49 U.S.C. 11322, for the holding of positions by Eric D. Gerst and John H. Marino as directors or officers of HERC and the Canton Railroad Co.

DATES: The exemptions are effective on January 16, 1986. Petitions to reopen are due on February 5, 1986.

ADDRESSES: Send pleadings referring to Finance Docket No. 30754 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: Eric D. Gerst, P.C., Suite 900 Phila. Bourse, 21 South Fifth Street, Philadelphia, PA 19106

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: December 23, 1985.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Taylor, Sterrett, Andre, Lamboley and Strenio. Commissioner Lamboley concurred with a separate expression. Commissioners Taylor and Strenio did not participate.

James H. Bayne,

Secretary.

[FR Doc. 86-1078 Filed 1-16-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30761]

Soo Line Railroad Company; Merger; the Milwaukee Road Inc.; Minneapolis, Northfield and Southern Railway, Inc.; Exemption

Decided: January 10, 1986.

Soo Line Railroad Company (Soo), the Minneapolis, Northfield and Southern Railway, Inc. (MN&S), and The Milwaukee Road Inc. (Milwaukee Road), filed a notice of exemption for the merger of Soo, MN&S, and Milwaukee Road, with the surviving corporation to be known as the Soo Line Railroad Company. Each is a wholly-owned subsidiary of Soo Line Corporation, a non-carrier holding company.

The notice of exemption involves two transactions. The first is the merger of Milwaukee Road into Soo, and the second is the merger of MN&S into Soo. In both cases, Soo will continue as the surviving corporation.

These transactions are corporate simplifications of the type specifically exempted from the necessity for prior review and approval under 49 CFR 1180.2(d)(3). The transactions merely consolidate the merging carriers into one corporate entity, and will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. Moreover, significant management efficiencies and cost reductions will be achieved as a result of the elimination of separate executive functions, separate accounting and reporting requirements, as well as the general administrative burdens of maintaining three separate corporations.

The parties contend that employees are already protected by labor conditions imposed by the Reorganization Court in *Matter of Chicago, Milwaukee, St. Paul and Pacific Railroad Company*, No. 77 C 8999, N.D. IL, where Soo acquired the core assets of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, or by agreements reached with unions representing those employees with regard to that acquisition. They claim that the present transactions will not result in any additional impacts on employees of the involved carriers. However, to ensure that all employees that may be adversely affected by the present transactions are given the minimum protection required under 49 U.S.C. 10505(g)(2) and 11347, we will require as a condition to the use of this exemption that any employee of Soo, MN&S, or Milwaukee Road affected by these transactions shall be protected pursuant to the labor conditions set forth in *New York Dock Ry.-Control-Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

This notice is effective on publication.

By the Commission, Jane Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86-1076 Filed 1-16-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-169)]

Seaboard System Railroad, Inc.—Abandonment—in Sumter County, SC; Findings

The Commission has issued a certificate authorizing Seaboard System Railroad, Inc. to abandon its 3.14-mile rail line between (milepost SJA-349.16) and (milepost SJA-352.30) at Sumter, in Sumter County, SC. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.

James H. Bayne,

Secretary.

[FR Doc. 86-1080 Filed 1-16-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket Nos. AB-33 (Sub-30) and (AB-37 (Sub-16)]

Union Pacific Railroad Co. Discontinuance of Service in Spokane County, WA and Oregon-Washington Railroad & Navigation Co. Abandonment in Spokane County, WA; Findings

The Commission has found that the public convenience and necessity permit: (1) The Union Pacific Railroad Company to discontinue service over (a) a 2.24-mile portion of the Tekoa Branch between milepost 163.33 and milepost 165.57, and (b) 1.13 miles of leased track between milepost 165.57 and E.S. 2645.99; and (2) Oregon-Washington Railroad & Navigation Company to abandon a 2.24-mile portion of its Tekoa Branch between milepost 163.33 and milepost 165.57 in Spokane, Spokane County, WA.

A certificate will be issued authorizing this discontinuance and abandonment unless within 15 days after this publication, the Commission also finds that: (1) Financially responsible persons have offered assistance (through subsidiary and purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicants no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 86–1120 Filed 1–16–86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-267 (Sub-1X)]

Vandalia Railroad Company; Discontinuance of Service Exemption; in Vandalia, IL; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to discontinue service on its rail line between milepost 689.09 and the north line of Gallatin Street, at or near milepost 689.83, a distance of approximately 0.74 of a mile, in Vandalia, IL.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that there is no overhead traffic to reroute over other lines, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the discontinuance of service shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective February 16, 1986 (unless stayed pending reconsideration). Petitions to stay must be filed by January 27, 1986, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by February 6, 1986, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission must be sent to applicant's representative: Mark H. Sidman, Suite 800, 1350 New York Avenue, NW., Washington, DC 20005.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: January 10, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne.

Secretary.

[FR Doc. 86–1077 Filed 1–16–86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Funding Methodology for Program Year (PY) 1986 Allotments to State Public Employment Services Under the Wagner-Peyser Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; request for comments.

SUMMARY: This notice invites public comment on two allocation methods for distributing the Secretary's 3 percent reserve funds which are authorized under section 6(b)(4) of the Wagner-Peyser Act.

DATE: Comments on the funding methodologies must be submitted on or before January 31, 1986.

ADDRESS: Comments should be addressed to the United States Employment Service, Employment and Training Administration, 601 D Street, NW., Room 8100, Washington, DC 20213, Attention: Richard C. Gilliland.

FOR FURTHER INFORMATION CONTACT: Richard C. Gilliland, Director, United States Employment Service. Telephone (202) 376–6750.

SUPPLEMENTARY INFORMATION: This notice describes two options for distributing the Secretary's 3 percent reserve authorized by section 6(b)(4) of the Wagner-Peyser Act (Act). 29 U.S.C. 49e(b)(4). The Wagner-Peyser Act provides at section 6(b)(1) that the Secretary allot two-thirds of funds appropriated under Section 5 of the Act and not alloted under section 6(a) of the Act on the basis of the relative number of individuals in the civilian labor force in each State as compared to the total number of such individuals in all States; and one-third on the basis of the relative number of unemployed individuals in each State as compared to the total number of such individuals in all States. 29 U.S.C. 49e(b)(1). No State's allotment under section 6 of the Act is less than 90 percent of its allotment percentage for the preceding year. 29 U.S.C. 49e(b)(2). No State shall receive a total allotment under 29 U.S.C. 49e(b)(1) and (2) which is less than 0.28 percent of the total amount available for allotments for all States. 29 U.S.C. 49e(b)(3).

This notice addresses the issue raised at section 6(b)(4) of the Act which directs the Secretary to reserve such amount, not to exceed 3 percent of the sums available for allotments under Section 6 for each year, as are necessary to assure that each State will have a total allotment under Section 6 sufficient to provide staff and other resources necessary to carry out employment service activities and related administrative and support functions on a statewide basis. 29 U.S.C. 49e(b)(4).

The thrust of the legislatively-mandated formula is to allot resources to States on a needs basis as defined by size of the civilian labor force and unemployment. This is a departure from previous methods which emphasized placement performance. The realignment of resources from a

performance base to needs base is tempered by the 90 percent "hold-harmless" provision of the formula (29 U.S.C. 49e(b)(2)) and with a portion of the Secretary's 3 percent set-aside.

For the transition period and Program Years (PY) 1984 and 1985, (July 1, 1984-June 30, 1985, and July 1, 1985-June 30, 1986) the Department distributed the Secretary's 3 percent set-aside utilizing a methodology that had been received by the States in April of 1983 and March of 1985. See 50 FR 10872 (March 18, 1985); and 50 FR 20955 (May 21, 1985).

On November 4, 1985, a letter was sent to all State Employment Security Agencies informing them of the Department of Labor's intent to re-examine the administrative formula used to distribute the reserved 3 percent funds and to solicit comments regarding the methodology. A work group of State agency representatives and private interest groups met in Washington, DC, on December 3–5, 1985, with Employment and Training Administration officials to review the issues associated with the set-aside.

Illustrated in the attachment are Options A and B. Option A reflects the methodology used since the transition period. In Step 1, States whose relative share of resources decreased from the previous year and whose civilian labor force (CLF) is below 1 million and also below the median CLF density, are held-harmless at 100 percent of their prior year relative share. (In practice, the same States have met these criteria since the introduction of the formula so that their relative share has been unchanged since Fiscal Year (FY) 1983.). The remainder of the 3 percent reserve is distributed in Step 2 to the balance of States losing in relative share from their prior year allotment. (The Step 2 distribution is prorated in the loss in relative shares between the prior year total allotment and current year basic formula amount.)

Option B represents a proposed methodology resulting from the recent consultation with State agency officials. States who are losing in relative share from the prior year and have a CLF below 1 million and are below the median CLF density would be reduced in 3 years by equal decrements of 2 percent of the prior year relative share. They would not be permitted to fall below 94 percent of their FY 1983 relative share. The other States who are losing in relative share from the prior year but do not meet the other two criteria, would be reduced up to 3 percent of their previous year's relative share each year until such time as they reach their ultimate share of resources as defined by the allocation formula in section 6(b)(1) of the Act. Relative shares in this option are measured by change in total allotments in the prior year with total funds available for allotment in the current year. The intent of this proposal is to accelerate the redistribution of resources to a needs base. For FY 1985, the remainder of the 3 percent reserve will be distributed to all States following the criteria in 6(b) (1), (2), and (3) of the Act. In future years, the Secretary of Labor would consider using the remainder of the 3 percent funds to fund activities which are designed to enhance efficiencies in statewide operations in various States. Option B would be reviewed after the third year to reassess its impact on all States.

Both options are simulated using the most current 12-month averages available for civilian labor force and unemployed. The amount of funds simulated reflect the appropriation for PY 1986 operations. Funds, in the amount of $14,000,000, are being withheld to finance postage costs associated with State employment service operations.

Subsequent to the public comment period on this proposal, the Department of Labor will publish preliminary planning estimates in accordance with section 6(b)(5) of the Act.

Signed at Washington, D.C., on January 14, 1986.

Roger D. Semerad,

Assistant Secretary for Employment and Training.

BILLING CODE 4510-30-M

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION
OFFICE OF FINANCIAL CONTROL AND MANAGEMENT SYSTEMS
OPTION A WAGNER-PEYSER ALLOTMENTS TO STATES
12-30-1985

	BASIC	3% DISTRIBUTION			TOTAL
	FORMULA	STEP 1	STEP 2	TOTAL	ALLOTMENT
Alabama	12,167,791	0	64,138	64,138	12,231,929
Alaska	7,384,504	1,074,903	0	1,074,903	8,459,407
Arizona	8,216,941	0	0	0	8,216,941
Arkansas	7,302,461	0	871,729	871,729	8,174,190
California	76,890,069	0	0	0	76,890,069
Colorado	9,663,341	0	0	0	9,663,341
Connecticut	9,174,047	0	0	0	9,174,047
Delaware	2,108,280	0	65,368	65,368	2,173,648
District of Columbia	5,433,270	0	648,595	648,595	6,081,865
Florida	30,151,849	0	0	0	30,151,849
Georgia	16,439,192	0	0	0	16,439,192
Hawaii	2,907,215	0	347,048	347,048	3,254,263
Idaho	6,152,604	895,585	0	895,585	7,048,189
Illinois	36,845,141	0	0	0	36,845,141
Indiana	17,177,839	0	0	0	17,177,839
Iowa	9,277,835	0	1,107,538	1,107,538	10,385,373
Kansas	6,654,730	0	0	0	6,654,730
Kentucky	11,029,103	0	0	0	11,029,103
Louisiana	13,807,229	0	0	0	13,807,229
Maine	3,658,896	532,596	0	532,596	4,191,492
Maryland	12,236,859	0	0	0	12,236,859
Massachusetts	15,779,938	0	8,362	8,362	15,788,300
Michigan	30,109,464	0	0	0	30,109,464
Minnesota	12,646,659	0	0	0	12,646,659
Mississippi	8,054,023	0	961,446	961,446	9,015,469
Missouri	14,391,422	0	0	0	14,391,422
Montana	5,027,941	731,876	0	731,876	5,759,817
Nebraska	6,042,595	879,572	0	879,572	6,922,167
Nevada	4,887,687	711,461	0	711,461	5,599,148
New Hampshire	2,789,638	0	0	0	2,789,638
New Jersey	21,460,399	0	0	0	21,460,399
New Mexico	5,642,232	821,295	0	821,295	6,463,527
New York	55,984,046	0	6,683,079	6,683,079	62,667,125
North Carolina	17,439,286	0	0	0	17,439,286
North Dakota	5,119,947	745,269	0	745,269	5,865,216
Ohio	33,316,796	0	0	0	33,316,796
Oklahoma	12,800,327	0	1,528,036	1,528,036	14,328,363
Oregon	8,959,696	0	1,069,560	1,069,560	10,029,256
Pennsylvania	34,855,706	0	0	0	34,855,706
Puerto Rico	9,624,029	0	0	0	9,624,029
Rhode Island	2,696,716	0	319,858	319,858	3,016,574
South Carolina	9,077,652	0	0	0	9,077,652
South Dakota	4,732,009	688,800	0	688,800	5,420,809
Tennessee	14,270,822	0	0	0	14,270,822
Texas	46,705,970	0	0	0	46,705,970
Utah	10,349,478	1,506,490	0	1,506,490	11,855,968
Vermont	2,216,744	322,674	0	322,674	2,539,418
Virginia	15,887,452	0	0	0	15,887,452
Washington	13,510,484	0	0	0	13,510,484
West Virginia	5,978,334	226,318	0	226,318	6,204,652
Wisconsin	14,249,019	0	0	0	14,249,019
Wyoming	3,671,322	534,404	0	534,404	4,205,726
FORMULA TOTAL	752,957,019	9,671,243	13,674,757	23,346,000	776,303,019
Guam	364,137	0	0	0	364,137
Virgin Islands	1,532,844	0	0	0	1,532,844
NATIONAL TOTAL	754,854,000	9,671,243	13,674,757	23,346,000	778,200,000

U.S. DEPARTMENT OF LABOR—EMPLOYMENT AND TRAINING ADMINISTRATION
OFFICE OF FINANCIAL CONTROL AND MANAGEMENT SYSTEMS
OPTION B WAGNER-PEYSER ALLOTMENTS TO STATES
12-30-1985

	BASIC	3% DISTRIBUTION			TOTAL
	FORMULA	STEP 1	STEP 2	TOTAL	ALLOTMENT
Alabama	12,223,760	0	4,653	4,653	12,228,413
Alaska	7,418,471	871,748	0	871,748	8,290,219
Arizona	8,254,737	0	0	0	8,254,737
Arkansas	7,336,051	0	778,408	778,408	8,114,459
California	77,243,736	0	0	0	77,243,736
Colorado	9,707,791	0	0	0	9,707,791
Connecticut	9,216,246	0	0	0	9,216,246
Delaware	2,117,978	0	55,670	55,670	2,173,648
District of Columbia	5,458,262	0	579,161	579,161	6,037,423
Florida	30,290,542	0	0	0	30,290,542
Georgia	16,514,809	0	0	0	16,514,809
Hawaii	2,920,588	0	309,895	309,895	3,230,483
Idaho	6,180,905	726,321	0	726,321	6,907,226
Illinois	37,014,622	0	0	0	37,014,622
Indiana	17,256,854	0	0	0	17,256,854
Iowa	9,320,511	0	988,974	988,974	10,309,485
Kansas	6,685,340	0	0	0	6,685,340
Kentucky	11,079,835	0	0	0	11,079,835
Louisiana	13,870,740	0	0	0	13,870,740
Maine	3,675,726	431,936	0	431,936	4,107,662
Maryland	12,293,146	0	0	0	12,293,146
Massachusetts	15,852,523	0	0	0	15,852,523
Michigan	30,247,962	0	0	0	30,247,962
Minnesota	12,704,831	0	0	0	12,704,831
Mississippi	8,091,070	0	858,521	858,521	8,949,591
Missouri	14,457,620	0	0	0	14,457,620
Montana	5,051,069	593,552	0	593,552	5,644,621
Nebraska	6,070,390	713,334	0	713,334	6,783,724
Nevada	4,910,169	576,996	0	576,996	5,487,165
New Hampshire	2,802,470	0	0	0	2,802,470
New Jersey	21,559,113	0	0	0	21,559,113
New Mexico	5,668,185	666,071	0	666,071	6,334,256
New York	56,241,562	0	5,967,635	5,967,635	62,209,197
North Carolina	17,519,503	0	0	0	17,519,503
North Dakota	5,143,498	604,414	0	604,414	5,747,912
Ohio	33,470,047	0	0	0	33,470,047
Oklahoma	12,859,206	0	1,364,455	1,364,455	14,223,661
Oregon	9,000,909	0	955,061	955,061	9,955,970
Pennsylvania	35,016,036	0	0	0	35,016,036
Puerto Rico	9,668,298	0	0	0	9,668,298
Rhode Island	2,709,120	0	285,538	285,538	2,994,658
South Carolina	9,119,407	0	0	0	9,119,407
South Dakota	4,753,775	558,618	0	558,618	5,312,393
Tennessee	14,336,465	0	0	0	14,336,465
Texas	46,920,808	0	0	0	46,920,808
Utah	10,397,084	1,221,765	0	1,221,765	11,618,849
Vermont	2,226,941	261,688	0	261,688	2,488,629
Virginia	15,960,531	0	0	0	15,960,531
Washington	13,572,630	0	0	0	13,572,630
West Virginia	6,005,833	74,726	0	74,726	6,080,559
Wisconsin	14,314,562	0	0	0	14,314,562
Wyoming	3,688,209	433,403	0	433,403	4,121,612
FORMULA TOTAL	756,420,476	7,734,572	12,147,971	19,882,543	776,303,019
Guam	364,137	0	0	0	364,137
Virgin Islands	1,532,844	0	0	0	1,532,844
NATIONAL TOTAL	758,317,457	7,734,572	12,147,971	19,882,543	778,200,000

[FR Doc. 86-1109 Filed 1-16-86; 8:45 am]
BILLING CODE 4510-30-C

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the descisions being modified.

Volume I:		
Dist. of Col.	DC86-1 (Jan. 3, 1986).	p. 80.
Georgia ...	GA86-22 (Jan. 3, 1986).	p. 252.
Massachussetts.	MA86-1 (Jan. 3, 1986).	p. 347.
New Hampshire.	NH86-4 (Jan. 3, 1986).	p. 572.
New York.	NY86-8 (Jan. 3, 1986).	p. 712.
Tennessee.	TN86 (Jan. 3, 1986).	p. 1053.
Volume II:		
Iowa	IA86-3 (Jan. 3, 1983).	pp. 35-37.
Iowa	IA86-4 (Jan. 3, 1986).	pp. 39-41.
Iowa	IA86-5 (Jan. 3, 1986).	p. 43, pp. 45-47.
Minnesota.	MN86-7 (Jan. 3, 1986).	p. 511, p. 523.
Minnesota.	MN86-8 (Jan. 3, 1986).	pp. 527-529, p. 531, p. 538.
Missouri..	MO86-11 (Jan. 30, 1986).	pp. 611-614.
Volume III:		
None		

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 10th day of January 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86-826 Filed 1-16-86; 8:45 am]

BILLING CODE 4510-27-M

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions, Notice of New Publication Procedures

Correction

In FR Doc. 85-29402 appearing on page 52124 in the issue of Friday, December 20, 1985, make the following correction:

In the second column in the first line, the cost per volume should read "$277."

BILLING CODE 1505-01-M

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 86-1; Exemption Application No. D-3397 et al.]

Grant of Individual Exemptions; Alaska Hotel & Restaurant Employees Pension Trust, et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee retirement Income Security Act of 1974 (the Act).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Alaska Hotel and Restaurant Employees Pension Trust (Hotel Fund) and the Alaska Electrical Pension Trust (Electrical Fund; together, the Funds) Located in Anchorage, Alaska

[Prohibited transaction Exemption 86-1; exemption Application Nos. D-3397 and D-3442]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply, effective February 3, 1975, to the purchase by the Funds of participation interests in certain multi-family residential and commercial mortgage loans from the first National Bank of Anchorage, a party in interest with respect to the Funds, provided that the terms of the transactions were not less favorable to the Funds than the terms generally available in arm's-length transactions between unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 15, 1985 at 50 FR 28661.

Effective Date: This exemption is effective February 3, 1975.

Written Comments:The applicants informed the Department that they were unable to notify interested persons of their right to comment within the time period set forth in the proposed exemption. pursuant to discussions with the Department, the applicants notified interested persons that the period for written comments would be extended until December 15, 1985. The applicants have represented that interested persons were notified, in the manner set forth in the notice of proposed exemption, on or before November 15, 1985.

The Department received two written comments with respect to the proposed exemption. Both sought information which was provided by the Department via telephone. Neither raised issues going to the merits of the proposed exemption.

The Department has considered the entire record, including the comment letters received, and has determined to grant the exemption as proposed.

For Further Information Contact: Mr. Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Plessey Dynamics Employees Retirement Plan (the Plan) Located in Hillside, New Jersey

[Prohibited Transaction Exemption 86-2; Exemption Application No. D-5905]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the past and proposed leasing of two improved parcels of real property by the Plan to Plessey Dynamics Corporation, the sponsor of the Plan and a party in interest with respect to the Plan, provided that the terms and conditions of such leasing were and are at least as favorable to the Plan as those obtainable by the Plan in like transactions with unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on Wednesday, November 6, 1985, at 50 FR 46191.

Effective Date: The exemption is effective December 5, 1984.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523-8195. (This is not a toll-free number.)

The Birr, Wilson & Co., Inc. Employee's Profit Sharing Plan (the Profit Sharing Plan) and the Birr, Wilson & Co., Inc. Financial Security Plan for Account Executives (the Security Plan collectively, the Plans) Located in San Francisco, CA

[Prohibited Transaction Exemption 86-3; Exemption Application Nos. D-5927 and D-5928]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application

of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the exercise of stock options (the Options) by the Plans to purchase from Birr, Wilson & Co., Inc. (the Employer) stock in unrelated companies; or (2) the potential repurchase of the Options from the Plans by the employer, provided that the terms and conditions of the transactions are at least as favorable to the Plans as those obtainable in similar transactions with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 23, 1985 at 50 FR 34214.

Written Comment: The Department received one comment opposing the exemption from a Plan participant. The commenter believes that the transactions are primarily for the benefit of the Employer. Specifically, the commenter stated that the Employer would benefit by this exemption because: the Employer has unilateral control in determining if and when the Options should be exercised and whether to repurchase the Options. The commenter also believes that the Options are exercisable for very speculative stocks. Additionally, the commenter states that recordkeeping for transactions involving the Options would be burdensome for the Plan trustee and the employer.

In response to the comment, the applicant stated the following: (1) The Employer gains no benefit from the granting of the Options to the Plans as dividends, since the Plans paid nothing for the Options; (2) all decisions concerning whether or not the Plans should exercise the Options will reside with the independent fiduciary; (3) because the Plans' exercise price under the Options is identical to the employer's cost for the stocks, there is no benefit enuring to the Employer if the Plans exercise their Options; (4) the Employer's decision of whether or not to repurchase the Options (possible only if the Employer disposes of its warrants or the shares acquired through its warrants) will depend, in part, on the recommendations of the independent fiduciary; and (5) because the Plans will receive their proportionate share of any proceeds resulting from the sale of the Employer's warrants or the shares acquired through its warrants, no benefit enures to the Employer if the Options are repurchased by the Employer.

The applicant further represents that prior to deciding whether to exercise the Plans' Options, the independent fiduciary will be obligated, among other considerations, to weigh the speculative nature of the investment as part of its fiduciary duties under section 404 of the Act and the regulations promulgated thereunder.

Finally, the applicant states that any additional recordkeeping associated with the exercise or repurchase of the Options will be minimal, since the Options have already been allocated to participants' accounts and the only additional action necessary would be to allocate the shares or cash to their accounts when the Options are exercised or repurchased.

After consideration of the entire record the Department has determined to grant the exemption as proposed.

For Further Information Contact: David Lurie of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

J.H. Blades & Co., Inc. Profit Sharing Plan and Trust (the Plan) Located in Houston, Texas

[Prohibited Transaction Exemption 86–4; Exemption Application No. D–6002]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale of a ten percent undivided beneficial interest in certain real property (the Property) by the Plan to J.H. Blades & Co., a party in interest with respect to the Plan, provided that the sale price of the Plan's interest in the Property is the highest of either $14,300 of the fair market value of the Plan's interest in the Property on the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 19, 1985 at 50 FR 47642.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

James R. Schwebel & Associates, P.A. Profit Sharing Plan and Trust (the Plan) Located in Minneapolis, Minnesota

[Prohibited Transaction Exemption 86–5; Exemption Application No. D–6055]

Exemption

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 cash sale (the Sale) by the Plan of a parcel of improved real property (the Property) to Mr. James R. Schwebel (Mr. Schwebel) a disqualified person with respect to the Plan, for a sales price equal to the higher of the fair market value as determined by an independent appraiser on the date of such Sale or the total expenditures incurred by a money purchase plan in connnection with the acquisition of the Property and by the Plan in the holding of the Property as calculated on the day of Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 6, 1985 at 50 FR 46196.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

New York State Linemen's Safety Training Fund (the Fund) Located in Manlius, NY

[Prohibited Transaction Exemption 86–6; Exemption Application No. L–6063]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act shall not apply to the proposed purchase by the Fund of an office building (the Building) from the I.B.E.W. Local Union 1249 Realty Corporation, a party in interest with respect to the Fund, for $81,000, provided that the purchase price is no more than the fair market value of the Building on the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on Nobember 15, 1985 at 50 FR 47301.

For Further Information Contact: David Lurie of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Roberto R. Pagarigan, M.D. Prototype Money Purchase Plan Trust (the Plan) Located in Tiffin, OH

[Prohibited Transaction Exemption 86–7; Exemption Application No. D–6134]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the loan (the Loan) of $37,979 or no more than 25% of the Plan's assets as of the date the Loan is made, by the Plan to Roberto R. Pagarigan, M.D., the sponsor of the Plan, provided that the terms and conditions of the Loan are at least as

favorable to the plan as those obtainable in an arm's-length transaction between unrelated parties.[1]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 26, 1985 at 50 FR 48659.

For Further Information Contact: David Lurie of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Boston Financial Real Estate Equity Group Trust (the Group Trust or Trust) Located in Boston, Massachusetts

[Prohibited Transaction Exemption 86-8; Application No. D-6197]

Exemption

Section I. Exemption for Certain Transactions Involving the Group Trust

(a) The restrictions of sections 406(a), 406(b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the transactions described below if the applicable conditions set forth in Section III are met.

(1) *Transactions Between Parties-In-Interest and the Group Trust: General.* Any transaction between a party-in-interest with respect to a plan which has an interest in the Group Trust (a Participating Plan) and the Group Trust, or any acquisition or holding by the Group Trust of employer securities or employer real property, if the party in interest is not Boston Financial Real Estate Advisors Limited Partnership (Boston Financial) or one of its affiliates, any other Trust maintained by Boston Financial or one of its affiliates, and if, at the time of the transaction, acquisition or holding, the interest of the Participating Plan, together with the interests of any other Participating Plans maintained by the same employer or employee organization in the Group Trust, does not exceed 10 percent of the total of all assets in the Group Trust.

(2) *Special Transactions Not Meeting the Criteria of Section I(a)(1) Between Employers of Employees Covered by a Multiemployer Plan and the Group Trust.* Any transaction between an employer (or an affiliate of an employer) of employees covered by a multiemployer plan (as defined in section 3(37)(A) of the Act and section 414(f)(1) of the Code) that is a Participating Plan, and the Group Trust, or any acquisition or holding by the Group Trust of employer securities or employer real property, if at the time of the transaction, acquisition or holding—

The interest of the multiemployer plan in the Group Trust exceeds 10 percent of the total assets in the Group Trust, but the employer is not a "substantial employer" with respect to the plan and would not be a "substantial employer" if "5 percent" were substituted for "10 percent" in the definition of "substantial employer."

(3) *Acquisitions, Sales, or Holdings of Employer Securities and Employer Real Property.* (A) Except as provided in subsection (B) of this section (3), any acquisition, sale or holding of employer securities or employer real property by the Group Trust which does not meet the requirements of paragraphs (a)(1) and (a)(2) of this Section I, if no commission is paid to Boston Financial or to the employer, or any affiliate of Boston Financial or the employer in connection with the acquisition or sale of employer securities or the acquisition, sale or lease of employer real property; and

(i) In the case of employer real property—

(aa) Each parcel of employer real property and the improvements thereon held by the Group Trust are suitable (or adaptable without excessive cost) for use by different tenants, and

(bb) The property of the Group Trust that is leased or held for lease to others, in the aggregate, is dispersed geographically.

(ii) In the case of employer securities—

(aa) Neither Boston Financial nor any of its affiliates is an affiliate of the issuer of the security, and

(bb) If the security is an obligation of the issuer, either:

1. The Group Trust owns the obligation at the time the plan acquires an interest in the Group Trust, and interests in the Group Trust are offered and redeemed in accordance with valuation procedures of the Trust applied on a uniform or consistent basis, or

2. Immediately after acquisition of the obligation by the Group Trust not more than 25 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by such plan, and at least 50 percent of the aggregate amount of obligations issued in the issue and outstanding at the time of acquisition is held by persons independent of the issuer. Boston Financial, its affiliates, and any collective investment fund maintained by Boston Financial or its affiliates, shall be considered to be persons independent of the issuer if Boston Financial is not an affiliate of the issuer.

(B) In the case of a Participating Plan that is not an eligible individual account plan (as defined in section 407(d)(3) of the Act), the exemption provided in subsection (A) of this section (3) shall be available only if, immediately after the acquisition of the securities or real property, the aggregate fair market value of employer securities and employer real property with respect to which Boston Financial or its affiliate has investment discretion does not exceed 10 percent of the fair market value of all the assets of the Participating Plan with respect to which Boston Financial or its affiliate has such investment discretion.

(C) For purposes of the exemption contained in subsection (A) of this section (3), the term "employer securities" shall include securities issued by, and the term "employer real property" shall include real property leased to, a person who is a party-in-interest with respect to a Participating Plan by reason of a relationship to the employer described in section 3(14) (E), (G), (H) or (I) of the Act.

(b) The restrictions of section 406(a)(1) (A) through (D) and section 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the transactions described below, if the conditions of Section III are met.

(1) *Certain Leases and Goods.* The furnishing of goods to the Group Trust by a party-in-interest with respect to a Participating Plan or the leasing of real property owned by the Trust to such party-in-interest and the incidental furnishing of goods to such party-in-interest by the Trust, if—

(A) In the case of goods, they are furnished to or by the Group Trust in connection with real property owned by the Trust;

(B) The party-in-interest is not Boston Financial, any affiliate of Boston Financial, or one of the other Trusts; and

(C) The amount involved in the furnishing of goods or leasing of real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the Group Trust with the

[1] Since Dr. Pagarigan is the Plan sponsor and the sole Plan participant, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2501.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code. Since Dr. Pagarigan is an owner-employee, the statutory exemption under section 4975(d)(1) of the Code is unavailable to him by reason of section 4975, but the Department may grant an administrative exemption under section 4975(c)(2).

same party-in-interest, or any affiliate thereof) does not exceed the greater of $25,000 or 0.5 percent of the fair market value of the assets of the Group Trust on the most recent valuation date of the Trust prior to the transaction.

(2) *Transactions Involving Places of Public Accommodation.* The furnishing of services, facilities and any goods incidental to such services and facilities by a place of public accommodation owned by the Group Trust to a party-in-interest with respect to a Participating Plan, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

(c) The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the following transaction if the conditions of Section III are met:

Any transaction between the Group Trust and a person who is a party in interest with respect to a Participating Plan, if—

(1) The person is a party in interest (including a fiduciary) solely by reason of providing services to the Participating Plan, or solely by reason of a relationship to a service provider described in section 3(14) (F), (G), (H) or (I) of the Act, or both, and the person neither exercised nor has any discretionary authority, control, responsibility or influence with respect to the investment of the Participating Plan's assets in, or held by, the Group Trust;

(2) At the time of the transaction, the interest of the Participating Plan, together with the interests of any other Participating Plan maintained by the same employer or employee organization in the Group Trust, does not exceed 20 percent of the total of all assets in the Trust; and

(3) The person is not Boston Financial or an affiliate of Boston Financial.

(d) The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the purchase and sale of units of beneficial interest in the Group Trust if no more than reasonable compensation is paid therefor, each purchase and sale is authorized in writing by a fiduciary of the Participating Plan who is independent of Boston Financial and any of its affiliates, and the applicable conditions of Section III are met.

Section II. Excess Holdings Exemption for Employee Benefit Plans

(a) The restrictions of sections 406(a) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to any acquisition or holding of qualifying employer securities or qualifying employer real property (other than through the Group Trust) by a Participating Plan if (1) the acquisition or holding constitutes a prohibited transaction solely by reason of being aggregated with employer securities or employer real property held by the Group Trust; (2) the requirements of either paragraph (a)(1) or paragraph (a)(2) of Section I of this exemption are met; and (3) the applicable conditions set forth in Section III of this exemption are met.

Section III. General Conditions

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of Boston Financial or its affiliate, the terms of the transaction are not less favorable to the Group Trust than the terms generally available in arm's-length transactions between unrelated parties.

(b) Boston Financial or its affiliates maintain for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this Section III to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Boston Financial or its affiliates, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c)(1) Except as provided in section 2 of this paragraph (c) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (b) of this Section III are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a Participating Plan who has authority to acquire or dispose of the interests in the Group Trust of the Participating Plan or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any Participating Plan or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any Participating Plan, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (c) shall be authorized to examine trade secrets of Boston Financial or its affiliate, or commercial or financial information which is privileged or confidential.

Section IV. Definitions and General Rules

For the purposes of this exemption,

(a) The term "the Group Trust" shall include any collective investment fund that may hereafter be established, operated and managed by Boston Financial or its affiliate in essentially the same manner as the Boston Financial Real Estate Equity Group Trust.

(b) An "affiliate" of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any officer, director, employee, relative of, or partner in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(e) The term "substantial employer" means for any plan year an employer (treating employers who are members of the same affiliated group, within the meaning of section 1563(a) of the Code, determined without regard to section 1563 (a)(4) and (e)(3)(c) of the Code, as one employer) who has made contributions to or under a multiemployer plan for each of—

(1) The two immediately preceding plan years, or

(2) The second and third preceding plan years, equaling or exceeding 10

percent of all employer contributions paid to or under that plan for each such year.

(f) The time as of which any transaction, acquisition or holding occurs is the date upon which the transaction is entered into, the acquisition is made or the holding commences. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or an acquisition is made, on or after the effective date of this exemption, or a renewal that requires the consent of the Group Trust occurs on or after the effective date of this exemption, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the property so acquired. Notwithstanding the foregoing, this exemption shall cease to apply to transactions exempt by virtue of subsections I(a)(1) and (I)(c) at such time as the interest of the Participating Plan exceeds the percentage interest limitations set forth in those subsections, unless no portion of such excess results from an increase in the assets allocated to the Group Trust by the Participating Plan. For this purpose, assets allocated do not include the investment of Trust earnings. Nothing in this paragraph (f) shall be construed as exempting a transaction entered into by the Group Trust which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(g) Each Participating Plan shall be considered to own the same proportionate undivided interest in each asset of the Group Trust as its proportionate interest in the total assets of the Group Trust as calculated on the most recent preceding valuation date of the Trust.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 6, 1985 at 50 FR 46199.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Kimball International, Inc. Indirect Retirement Plan (the Plan) Located in Jasper, Indiana

[Prohibited Transaction Exemption 86–9; Exemption Application No. D–6257]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale by the Plan of 0.59 acres of real property (the Property) to Kimball International, Inc., the sponsor of the Plan, provided that all terms and conditions of such sale are not less favorable to the Plan than the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 6, 1985 at 50 FR 46204.

Written Comments: The Department received one written comment with respect to the proposed exemption, which was submitted by the applicant. The applicant wrote to correct several mistakes of fact which appeared in the notice of proposed exemption. The Plan's trustee, the Springs Valley Bank and Trust Company, is located in French Lick, Indiana, not Jasper, Indiana. The Property is located in Jasper, Indiana, not West Baden, Indiana. The independent appraisers of the Property, David C. Hoffman and Linda L. Schroering, are professional real estate appraisers with the firms of Hoffman & Mullen Realtors and Schroering Realty, respectively, of Jasper, Indiana. The Department notes the above corrections and has determined to grant the exemption as proposed.

For Further Information Contact: Mr. Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

The Fulbright & Jaworski Attorney 401K Plan (the Plan) and the Fulbright & Jaworski Attorney Pension Plan and Trust Agreement (the Pension Plan) Located in Houston, Texas

[Prohibited Transaction Exemption 86–10; Exemption Application No. D–6267]

Exemption

The restrictions of section 406(b)(2) of the Act shall not apply to the proposed sale by the Plan of 24,570 shares of M Corp. Common Stock (the Stock) to the Pension Plan, provided that the sales prices of the Stock is the fair market value of the Stock on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 19, 1985 at 50 FR 47643.

For Further Information Contract: Mr. E.F. Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Wayne A. Ono, D.D.S., P.S. Money Purchase Pension Plan and Wayne A. Ono, D.D.S., Profit Sharing Plan (collectively, the Plans) Located in Bellevue, Washington

[Prohibited Transaction Exemption 86–11; Exemption Aplication Nos. D–6293 and D–6294]

Exemption

The restrictions of section 406(a) and 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale by the Plans of a certain parcel of improved real property (the Property) located in Redmond, Washington to Wayne A. Ono, D.D.S. and Sadami Ono, fiduciaries with respect to the Plan, for $80,000, provided that such price is not less than the fair market value of the Property as of the date of the sale.

For a more complete statement of the facts and representation supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 6, 1985 at 50 FR 46205.

For Further Information Contact: Ms. Janet Laufer of the Department, telephone (202) 523–7901. (This is not a toll-free number.)

Charles R. Chung, M.D., P.A. Defined Benefit Pension Plan (the Plan) Located in Arlington, Texas

[Prohibited Transaction Exemption 86–12; Exemption Application No. D–6301]

Exemption

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan of an interest in Ninety Four Ten Associates (the Partnership) to Charles R. Chung, M.D. (Dr. Chung), a fiduciary with respect to the Plan, provided that: (1) the sales price is not less than the fair

market value of the interest in the Partnership on the date of sale; and (2) the Partnership executes appropriate documents that reflect the substitution of Dr. Chung as a partner and acknowledge that the Plan has been absolved and released of any further and continuing obligations in connection with the Partnership.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 19, 1985 at 50 FR 47643.

For Further Information Contact: Ms. Angelena C. Le Blanc of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

C.J. Jacoby & Co. Inc. Pension Plan (the Plan) Located in Alton, IL 62002

[Prohibited Transaction Exemption 86–13; Exemption Application No. D–6309]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to the past and proposed loans by the Massachusetts Mutual Life Insurance Company to the Plan of the maximum loan values of life insurance policies held by the Plan on the lives of Plan participants, provided that the terms and conditions of such loans are at least as favorable to the Plan as those it could obtain from an unrelated party.

Effective Date: The effective date of this exemption is January 1, 1980.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 15, 1985 at 50 FR 47302.

For Further Information Contact: David Lurie of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Lakeshore Internal Medicine, S.C. Profit-Sharing Plan and Trust (the Plan) Located in Manitowoc, Wisconsin

[Prohibited Transaction Exemption 86–14; Exemption Application No. D–6338]

Exemption

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 to the sale of two diamonds for cash from the individual segregated account of Dr. J. Lawrence Stoune (Stoune) in the Plan to Stoune, provided the sales price is not less than the fair market value at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 26, 1985, at 50 FR 48660.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 523–8882. (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) These exemptions are 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.

(3) The availability of these exemptions is subject to the express conditon that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 14th day of January 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 86–1102 Filed 1–16–86; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–5608 et al.]

Proposed Exemptions; Jim's Formal Wear Co. 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.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Pension and Welfare Benefit Programs, Office of Regulations and Interpretations, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. 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, DC 20210.

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.

Jim's Formal Wear Company Profit Sharing Retirement Plan (the Plan) Located in Trenton, Illinois

[Application No. D–5608]

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 sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the code shall not apply to the continued leasing of certain real property by the Plan of Jim's Formal Wear Company (the Employer), provided all of the terms of the lease are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party.

Effective Date: If granted, the proposed exemption will be effective July 1, 1984.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 165 participants. The Plan had total assets of $663,137 as of March 31, 1985. The trustees of the Plan are James W. Davis and Gary L. Davis, officers of the Plan Sponsor. The Plan Sponsor is in the formal wear rental business.

2. In June 1973 the Plan purchased land and a building located at 111 South Washington Street, Trenton, Illinois (the Property) from an unrelated party at the cost of $13,500. The Property has been leased to the Plan Sponsor from 1973 until the present time (the Old Lease). The applicant requests an exemption to permit the Old Lease to continue beyond June 1, 1984. The applicant represents that the Old Lease was not a prohibited transaton through June 30, 1984 because it was covered by section 414 of the Act.[1]

3. A new lease (the New Lease) became effective on July 1, 1984. The terms of the New Lease is from July 1, 1984 to March 31, 1989. The New Lease provides an option to extend its term for one successive period of three years. This option is subject to the approval of the Plan's independent fiduciary (see below). The rental rate is $500 per month.

4. An appraisal of the Property was performed by Mr. James Kuhn of Trenton, Illinois (Mr. Kuhn). Mr. Kuhn represents that he served as the official appraiser for the Trenton Savings and Loan Association for approximately 16 years and is well-versed in all phases of real estate. Mr. Kuhn represents that the fair market value of the Property was $59,323 as of March 31, 1983 and that the fair market rental value of the Property is $500 per month as June 28, 1984.

5. Mr. Kuhn was appointed independent fiduciary for the New Lease on June 28, 1984. Mr. Kuhn represents that he has no interest, either present or contemplated in the Property. Mr. Kuhn represents that he has served as a director of the Trenton Savings and Loan Association for approximately 16 years and is knowledgeable about the responsibilities and liabilities of a fiduciary under the Act.

6. Mr. Kuhn represents that he will assure that:

(a) All transactions regarding the Property are made at arms length;

(b) All terms of the New Lease are enforced, i.e. maintenance, payments and other matters;

(c) If the renewal option is exercised, he will determine whether or not it is in the interests of the Plan to renew the New Lease for a successive period of three years and will determine the new rental ratre based upon a fair market value appraisal of the Property at that time;

(d) That the rental fees charged are economically sound;

(e) That quarterly inspections of the Property and accounting records will be made and a report of his findings furnished to the Plan; and

(f) All records will be made available for inspection the participants.

8. Mr. Kuhn represents that he has personally inspected the Property and determined that the fair market rental value is $500 per month. He states that he firmly believes that the rental rate charged for the Property is proper and fair taking into consideration the area and time. This rental rate will afford a proper net income to the Plan and also will afford the Plan a possible increase in value due to the growth of the area. Mr. Kuhn states that the percentage of return is above normal for the New Lease.

9. Mr. Kuhn represents that the rental rate charged was determined by taking into consideration the square footage, building location, and the economic conditions of this area at the present time. He states that he knows from his expertise in the real estate field that the rental rate is proper and an excellent fee for the Plan.

10. In summary, the applicant represents that the proposed transactions meets the statutory criteria of section 408(a) of the Act because:

(a) The Plan will receive fair market rental value for the Property;

(b) The fair market rental value of the Property has been determined by an independent appraiser; and

(3) The Plan's independent fiduciary has determined that the New Lease is in the interests of and protective of the Plan and its participants and beneficiaries.

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Knutson Companies Employees Amended Profit Sharing Trust (the Plan) Located in Minneapolis, Minnesota

[Application No. D–6155]

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 sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale of certain real property by the Plan to The Knutson Companies, Inc. (Knutson), a party in interest with respect to the Plan, for $852,600 in cash, provided that such price is not less than the fair market value of the property on the date of sale and provided further that the net cash proceeds to the Plan are at least equal to the Plan's cash outlay for the property to the date of sale.

[1] The Department expresses no opinion as to the applicability of section 414 in this instance.

Summary of Facts and Representations

1. The Plan is a defined contribution individual account multiple employer plan with 197 participants and total assets of approximately $1,400,000 as of December 31, 1985, sponsored by Knutson and its two wholly-owned subsidiaries, Knutson Construction Company and Knutson Mortgage and Financial Corporation. The Plan's trustees are Messrs. J.D. Smith and Richard G. Bracher (the Trustees).

2. Between 1974 and 1979 the Plan purchased five parcels of land (the Real Property). These five parcels constitute the entire farmland holdings of the Plan. They include: 60 acres acquired in 1976 in Mahnomen County for $18,000; 970 acres in Mahnomen County acquired in 1979 for $465,000 (100 acres of this parcel were recently sold to the State of Minnesota for $74,812.50); 160 acres in Becker County acquired in 1974 for $4,346 (an additional $52,510 was spent in farmland development on this tract); 160 acres in Ottertail County acquired in 1979 for $73,000; and 331 acres in Morrison County acquired in 1979 for $225,000 (40 acres of this parcel were sold in 1984 to an unrelated third party for $10,000). The Plan thus expended $753,043.50 for the purchase and development of the Real Property as currently held by the Plan (including purchase and development costs of the Real Property less the sale price of the acreage sold as described above). As of December 31, 1984, the Plan has generated a cumulative net income of $7,449.13 from the Real Property. During this period, total real estate tax expense of approximately $1,250 not included in operations was capitalized.

3. On December 31, 1984, Steven M. Spaeth, Appraiser, and Rodger K. Tinjum, Accredited Rural Appraiser, of the Tinjum Appraisal Company of Detroit Lakes, Minnesota, estimated the fair market value of the Real Property at $852,600 as of that date. On March 15, 1985, Thomas B. Waarvik, Senior Staff Appraiser, and Layton C. Hoysler, A.F.M., A.R.A., of Hoysler Associates, Inc., of Faribault, Minnesota, estimated the fair market value of the Real Property as of December 31, 1984 at $722,900. On May 29, 1985, Dennis Christensen, Farm Manager and Rural Appraiser of the Northwestern Farm Management Co. of Minneapolis, Minnesota, estimated the fair market value of the Real Property as of December 31, 1984 at $665,000. The applicant represents that the appraisers have no present or future interest in the Real Property and are unrelated to the Plan and to Knutson.

4. The Plan was terminated effective September 18, 1984. The termination resulted from the sale of Knutson's wholly-owned subsidiary, Knutson Mortgage and Financial Corporation, and Knutson's decision to liquidate its assets. The Trustees now wish to liquidate the assets of the Plan in order to make distribution of benefits to the Plan participants. In an effort to accomplish the sale of the Real Property, the Trustees contacted two real estate companies. These real estate companies refused to list the Real Property for sale because of the weakness of the market for farmland in the area and because the companies determined that finding a potential buyer for the Real Property would be unlikely.

5. The applicant represents that the decision of the Trustees to invest in farmland was based on the expectation that it would generate a return of 20 to 25%. However, as the appraisals show, appreciation in farmland value has in the relatively recent past been reversed by the deterioration of the U.S. farming economy and the reduction in the inflation rate. No real estate has been acquired by the Plan since June, 1979. The applicant further represents that the farmland was purchased with the expectation that contributions to and the growth in the corpus of the trust would put the total farmland investment at less than 20% of the total fund, but that as a result primarily of the financial downturn of the Knutson Construction Company, the anticipated level of contributions did not materialize.

6. The applicant seeks an administrative exemption for the Plan to sell the Real Property to Knutson for $852,600, the fair market value established by Messrs. Spaeth and Tinjum as of December 31, 1984, which was the highest fair market value established by the three appraisals. The purchase price will be for cash and has been held in an escrow account since March 15, 1985. All interest earnings on the escrow account will be transferred to the Plan as part of the sale. The Plan will not be required to pay any real estate commissions or fees in connection with the sale.

7. In summary, the applicant represents that the proposed transaction will satisfy the terms and conditions of section 408(a) of the Act because: (a) The Real Property will be sold for no less than its fair market value at the time of the sale as determined by an independent appraiser; (b) the sale represents a one-time transaction for cash which can be easily verified; (c) the sale will not require the payment of any commissions by the Plan; (d) the Plan will not suffer any loss with respect to its outlay in connection with its purchase of the Real Property; (e) the proposed sale will enable the Plan to dispose of a non-marketable asset, thus facilitating the distribution of assets to the Plan participants; and (f) the Trustees have determined that the proposed transaction would be in the best interests and protective of the Plan and of its participants and beneficiaries.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Astro Homes, Inc. Profit Sharing Trust (the Plan) Located in Utica, Michigan

[Application No. D6165]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4875(c)92) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the applications of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale of a parcel of vacant land and concurrent extension of credit by the Plan to Lombardo Enterprises, Inc. (the Purchaser), or to the guarantee of repayment by Mr. Cosimo Lombardo (Mr. Lombardo), provided that the terms of the transactions are not less favorable to the Plan than those obtainable in an arm's-length transactions with an unrelated person.

Summary of Facts and Representatives

1. The Plan was originally established as the Mavant Homes, Inc. Profit Sharing Plan on October 12, 1967. The Plan was adopted by Astro Homes, Inc., effective June 1, 1978. The trustee of the plan is Mr. Lombardo. The Plan has two participants and net assets of approximately $1,366,454 as of May 31, 1985. Astro Homes is a Michigan Corporation and its sole stockholder is Mr. Lombardo. Lombardo Enterprises, Inc. capital stock is owned by Mrs. Lombardo and her children.

2. The Plan owns a parcel of vacant land containing approximately 46.413 acres located in Shelby Township, Macomb County, Michigan (the Property). The Property was part of a 98.352 acre parcel acquired by the Plan

on June 3, 1977[2] from unrelated parties for purchase price of $375.000. On September 29, 1984, the Plan entered into a land contract with Shelby Forest Associates, a Michigan partnership (the Partnership) to sell 51.939 acres of the original acreage purchased for $363,573. The applicant represents that Mr. Lombardo and members of his family owned a 45% interest in the Partnership. As a result, the sale of the land was a prohibited transaction under section 406(a)(1)(D) and 406 (b)(1) and (b)(2) of the Act. The applicant represents, that with respect to this transaction, it will pay any applicable excise tax, if such tax is found to be due by the Internal Revenue Service.

3. The applicant now proposes to sell the Property under the terms of a land contract [3] (remainder of acreage purchased) to the Purchaser for $540,000. The Property was appraised by Mr. Richard C. Razet, an MAI appraiser located in Troy, Michigan, as having a fair market value of $540,000 ($11,635 per acre) as of May 16, 1985. The Purchaser will make a down payment of $45,000 and will pay the remaining balance to the Plan over a 4 year period.

4. The Plan will hold title to the Property and will release portions of the land over the 4 year period as principal payments are received. During the first year the Plan will release at least 20 acres to the Purchaser. By the end of year 2, at least 5 more acres will be released, with at least 11 more acres being released in year 3 and any remaining acreage being released in year 4. Each time a release of acreage is made the Plan will be paid $11,635 per acre, representing the outstanding principal due on each acre. Interest will be paid to the Plan on the outstanding balance of the loan at the rate of 2% over the base rate (represented to be the same as the prime rate) charged by the First of American Bank Detroit, National Association with a minimum of 10% per annum. Interest will be paid on the balance owed at the time of each release of acreage, but in any event at least quarterly.

5. In addition to the land, Mr. Lombardo will execute a pledge agreement in which he will add as additional security for the loan, marketable securities in the amount of at least $250,000.[4] Such securities will be held by Mr. Lombardo's broker, Merrill Lynch Pierce Fenner & Smith, Inc., subject to examination by the independent fiduciary appointed by the Plan (see representation No. 6). The Purchaser represents that the collateral securing the loan will at all times be at least equal to 150% of the outstanding loan balance. Mr. Lombardo has personally agreed to guarantee payment of the loan and his net worth as of December 31, 1984 was in excess of $1,000,000. During the term of the loan, the Purchaser and/or Mr. Lombardo will keep the collateral adequately insured against fire or other loss at their sole expense and the insurance proceeds will be made payable to the Plan.

6. Mr. E. Donald Gurwin (Mr. Gurwin) an attorney practicing in Southfield, Michigan, has agreed to serve as an independent fiduciary with respect to the proposed transaction. Mr. Gurwin has had no prior direct or indirect contract with the Plan, Astro Homes, or the Purchaser. Mr. Gurwin represents that he has reviewed the Plan's annual financial statements for the last four years, the proposed sales documents including the land contract, the guaranty of Mr. Lombardo and the pledge agreement.

Mr. Gurwin has concluded that the proposed transactions would increase the Plan's liquidity and provide a means for diversifying the Plan's investment portfolio which heretofore has been weighted with non-income producing real estate. In making the determination that the proposed transaction would be appropriate and suitable for the Plan, Mr. Gurwin represents that the proposed interest rate of 2% over the base rate with a guaranteed minimum rate of 10% per annum is appropriate given the type of property being sold, the term of the payment period, the collateral used to secure the payment, the amount involved and the requirement of Mr. Lombardo's personal guaranty.

Furthermore, Mr. Gurwin has agreed to accept the responsibility to enforce the terms of the agreement between the Plan and the Purchaser, including making demand for timely payment, bringing suit or the appropriate process against the Purchaser in the event of default and keeping accurate records and reporting annually to the Plan's trustee on the performance of the Purchaser under the agreement. Mr. Gurwin will take whatever steps are necessary during the year to insure that the value of the collateral remains equal to at least 150% of the outstanding balance of the amount owed during the term of the payment period.

7. In summary, the applicant represents that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The sale will be approved and monitored by an independent fiduciary;

(b) The amount owed will be secured by collateral which at all times will be equal to at least 150% of the outstanding amount owed to the Plan;

(c) The Plan's independent fiduciary has determined that the proposed transactions are appropriate and suitable for the Plan, in the best interest of the Plan's participants and beneficiaries, and protective of their rights.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Semmes-Murphey Clinic Employees' Profit-Sharing Plan & Trust (the Plan) Located in Memphis, Tennessee

[Application No. D-6209]

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 section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale by the Plan of a watercolor to Matthew W. Wood, M.D. (Dr. Wood), a party in interest with respect to the Plan, for $15,000 in cash, provided that the sales price is not less than the fair market value of the watercolor at the time of sale, and provided further that the Plan suffers no loss in connection with its acquisition and holding of the watercolor.

Summary of Facts and Representations

1. The Plan is an individual account profit sharing plan sponsored by Semmes-Murphey Clinic, a professional corporation located in Memphis,

[2] In this proposed exemption, the Department expresses no opinion whether the acquisition and holding by the Plan of a substantial portion of its assets in vacant land violated any provision of Part 4 of Title I of the Act.

[3] The applicant represents that under Michigan law, it is to the seller's advantage to retain title to the property and sell by land contract. It is represented that foreclosure procedures in the event of default are generally simpler and far quicker when the sale is made by land contract as opposed to when title is transferred and a mortgage is taken back.

[4] The present composition of Mr. Lombardo's portfolio with Merrill Lynch is as follows:

(a) Michigan State Bonds—Face Value 750,000, Market value 735,000

(b) Texas Mine Power Agency Bonds—Face Value 250,000, Market Value 250,000

(c) Columbia City Inc. Bonds—Face Value 200,000, Market Value 202,000.

Tennessee. As of May 29, 1985, the Plan had 80 participants. The Plan has 17 trustees, including Dr. Wood.

2. On October 23, 1979, Dr. Wood purchased an original watercolor (the Watercolor) by Samuel Prout entitled "The Rialto Bridge, Venice" from Kurt E. Schon, Ltd., an art dealer in New Orleans, Louisiana, for $15,000 as a directed investment for his own account in the Plan. This purchase was made prior to the prohibitions of section 408(m) of the Code regarding the purchase of collectibles for individually directed accounts of plans qualified pursuant to section 401(a) of the Code.

3. The Watercolor has been held by the Plan since its acquisition in a vault at the offices of the Plan at the Semmes-Murphey Clinic, except for a period when it was on display at a local museum.

4. On January 17, 1985, Nancy Harrison, Director for 19th Century European Paintings at Sotheby's, an art appraisal and auction company in New York, estimated the auction value of the Watercolor to be from $6,000 to $8,000.

5. The Plan has held the Watercolor for sale to unrelated third parties since its acquisition, but has been unable to obtain an offer equal to or above the original purchase price. Dr. Wood now realizes the inappropriateness of the Plan's holding a non-income producing asset, and wishes to buy the Watercolor from his individual account in the Plan for cash at the greater of either its original purchase price of $15,000, together with any additional expenses, such as insurance premiums, incurred by the Plan in connection with its acquisition and holding of the Watercolor, or the fair market value on the date of sale.[5]

6. In summary, the applicant represents that the proposed transaction will satisfy the terms and conditions of section 408(a) of the Act because: (a) The Watercolor will be sold for no less than the greater of the Plan's outlay in acquiring and holding the Watercolor or the Watercolor's fair market value on the date of sale; (b) the sale represents a one-time transaction for cash which can be easily verified; (c) the sale will not require the payment of any commissions, fees, or taxes by the Plan; (d) Dr. Wood's individual account in the Plan will not suffer any loss with respect to its acquisition or holding of the Watercolor; and (e) Dr. Wood has determined that the proposed transaction would be in the best interest and protective of his individual account in the Plan.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan's 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: Joseph L. Roberts III of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Industrial, Production and Maintenance Health and Welfare Trust Fund (the Plan) Located in Riverside, California

[Application No. L-6262]

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 shall not apply to the proposed cash purchase of a certain unimproved parcel of real property (the Property) by the Plan from Building Corporation of Laborers' Local 1184 (the Building Corporation), a non-profit corporation solely owned by Laborers' International Union of North America, Local No. 1184, (the Local Union), a party in interest with respect to the Plan, provided the terms and conditions of the purchase are not less favorable to the Plan than those obtainable in a like transaction between unrelated parties.

Summary of Facts and Representations

1. The Plan is a jointly-trusteed, multiemployer, welfare benefit plan for members of the Local Union with approximately 862 participants and 2,478 beneficiaries. According to Plan documents there are two Plan trustees; one is appointed by the sponsoring employers and the second is appointed by the Local Union. A third trustee, Mr. David G. Moore, a practicing attorney at law in Riverside, California, has been appointed by the first two trustees of the Plan as an independent fiduciary of the Plan with full and exclusive authority over the proposed transaction. As of March 31, 1985, the Plan had total assets of $2,025,459.42 and capital in excess of reserves for claims in the amount of $1,397,150.94. These reserves for claims are five times greater than the monthly experience by the Plan for paying claims.

2. The Plan seeks an exemption from the prohibited transactions of the Act for its proposed cash purchase of the Property from the Building Corporation for an agreed purchase price of $193,500. Since its current office facilities are inadequate, the Plan desires to acquire the Property for a construction site for new office facilities for the Plan. The Property consists of .803 acres of vacant land located at 1112 East La Cadena Drive, Riverside, California. Mr. Lawrence O. Bliss, a licensed Real Estate Broker, Consultant, Appraiser, and Land Planner and Developer, as an independent appraiser has determined, as of March 25, 1984, that the market value of the Property is $215,000. As of May 17, 1985, Mr. Bliss updated his 1984 appraisal of the Property and concluded that its market value remained at the same previously appraised value of $215,000. The members of the Local Union, which is the sole owner of the Building Corporation, are all participants of the Plan.

3. Mr. Moore represents that he has never represented and is independent of the other fiduciaries of the Plan, the Building Corporation, and the Local Union and that he is fully aware of his duties under the Act as fiduciary with respect to the Plan. He also represents that he has reviewed all the terms and conditions of the proposed acquisition, including the appraisals by Mr. Bliss and he concludes that the purchase price is reasonable and that the acquisition is in the best interests of the Plan. Mr. Moore further states that as independent fiduciary he will oversee the entire transaction involving the purchase of the Property as well as the construction of a building on the Property. Mr Moore also states that the building proposed for the Property is highly salable in the event the Plan later decides to sell the Property and the building.

4. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act because (a) the acquisition is a one-time transaction for cash; (b) the sale price of the Property is 10 percent less than appraised value of the Property; (c) the sale price of the Property is 9.5 percent of the total assets of the Plan and 13.8 of the capital of the Plan; (d) the location of the Property is important to the Plan and its participants because of its proximity to

[5] The applicant represents that the sale of the Watercolor will not result in a contribution to Dr. Wood's individual account in the Plan exceeding the limitations set forth in section 415(c) of the Code.

the offices of the Local Union; and (e) the transaction will be within the exclusive authority of an independent fiduciary.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Benham Management Corporation Money Purchase Pension Plan and Trust (the Plan) Located in Palo Alto, California

[Application No. D–6295]

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 the section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale by the Plan of 45 units (the Units) in Westar Timber Group 37, Ltd. (the Partnership), a California limited partnership, to Benham Management Corporation (the Employer), the sponsor of the Plan, provided that the sales price is not less than the higher of either $45,000 or the fair market value of the Units on the date of the sale.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 48 participants. The Plan had total assets of $707,000 as of October 1, 1985. The trustee of the Plan, and the decision-maker with respect to the proposed transaction, is Mr. James Benham (the Trustee). The Trustee is an officer of the Employer. The Employer is a California corporation located at 755 Page Mill Road, Palo Alto, California, engaged in the business of providing investment advice to mutual funds registered under the Investment Company Act of 1940.

2. The Units were purchased by the Plan on October 17, 1983 for a total price of $45,000. The purpose of the Partnership was to purchase a one-half interest in 920 acres in Santa Cruz County, California, harvest redwood timber from the property, and sell the land in a semi-developed condition to land developers. The applicant states that representations were made by the Partnership that the timber harvest would be completed and the property sold at a profit for the investors in approximately 18 months. During the months following the Plan's purchase of the Units, Coast County Corporation, the general partner and manager of the Partnership, advanced various reasons for why the project did not progress as represented. By April 1985, no timber had been harvested. The applicant states that at about this time the Trustee learned that the Partnership, along with a number of related partnerships, affiliated management companies, individual promoters, and lawyers and accountants advising these entities, were being sued for violation of federal and state securities laws, as well as for fraud, negligence, breach of fiduciary duty and racketeering. The Employer has joined the lawsuit as a plaintiff and has agreed to pay a share of the plaintiff's legal fees.

3. The applicant represents that no recovery on the Plan's investment in the Units will result other than through the instituted litigation. However, the applicant represents further that a complete recovery under the litigation is not very probable. The Employer desires to insulate the Plan from the expected losses on the investment in the Units. The Trustee proposes that the Plan sell the Units to the Employer at the greater of either the original purchase price of $45,000 or the fair market value of the Units as of the date of the sale. The Plan would have no further interest in the Partnership and the Employer would bear the entire risk of loss and expense in connection with the attempt to recover from the Partnership. The Employer represents that if an amount is recovered from the investment, and if the recovery exceeds the cost of the Units, the expenses of the litigation and the income tax attributable to the recovery, such excess amount will be returned to the Plan. In addition, no commissions or other selling expenses will be charged to the Plan in connection with the sale of the Units to the Employer.

4. The Units were appraised on September 24, 1985 by John A. Miskimen, ASA, President of Corporate Procedures, Inc. (the Appraiser), a California corporation experienced in the valuation of securities of public and private companies. The Appraiser states that even based on the most optimum assumptions concerning the market prices for redwood timber, the Units would be worth only $5,265. The Appraiser concludes that the Units have little or no value at this time and that, while it is too early to declare the Units worthless, realizable values are likely to fall well below the original investment of $45,000.

5. The applicant states that the transaction is in the best interest of the Plan and its participants because the Plan will not be subjected to the possible loss of $45,000 while the litigation proceeds in connection with the investment. Further, the Plan will be able to reinvest the proceeds of the sale in more secure, higher yielding investments.

6. In summary, the applicant represents that the proposed transaction meets the statutory requirements of section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the Plan will receive the higher of either the original cost of the Units or their fair market value on the date of the sale; (c) the Plan will incur no costs with respect to the sale; and (d) the Plan will be able to divest itself of a nearly worthless asset and reinvest the proceeds in investments which yield greater returns.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Merrill Lynch Real Estate Separate Account of Family Life Insurance Company (the Separate Account) Located in Seattle, Washington

[Application No. D–6322]

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), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale of an office building (the Real Property) by the Separate Account to the General Account (the General Account) of the Family Life Insurance Company (Family Life) for the total cash consideration of $6.2 million, provided the sales price for the Real Property is not less than its fair market value on the date of the consummation of the sale.

Summary of Facts and Representations

1. Family Life is a life insurance company organized under the laws of the State of Washington with current assets exceeding $260 million. Family Life is a wholly-owned subsidiary of Merrill Lynch and Company, Inc., (Merrill Lynch), a Delaware corporation.

2. The Separate Account, which is a pooled separate account in which eighty-three employee benefit plans (the

Plans), among others, invest has been maintained by Family Life since March 26, 1982. The Separate Account invests primarily in real estate assets, such as mortgage loans, sale-leaseback transactions and the ownership of real estate. Assets of the Separate Account are managed by Merrill Lynch, Hubbard, Inc., a subsidiary of Merrill Lynch and an affiliate of Family Life. As of June 30, 1985, the Separate Account had total assets of $10,083,963. The range of investments by the Plans in the Separate Account is from $2,000 to $200,000.

3. The General Account has been maintained by Family Life since its adoption on June 1, 1949. The General Account invests primarily in bonds, cash, short-term investments and receivables. As of June 30, 1985, the General Account had total assets of $227,453,992. The General Account and the Separate Account are not parties in interest with respect to each other within the meaning of section 3(14) of the Act. In addition, no portion of the Separate Account has ever been invested in the General Account and no portion of the General Account has ever been invested in the Separate Account.

4. On April 19, 1984, the Separate Account acquired the Real Property from Philip O. Kraft and Rae A. Kraft, who are unrelated parties, for $5,800,000 plus capitalized acquisition costs of $102,151. The Real Property, which is located at 2141 East Camelback Road, Phoenix, Arizona, consists of a two-story office building and an adjoining parking facility. It also includes a leasehold interest in the underlying land. The Real Property is leased in its entirety to CIGNA Healthplan of Arizona, Inc. (CIGNA Healthplan), a subsidiary of CIGNA Corporation which is not affiliated with Family Life or Merrill Lynch in any way. The lease commenced on November 1, 1978 and expires on January 11, 1989. It contains no renewal option. The annual rental paid to the Separate Account by CIGNA Healthplan is $692,614.

5. The Real Property is encumbered by a first mortgage loan having an unpaid principal balance of $1,189,108 as of July 31, 1985. The mortgage loan bears interest at the rate of 9.875 percent per annum with monthly installments of principal and interest. The mortgage loan has a remaining term of approximately nine years and it is payable to Northland Mortgage Company, an unrelated party.

6. Family Life proposes to transfer the Real Property from the Separate Account to its General Account since the Real Property presently represents more than 60 percent of the Separate Account's assets. According to the exemption application, section 817(h) of the Code requires that investments by a segregated asset account be "adequately diversified" in compliance with the Income Tax Regulations. Although regulations in this area have not yet been proposed, Family Life believes the diversification requirements would not be liberal enough to permit the continued investment by the Separate Account in the Real Property. Therefore, an administrative exemption is requested.

7. The purchase price for the Real Property will be an amount equal to the value of the Real Property as carried on the books of the Separate Account at the time of transfer. This value is established annually by an independent appraisal. In an appraisal report dated May 13, 1985, Mr. Greg D. Lee (Mr. Lee), an independent M.A.I. appraiser who is affiliated with the Tucson, Arizona office of the appraisal firm of Burke, Hansen and Klafter, has placed the fair market value of the Real Property at $6,200,000 as of April 30, 1985. Mr. Lee states that this value assumes an all cash sale subject to an existing mortgage loan and lease. The Separate Account will receive cash and the General Account will receive the Real Property subject to the mortgage. In addition, the Separate Account will not incur any real estate commissions or fees with respect to the sale of the Real Property.

8. Family Life states that the proposed transaction is in the best interests of the Plans and their participants and beneficiaries since the Real Property represents a disproportionate amount of the Separate Account's assets. As such, Family Life represents that a decline in property values in the Phoenix area or in property similar to the Real Property might cause a substantial loss to the Separate Account. Family Life represents that the contract holder bears the investment risk with respect to the assets held in the Separate Account. Accordingly, Family Life believes the transfer of the Real Property for cash will enable the Separate Account to invest in real estate in different locales or of different types so that decline in values in one district or in one class of property will not cause a loss to the Separate Account.

In addition, Family Life states that the proposed sale is in the interests of the Plans and their participants and beneficiaries because the Real Property will be exchanged with the General Account rather than with a third party. Also, Family Life represents that the Separate Account will not be charged brokerage commissions and other costs which would occur in a commercial sales transaction with an unrelated party. Therefore, Family Life states, the consideration received from the General Account by the Separate Account should be greater than that which the Separate Account would receive if the Real Property were sold to an unrelated buyer.

Finally, Family Life states that the proposed transaction is protective of the rights of the participants and beneficiaries of the affected Plans since the purchase price will be determined by an independent M.A.I. appraisal just prior to the consummation of the sale. Thus, Family Life represents, that what the Separate Account will receive in exchange for the Real Property is an amount that is not less than the fair market value of the Real Property.

9. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The transfer will be a one-time transaction for cash; (b) the sale will enable the Separate Account to achieve greater diversification of investments and increased liquidity; (c) the Separate Account will not incur any real estate commissions or fees in connection therewith; and (d) the purchase price for the Real Property has been and will again be determined by an independent appraisal to ensure that the Separate Account receives an exchange amount for the Real Property of not less than its fair market value.

For Further Information Contact: Ms. Jan Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Burt Chevrolet, Inc. Employees Retirement Plan and Trust (the Plan) Located in Englewood, Colorado

[Application No. D-6331]

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 the section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Plan to Burt Chevrolet, Inc. (the Employer) of a certain parcel of improved real property (the Property) which is currently being leased to the Employer, provided that the sales price is no less than the fair

market value of the Property on the date of sale.

Summary of Facts and Representations

1. The Plan is a defined benefit plan with 84 participants and total assets of $649,759.29 as of December 31, 1983. Effective January 1, 1974, the Plan was "frozen" with approval from the Internal Revenue Service (the Service), and the Employer has made no contributions to the Plan since that date. The Plan has established a policy of refunding terminated employees accounts whose account balances did not exceed $1,750. All other accounts are being held for distribution in the normal course, such as retirement or death.

2. The trustees of the Plan are Lyoyd G. Chavez, August J. Guanella, Jr., and N.B. Burt (the Trustees), who are the decision-makers with respect to Plan investments. The Trustees are all officers of the Employer. The Employer is a Colorado corporation in business as an automobile retail dealership located at 5200 South Broadway, Englewood, Colorado.

3. The Property is a .17 acre parcel described as Lot No. 7, Block 3, Brookridge Heights, Arapahoe County, Colorado. The Property is improved with asphalt paving and chainlink fencing and is used as an automobile parking and storage lot. The Property was purchased on June 14, 1974 for $33,000 and has been leased to the Employer since that time. For the period from June 14, 1974 to December 31, 1977, the Property was leased to the Employer for $205.00 per month on a triple net basis. On January 1, 1977, a new lease was signed for the period ending July 1, 1984, with a monthly rental of $275.00 per month. The Employer represents that the leasing of the Property satisfied the requirements of section 414(c)(2) of the Act through June 30, 1984.[6] The Employer has continued to lease the Property, paying monthly rentals of $275.00 to the Plan. The Employer states that it has never defaulted on any rent payments and that the amounts paid represent the fair market rental value for the Property. The Employer states further that Form 5330, Return of Initial Excise Taxes Related to Pension and Profit-Sharing Plans, has been filed with the Service for the period through December 31, 1984, and that all appropriate taxes for the leasing transaction will be paid within 60 days of the date of a grant of an exemption for the proposed sale of the Property.

[6] The Department expresses no opinion as to the applicability of section 414(c)(2) of the Act to this lease arrangement.

4. The Trustees propose to sell the Property to the Employer at its appraised value. The Property is surrounded on three sides by a large parcel of property owned by the Employer. The applicant states that due to zoning restrictions limiting the Property to single family residential uses, as well as its inadequate size and location, other potential purchasers are not likely to pay as much for the Property as the Employer. The Trustees represent that the transaction would be in the best interests of the Plan. The Property has not appreciated significantly in value over the past eleven years and cash proceeds from a sale of the Property would allow the Trustees to choose investments which yield a higher rate of return. In addition, the transaction would provide the Plan with more liquidity and an opportunity to achieve greater diversification of its assets.

5. The Property was appraised on February 1, 1985 and September 23, 1985 by Basil S. Katsaros, M.A.I. (Mr. Katsaros), an independent real estate appraiser in Denver, Colorado, as having a fair market value of $34,000. Mr. Katsaros states that consideration was given in the appraisal to the possible special value of the Property to the Employer. Since the Employer's property is zoned for general business uses, the Property has a different zoning designation that the Employer's property. In addition, the Property is located in an unincorporated part of Arapahoe County, while the Employer's property is located in the City of Englewood. Mr. Katsaros states that these conditions restrict the potential value of the Property to the Employer as the adjacent property owner. The appraisal's valuation is based upon a sale to an adjoining property owner. In Mr. Katsaros' opinion, the Property would have a minimal value to anyone other than the Employer since the potential for annexation of the Property by the City of Englewood or a change in the zoning designation is remote.

The Property was also appraised on February 1, 1985 by Justin H. Haynes & Co., another independent real estate appraisal in Denver, Colorado, as having a fair market value of $24,600. However, the Employer proposes to purchase the Property for $34,000, in accordance with Mr. Katsaros' original and updated appraisals.

6. The applicant states that no commissions will be charged on the transaction. The Employer has agreed to pay all necessary expenses connected with the transaction, including appraisal fees.

7. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the Plan will receive the fair market value for the Property as determined by an independent qualified appraiser; (c) the Plan will not pay any commissions or other expenses in connection with the transaction; and (d) the Trustees have determined that the sale of the Property is in the best interests of the Plan.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Rex Moore Electrical Contractors & Engineers Profit Sharing Plan (the Plan) Located in Sacramento, CA

[Application No. D-6383]

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), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply, for a period of 5 years, to the proposed loans by the Plan of up to 25% of its assets to Rex Moore Electrical Contractors and Engineers, Inc. (the Employer), provided that the terms of the transactions are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party at the time of consummation of each transaction.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 12 participants and net assets of $1,178,528 as of April 30, 1985. The Plan's trustees are Messrs. Rex Moore, Steven Moore and Rodney J. Weckworth.

2. The Plan proposes to make a series of loans to the Employer involving up to 25% of the Plan's assets. The loans will be used by the Employer to purchase inventory and equipment among other uses.

3. The proposed loans will be repaid on a monthly basis with a pro rata portion of the principal amount of the loans plus interest on the total unpaid balance accrued to date, being repaid to the Plan at the end of each month. The loans will occur over a period of 5 years

and each loan will have a maturity date which will not exceed 5 years beyond the exemption period. The interest rate for such loans will be the Bank of America's prime rate plus 2% adjusted quarterly by the independent fiduciary appointed by the Plan (see representation #6) with a guaranteed minimum rate of 11%.

4. The loans will be secured by the Employer's accounts receivable. The applicant represents that as of March 24, 1985, the Employer's accounts receivable amounted to $2,269,000. The Employer's turnaround time for its accounts receivable is represented to be approximately 2½ months and the Employer's bad debts amount to about 5% of accounts receivable. The Plan will have a perfected first security interest in the accounts receivable (the Collateral) through the execution and filing by the Employer of security agreements on behalf of the Plan. The Employer will warrant to own throughout the term of the loans all Collateral free from any adverse claims, security interests, or encumbrances.

5. The Plan will use loan documents which are similar to those currently being used by Capital Federal Savings and Loan Association to evidence the loans with the Employer. The loan documents will indicate that the loans are secured by the Collateral in an amount not less than 200% of the outstanding principal balance of the loans. The principal balance of the loans will be reduced in amount if the Collateral ever falls below an amount equal to 200% of the outstanding principal balance of the loans to ensure that the 200% ratio is maintained.

The Employer will have the Collateral independently valued no less frequently than once a month to determine its value. The Employer will bear all expenses required to have such valuation made.

6. Mr. Dale Alan Helton (Mr. Helton), a certified public accountant with the firm of Helton & Reiken of Sacramento, California has agreed to serve as an independent fiduciary for the proposed loans.[7] Mr. Helton represents that he has been advised by legal counsel of his duties, responsibilities and potential liabilities in serving as an independent fiduciary.

Mr. Helton represents that after examining the terms of the proposed loans and the history of the Employer and the Plan, he has determined that such loans would be appropriate and suitable for the Plan. Mr. Helton represents that he will make the same determination immediately prior to the consummation of each loan transaction taking into account the facts and circumstances at the time of such proposed loan transaction. In arriving at this conclusion he has reviewed the proposed loans with respect to: (a) The Plan's overall investment portfolio, (b) the cash flow needs of the Plan (c) the necessity of the sale of any of the Plan's assets, (d) the diversification of the Plan's assets, both before and after each loan and (e) the terms of the loan as such terms conform with the Plan's investment policy. Mr. Helton represents that the proposed interest rate of prime plus 2% with a guaranteed minimum of 11% is appropriate given the type of loans, the term of the loans, the Collateral used to secure the loans and the amount of the loans.

Mr. Helton has agreed to accept the responsibility to enforce the terms of the loan agreement between the Employer and the Plan, including making demand for timely payment, bringing suit or other appropriate process against the Employer in event of default, and keeping accurate records and reporting annually to the Plan's trustee on the performance of the loans. Mr. Helton will take whatever steps are necessary during the year to ensure that the value of the Collateral remains equal to at least 200% of the outstanding balance of the loans during the duration of the loans.

7. In summary the applicant represents that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The loans will be approved and monitored by an independent fiduciary;

(b) The loans will be secured by Collateral which at all times will be at least equal to 200% of the outstanding loan balances;

(c) The exemption will be for a 5 year period with a repayment date not to exceed 10 years from the date of grant of the exemption; and

(d) The Plan's independent fiduciary has determined that the transactions are appropriate and suitable for the Plan, in the best interests of the Plan's participants and beneficiaries, and protective of their rights.

Temporary Nature of Exemption

The proposed exemption is temporary and, if granted will expire 5 years after the date of grant with respect to the making of any loan. Subsequent to the expiration of this exemption, the Plan may hold loans originated during this 5 year period until the loans are repaid. Should the applicant wish to continue entering entering into loan transactions beyond the 5 year period, the applicant may submit another application for exemption.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Northeast Georgia Pediatric Group Self-Employed Retirement Plan (the Plan) Located in Gainesville, Georgia

[Application No. D–6399]

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 cash sale of a parcel of real property (the Property) to Dr. Larry Morris (Dr. Morris) by his separate account (the Account) in the Plan for the greater of $50,000 or the fair market value of the Property on the date of the sale. Section 408(d)(3) of the Act provides that the Department lacks authority to grant an exemption under section 408(a) of the Act for the sale of any property by a plan to an owner-employee. Therefore, the Department cannot grant an exemption under Title I for the subject sale. However, the Department can grant an exemption under Title II of the Act, pursuant to section 4975 of the Code.

Summary of Facts and Representations

1. The Plan is a profit-sharing plan for self-employed persons, to which contributions have ceased due to the discontinuance by the Plan's sponsor, Northeast Georgia Pediatric Group (the Employer), of its medical practice in self-employed business form. The assets of the Plan continue to be held in a trust with the First National Bank of Gainesville as trustee. There are eight participants in the Plan, and the Plan had total assets of approximately $356,000 as of December 31, 1984.

2. Dr. Morris is an owner-employee with respect to the Plan. Dr. Morris' Account had assets of approximately $80,000 in value as of December 31, 1984. The subject transaction only involves Dr. Morris' Account.

3. The Property consists of a parcel of unimproved real estate located in Hall County, Georgia. The Property was acquired by the Account in the

[7] The applicant represents that Mr. Helton's accounting firm receives fees from the Employer, but the total fees received represent less than 1% of its total billings.

unimproved state in which it is presently held on October 13, 1981, for a purchase price of $35,000. The Property was acquired by the Account from Mr. and Mrs. John Girardeau, parties unrelated to Dr. Morris, the Employer and the Plan. The Property has appreciated in value and Dr. Morris has determined that it would now be in the best interests of the Account to sell the Property and reinvest the proceeds in a more liquid and fixed-income type of investment.

4. Mr. W. McRae Greene, Jr. of Greene Real Estate Co., Inc., an independent broker-appraiser located in Gainesville, Georgia, has appraised the Property as having a fair market value of $50,000 as of August 30, 1985. Dr. Morris represents that the Account will be paid the higher of $50,000 or the fair market value of the Property on the date of the sale. Dr. Morris further represents that no real estate commissions or brokerage charges of any nature shall be paid with respect to the contemplated sale.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 4975(c)(2) of the Code because: (1) The sale is a one-time transaction for cash; (2) no commissions will be paid with respect to the sale; (3) the sale price will be no less than the Property's fair market value as of the date of the sale; and (4) Dr. Morris is the only participant in the Plan to be affected by the transaction, and he has determined that it is appropriate for and in the best interests of the Account.

Notice to Interested Persons: Because Dr. Morris is the only participant in the Plan to be affected by the proposed transaction, it has been determined that there is no need to distribute this notice of proposed exemption to interested persons. Comments and requests for a hearing are due 30 days from the date of publication of this proposed exemption in the **Federal Register.**

For Further Information Contact: Mr. Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Warner Plumbing Employees' Profit Sharing Plan (the Plan) Located in Springfield, Virginia

[Application No. D–6434]

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 the section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale by the Plan, for the total cash consideration of $700,000, of certain improved real property (the Suitland Property), to The Warner Corporation (The Warner Corp.), a contributing employer and a party in interest with respect to the Plan, provided the price paid for the Suitland Property is not less than its fair market value at the time the transaction is consummated.

Summary of Facts and Representations

1. The Plan, which was established in 1962, is a profit sharing plan with an estimated 156 participants and net assets of $4,153,953 as of December 31, 1984. The trustees of the Plan (the Trustees) are Messrs. George F. Warner, George E. Warner, Francis R. Howard and Thomas F. Warner. Investment decisions for the Plan are made by Mr. George F. Warner.

2. The Plan has been adopted by the Warner Plumbing Corporation, The Warner Corp., George F. Warner, Inc. and Ho-War Plumbing Corporation (the Adopting Corporations). The Adopting Corporations are engaged in the plumbing, heating, air conditioning and general contracting business in the metropolitan Washington, D.C. area. As a result of stock ownership by Messrs. George F. Warner, Francis R. Howard and the late Mr. Edwin F. Warner, the Adopting Corporations constitute a controlled group of corporations along with a fourth corporation, the Warner Holding Group, Inc., which has not adopted the Plan. The Adopting Corporations and the Warner Holding Group, Inc. are parties in interest with respect to the Plan. The Trustees are members of both the Board of Directors of Warner Plumbing Corporation and The Warner Corp. The Trustees are also shareholders and officers of both entities.

3. Among the Plan's assets is the Suitland Property which is located at 4907-4939 Suitland Road, Prince George's County, Maryland. The Suitland Property consists of two, two-story masonry buildings containing approximately 24,600 square feet and the improvements situated thereon. The buildings constitute a shopping center which the Plan leases to unrelated parties. At no time has the Suitland Property been used or leased by the Adopting Corporations.

4. The Plan purchased the Suitland Property as two unimproved parcels from unrelated parties. The first parcel was purchased on August 13, 1964 from Ms. Estelle L. Sinclair for $50,000. The Plan purchased the second parcel of land from Mr. William V. Goodwin on March 7, 1966 for $60,224. At present, the Suitland Property is unencumbered.

5. Since the time it has owned the Suitland Property, the Plan has received income which includes unrealized appreciation of $1,028,586. It has also spent a total of $445,995. This amount includes such expenses as commissions paid to rental agents, certain utility costs, legal fees and expenses, maintenance and repair charges, advertising, insurance and real estate taxes. In addition, the Plan has made valuable improvements to the Suitland Property totaling $501,233. The Plan commenced making the improvements between 1971 and 1974.

6. Because the Plan has invested a substantial portion of its assets in real property, the Trustees wish to reduce the weighting of the Plan's investment portfolio in this area. To accomplish this result, the Trustees believe a sale of the Suitland Property would be desirable. In anticipation of the sale, the Trustees have obtained three offers for the Suitland Property from unrelated parties. In two separate arm's length negotiations, the Trustees have been offered $650,000. In a third separate arm's length tansaction, the Trustees have obtained an offer of $625,000.

7. Since the third party offers would have involved the payment of a six percent real estate commission which would have reduced the amount of gain to be realized by the Plan, the Trustees request an administrative exemption to permit the Warner Corp. to purchase the Suitland property from the Plan. Accordingly, The Warner Corp. will purchase the Suitland Property for cash for its appraised fair market value. The Plan will not be required to pay any real estate commissions or fees in connection with the proposed transaction.

8. The Suitland Property was appraised by Mr. Raymond C. Wockley (Mr. Wockley), an independent real estate appraiser who is affiliated with the appraisal firm of Real Property Research located in Clinton, Maryland. In an appraisal report dated June 10, 1985, Mr. Wockley placed the fair market value of the Suitland Property at $700,000 as of June 3, 1985.

9. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the sales price will be based on the value of the Suitland Property as established by an independent appraiser; (c) the Plan will

not be required to pay any real estate commissions or fees in connection therewith; and (d) the sale will enable the Trustees to reduce the Plan's real estate holdings and allow them to diversify the Plan's investment portfolio.

Notice to Interested Persons: Notice of the proposed exemption will be provided to all interested persons within 21 days of the date of publication of this notice of pendency in the **Federal Register.** Comments and hearing requests are due within 51 days of the date of publication of the proposed exemption in the **Federal Register.**

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

The Travelers Separate Account "R" (the Account) Located in Hartford, Connecticut

[Application No. D–6456]

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), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply, effective December 16, 1985, to the sale of certain agricultural properties by the Account to The Travelers Insurance Company (Travelers), a party in interest with respect to the Account, provided that the terms of the sale are not less favorable to the Account than those terms obtainable in an arm's-length transaction with an unrelated party.

Effective Date: If granted, this exemption will be effective December 16, 1985.

Summary of Facts and Representations

1. The Account is a pooled open-ended real estate investment fund of qualified employee benefit plan assets. As of December 31, 1984, approximately 129 plans participated in the Account, and the Account had net assets of approximately $500 million. The greatest amount of participation, approximately $73.9 million, is by Travelers Corporation Retirement Plan for Salaried Employees. The total number of participants in the plans participating in the Account is over one million.

2. The Account is sponsored by the Travelers Corporation, the parent corporation of Travelers. Travelers, through its real estate investment department, currently manages over $9 billion in real estate investments, of which approximately $6 billion represent the funds of retirement plans. Travelers serves as the asset manager of the Account.

3. The Account is composed of an equity component and a mortgage component. The equity component is composed of income producing properties selected to achieve long-term growth of capital and income. The equity component currently owns 16 agricultural properties dispersed throughout six states: Arkansas (2), Colorado (4), Georgia (1), Illinois (5), Kansas (1), and Wyoming (3) (the Agricultural Properties). These properties, which were acquired between 1976 and 1981, range in size from 283 to 7,153 acres, with a combined total acreage of 37,643. Total acquisition cost for the sixteen properties was $27,171,000. Because of the general economic distress experienced by large segments of the agricultural community, these properties have significantly reduced the total return on investment for the equity component of the Account in recent years.

4. It is proposed that the Account sell the Agricultural Properties in bulk to the General Account of Travelers (General Account) for a total cash price of $24,484,000. This offer corresponds to the total fair market value for the Agricultural Properties as of December 31, 1984, as estimated by Travelers. The sale would be consistent with the new investment policy of the equity component of the Account, which is intended to achieve a superior cash return on investment. As of December 31, 1984, the General Account contained assets in excess of $22 billion, including approximately $197 million in agricultural properties.

5. The Account appointed The Karsten Companies (Karsten) to serve as the independent fiduciary for the Account with regard to the proposed sale. Founded in 1969, Karsten concentrates on providing real estate sales and development advisory assistance to major corporations, financial institutions, and public institutions, and has regularly assumed major responsibilities with respect to the management and investment of retirement plan assets. Karsten is not affiliated with Travelers in any way, nor have the parties had any previous business dealings.

6. Karsten identified three alternative strategies for dealing with the Agricultural Properties: (a) Sale to the General Account pursuant to the Travelers offer, (b) sale on the open market, or (c) retention of the properties for investment cash flow and potential appreciation benefits. Under the first alternative, the Account will receive $24,484,000 for the Agricultural Properties. Under the second strategy, Karsten estimates the current fair market value of the properties to be $18,992,000, which, after allowance of a 5 percent factor for sales commissions and other closing costs, would yield an estimated return of $18,042,000, or approximately 74 percent of the Travelers offer. Karsten estimates present value of a 5 year hold strategy to be $14,355,000, or approximately 59 percent of the Travelers offer. Karsten estimates that the average appreciation of the properties would have to exceed 15 percent per year in order for the present value of the 5 year hold strategy to exceed the Travelers offer. Karsten believes that a 15 percent rate of appreciation is not a realistic expectation with respect to agricultural properties.

7. Karsten states that its valuation and present value studies were based on analysis of each of the properties being operated as a farm. Karsten inspected each property to see whether it might have a more valuable alternative land use or for any mineral rights. Karsten concluded that based on its investigation, including site inspections, meetings with people knowledgeable about each property and local area factors and its review of Traveler's documentation, that the highest and best use of each of the properties is as a farm under existing use and that none of the properties has an alternative use value greater than its estimated farm land value.

8. Karsten recommends that the Account sell the Agricultural Properties to the General Account for the following reasons:

(a) The price being paid by the General Account is greater than the current fair market value of the properties;

(b) The sale to the General Account achieves results consistent with the Account's new investment policy;

(c) Although farm land values have declined dramatically over the last 4 or 5 years, there is a strong possibility that values have not yet bottomed out and may, in fact, continue to decline; and

(d) The price being paid by the General Account is greater than the estimated present value of the farm portfolio under a holding strategy.

9. Karsten states that in reaching its conclusion that the Account should sell the Agricultural Properties to the

General Account it performed the following research:

(a) Reviewed applicable documents from the Account's files, including initial acquisition reports, property accounting reports, Travelers' in-house appraisal reports, independent appraisal reports, property operating statements and budgets, title reports and policies, management reports, property leases, crop sharing agreements and miscellaneous correspondence.

(b) Met with Travelers home office personnel associated with the management and administration of the properties as well as with the regional field managers for each property.

(c) Inspected each of the properties as well as comparable sale and listing properties.

(d) Interviewed appraisers, lenders, farm brokers, farm equipment dealers and other informed parties with respect to each property.

(e) Met with agribusiness consultants, educators and legislative representatives with a view toward obtaining information and insight into current and projected agribusiness trends.

(f) Engaged independent fee appraisers to prepare new appraisals and to provide current market data on the properties located in Wyoming and Colorado.[8]

10. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act because (a) the sale of the Agricultural Properties will be a one-time transaction for cash; (b) Karsten, a qualified independent fiduciary, has determined that the sale is appropriate and is in the best interests of the Account; and (c) Karsten has determined that the amount of the offer from the General Account is greater than what would be realized from a third party, is not less than fair market value, and exceeds the present value of the properties under a hold strategy.

For Further Information Contact: Mr. Alan Levitas of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Grove Hill Clinic, P.C. Pension Plan and Trust (the Plan) Located in New Britain, Connecticut

[Application No. D-6463]

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), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to: (1) a proposed loan (the Loan) by the Plan to Grove Hill Realty Associates (GHR), a party in interest with respect to the Plan; and (2) the proposed personal guarantees of GHR's obligations under the Loan by the partners of GHR, provided that all terms of such transactions are at least as favorable to the Plan as the Plan could obtain at arm's-length with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan with 139 participants and total net assets of $11,882,852 as of September 30, 1984. The Plan is sponsored by Grove Hill Clinic, P.C. (the Employer), a Connecticut professional corporation owned by 35 equal stockholders operating a medical clinic in New Britain, Connecticut. GHR is a Connecticut partnership which owns and leases to the Employer the improved real property which constitutes the Employer's principal place of business. GHR is comprised of thirty one partners, each of whom is a stockholder and/or employee of the Employer. The Plan's trustees (the Trustees) are 10 stockholders of the Employer who are also partners in GHR.

2. During 1984, principals of the Employer and GHR determined that the Employer would expand its operations with the addition of a new clinic facility at a different location, to be constructed and owned by GHR and leased to the Employer. The new clinic facility (the New Clinic) was constructed by GHR on a 1.84 acre parcel of land located at 6 Hammerhead Place in Cromwell, Connecticut. The New Clinic was appraised by E. Richard Sjostrom (Sjostrom) a professional real estate appraiser located in Wethersfield, Connecticut. Sjostrom determined that as of April 18, 1985 the New Clinic, inclusive of the underlying land, had a fair market value of $685,000. GHR financed the construction of the New Clinic by means of short-term obligations with longer-term financing arrangements upon completion of construction. In order to partially retire such outstanding short-term construction debts and secure longer-term financing for those debts, GHR seeks the Loan, a proposed secured loan from the Plan, and the Trustees are requesting an exemption to permit the Loan. The partners of GHR propose to offer their personal guarantees of GHR's obligations resulting from the Loan, and the Trustees are further requesting an examination to permit these proposed personal guarantees.

3. It is proposed that the Loan will be in the total principal amount of $456,000, which is approximately two-thirds of the amount of the New Clinic's fair market value according to Sjostrom's appraisal. The Loan will be secured by a first mortgage on the newly-completed improvements constituting the New Clinic and on the land on which the New Clinic is located. This particular proposed Loan amount is selected to ensure that the Loan is secured with unencumbered real property with a value of no less than 150 percent of the Loan's principal amount. The Loan will be further secured by the personal guarantees of each of the partners of GHR, each of whom has a net worth in excess of $100,000. The Loan will be evidenced by a promissory note (the Note) which provides that the Loan's principal amount will bear interest at the rate of one percent above the average prime rate announced by Citibank, N.A. of New York, New York (Citibank) during the three-month period prior to the date of the Loan, such interest rate to be adjusted on every third anniversary of the Loan during the entire twenty-year term of the Loan to a rate of interest of one percent above the average prime rate announced by Citibank during the three-month period prior to each such third anniversary. The Note requires GHR to make equal monthly principal payments of $1,900.00, plus interest on the unpaid balance, on the first day of each month after the making of the Loan until the principal and interest are fully paid, provided that the entire principal and interest shall be due and payable twenty years from the due date of the first of such monthly payments if not sooner paid. The Note further provides that is any monthly payment is not paid when due, the unpaid principal balance of the Loan shall bear interest during the period of delinquency at a rate of fifteen percent per annum and at the option of the Note's holder the entire principal amount outstanding plus accrued interest shall at once become due and payable. Similarly, the Note provides that the Loan shall become immediately due and payable if GHR transfers, sells or otherwise conveys the New Clinic or if title to the New Clinic becomes vested in any other person. In the event of default in the payment of the Loan, the

[8] Karsten represents that fee appraisers were retained only in Wyoming and Colorado because of difficulties in obtaining comparable market sales and listing data for properties in these States.

Note provides that GHR will pay all costs and expenses of collection incurred on behalf of the Plan. At all times during the Loan, the New Clinic will be fully insured by GHR against loss and the Plan will be named as the loss payee under such insurance coverage policy.

4. The Trustees have designated Connecticut National Bank (the Bank) of Hartford, Connecticut to act as an independent fiduciary on behalf of the Plan with respect to the proposed Loan to determine whether the Loan will be in the best interest and protective of the Plan and by representing the Plan's interests in the consummation and for the duration of the Loan. The Bank represents that it is qualified to act in this capacity, with substantial experience in originating and servicing such mortgage loans, and that it is unrelated to GHR and the Employer except for the Bank's provision of normal commercial services, with total deposits and outstanding loans of GHR and the Employer representing less than one percent of the Bank's total deposits and outstanding loans. The Bank represents that it has reviewed and evaluated all proposed terms of the Loan and has determined that it will be prudent investment for the Plan on terms at least as favorable to the Plan as those which would be structured between unrelated parties dealing at arm's-length. The Bank notes that the Loan will be adequately secured by a first mortgage on the New Clinic and its underlying land and by the personal guarantees of the partners of GHR. The Bank has determined that the interest rate of the Loan will be appropriate as proposed, as it will compare favorably to the market rate for similar investments and will be a variable rate which will permit the Plan to participate in any market rate increases. The Bank has determined that the making of the Loan will not create a liquidity problem for the Plan. The Bank accepts responsibility to monitor GHR's obligations under the Loan, to collect all payments of principal and interest as they become due under the Note and to pursue appropriate remedies on behalf of the Plan in the event of any default on the part of GHR with respect to its Loan obligations. The Bank represents that it will make certain that the collateral securing the Loan continues to equal or exceed in value 150% of the outstanding principal balance of the Loan, and will take appropriate action to protect the interests of the Plan if it does not.

5. In summary, the applicants represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The interests of the Plan with respect to the proposed Loan will be represented by an independent fiduciary, the Bank, which has determined that the proposed Loan will be in the best interests of the Plan; (2) The Loan will be secured by a first mortgage on real property with a value of a least 150% of the Loan's principal amount and by the personal guarantees of the partners of GHR; (3) The Loan will provide the Plan with a favorable return in the Loan's variable interest rate, which will allow the Plan to take advantage of increases in the market rate, reflected in Citibank's average prime rate; and (4) The Bank has determined that the Loan as proposed is on terms at least equivalent to those which would be expected in an arm's-length transaction between unrelated parties.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Charles G. Rogers, M.D., P.C. Target Benefit Plan and Trust (the Plan) Located in Atlanta, Georgia

[Application No. D-6468]

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 the section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of 18,562 shares of the common stock of American Folks, Inc. to Charles G. Rogers, M.D. (Dr. Rogers), a fiduciary and party in interest with respect to the Plan, for cash in the amount of $35,000, provided that such amount is not less than the fair market value of the shares on the date of sale.

Summary of Facts and Representations

1. The Plan is a target benefit plan sponsored by Charles G. Rogers, M.D., P.C. (the Employer). As of October 31, 1985, the Plan had three participants and net assets of approximately $200,000. The trustee of the Plan and decision maker with respect to Plan investments is Dr. Rogers. Dr. Rogers is also the president, sole director and shareholder of the Employer, a medical practice.

2. In March, 1983, Dr. Rogers, as trustee of the Plan, caused the Plan to purchase one of forty equal limited partnership interests in Hart-Orleans, Ltd. (the Partnership), a Georgia limited partnership, at a cost of $35,000. The general partner and all other investors in the Partnership are unrelated to the Plan. The Partnership was formed to develop and operate up to fifteen "Po-Folks" restaurants in the New Orleans, Louisiana area. The general partner of the Partnership was JH Restaurants, Inc. JH Restaurants, Inc. has since changed its name to American Folks, Inc. Dr. Rogers purchased the Partnership interest for the Plan because the Plan's assets had been invested primarily in illiquid assets and investment in the Partnership interest was thought to be an excellent way of diversifying the Plan's portfolio.

3. Since its inception, the Partnership has suffered continual and substantial losses. On September 30, 1984, American Folks, Inc. purchased the assets of the Partnership for 750,000 shares of common stock of American Folks, Inc. and the assumption of approximately $350,000 of liabilities of the Partnership. The net book value of the Partnership at that time was approximately $900,000. Each owner of a unit of the Partnership, including the Plan, received 18,562 shares of the common stock of American Folks, Inc. Since the Plan's acquisition of the American Folks, Inc. common stock, American Folks, Inc. has been operating at a substantial loss. Dr. Rogers, as trustee of the Plan, believes that such losses will continue in the future and that the value of the American Folks, Inc. common stock will remain constant or decline.

4. On August 1, 1984, American Folks, Inc. completed a private placement offering of 1,700,000 shares of common stock, 700,000 shares of which were sold at $1.00 per share and 1,000,000 shares of which were sold at $1.20 per share. The applicant represents that these shares were purchased primarily by individual investors in the Atlanta area who were unrelated to American Folks, Inc.

Subsequently, in January, 1985, American Folks, Inc. completed a private placement offering of 3,500,000 shares of common stock at $.50 per share. Approximately 1,000,000 of these shares were purchased by an individual who is unrelated to American Folks, Inc. Since January 31, 1985, American Folks, Inc. has issued 1,744,413 shares of common stock at $.40 to $.60 per share. These shares have been issued to individual investors and creditors to satisfy liabilities of American Folks, Inc. The applicant states that no public

offering of American Folks, Inc. stock is currently contemplated.

5. In order to restore to the Plan the value of its original investment in the Partnership of $35,000, Dr. Rogers proposes to purchase the Plan's 18,652 shares of American Folks, Inc. stock for cash in the amount of $35,000, which is equivalent to $1.89 per share. No fees or commissions would be charged to the Plan with respect to the sale. Dr. Rogers represents that if the aggregate proposed selling price of $35,000 exceeds the fair market value of the stock on the date of sale and the excess over fair market value is deemed to be an employer contribution, such contribution will not disqualify the Plan under section 415 of the Code.

6. Dr. Rogers represents that the Plan's sale of the stock is appropriate for, protective of and in the best interest of the Plan and its participants and beneficiaries because the Plan will be able to invest the proceeds of the sale in investments producing a higher yield and/or more capital appreciation. In addition, the Plan will be capable of reacting more effectively to market conditions because the proceeds will be invested in more marketable investments. Further, no fees or commissions will be charged to the Plan with respect to the sale.

7. In summary, the applicant represents that the proposed sale satisfies the statutory criteria under section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the Plan will be able to sell an investment which has declined in value and is not likely to appreciate in the near future; (c) the Plan will be able to reinvest the proceeds of the sale in more liquid and profitable investments; and (d) no fees or commissions will be paid by the Plan with respect to the sale.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523-8194. (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 14th day of January, 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 86-1101 Filed 1-16-86; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, SI 502-4 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Format and Content of Plant-Specific Pressurized Thermal Shock Safety Analysis Reports for Pressurized Water Reactors" and is intended for Division 1, "Power Reactors." It is being developed to describe a format and content acceptable to the NRC staff for plant-specific pressurized thermal shock safety analyses required by the new pressurized thermal shock (PTS) rule. The guide also describes acceptance criteria that the NRC staff will use in evaluating licensee analyses and proposed corrective measures.

The new draft guide deals with one requirement of the PTS rule, which became effective July 23, 1985. This rule establishes a screening criterion related to the fracture resistance of pressurized water reactor vessels during PTS events. The rule requires a plant-specific submittal of updated information needed to calculate the extent of radiation damage to the reactor vessel based on the chemical composition of the vessel materials and the expected neutron fluence, including the effects of any flux reduction programs. The rule also requires detailed safety evaluations to be made before the plant is operated beyond the screening criterion.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of comments received may be examined at the ANRC Public Document Road, 1717 H Street, NW., Washington, DC. Comments will be most helpful if received by March 14, 1986.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland this 9th day of January, 1986.

For the Nuclear Regulatory Commission.

Robert B. Minogue, *Director,*

Office of Nuclear Regulatory Research.

[FR Doc. 86-1118 Filed 1-16-86; 8:45 am]

BILLING CODE 7590-01-M

Draft Report on Estimates of Early Containment Loads from Core Melt Accidents: Availability

Availability of the draft report on Estimates of Early Containment Loads from Core Melt Accidents (NUREG-1079) for Public Comments.

The Nuclear Regulatory Commission has issued for public comments a draft report on Estimates of Early Containment Loads from Core Melt Accidents (NUREG-1079). The report provides a summary of studies performed by various contractors to the NRC examining the thermal-hydraulic processes and corium debris-material interactions that can result from core melting in a severe accident. The studies were designed a evaluate the potential effects of the consequences from such phenomena on containment integrity. Pressure and temperature loads associated with representative severe accident sequences have been estimated for typical configurations of the six LWR containment types used within the United States. The analyses were performed by various expert groups from the national laboratories, universities and commercial institutions. Summaries of the analyses are presented and an interpretation of the results provided. An executive summary of these results was incorporated for use in the NRC Draft report Reassessment of the Technical Bases for Estimating Source Terms, (NUREG-0956) issued for public comment in July 1985.

Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulation Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. Comments should be received no later than 60 days following the date of issuance of this notice.

Copies of the NUREG-1079 are available for inspection, and copying for a fee, in the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555. Copies may be purchased by calling (202) 275-2060 or (202) 275-2171, by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, D.C. 20013-7082. Copies may also be purchased by calling (703) 487-4650 or by writing to the National Technical Information Service, Springfield, VA. 22161.

For further information contact Cardis L. Allen, Safety Programs Evaluation Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492-8345.

Dated at Bethesda, Maryland this 13th day of January, 1986.

Karl Kniel,

Chief, Safety Program Evaluation Branch, Division of Safety Review and Oversight, Office of Nuclear Reactor Regulation.

[FR Doc. 86-1117 Filed 1-16-86; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, DC, 20549.

Extension

Rule 17Ad-11

No. 270-261

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17Ad-11 (17 CFR 240.17Ad-11) under the Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.), which generally requires transfer agents to file reports regarding aged record differences, buy-ins, and failure to post certificate detail to master securityholder and subsidiary files.

Submit comments to OMB Desk Officer: Ms. Sheri Fox, (202) 395-3785, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, DC 20503.

Dated: January 10, 1986.

John Wheeler,

Secretary.

[FR Doc. 85-1065 Filed 1-16-85; 8:45 am]

BILLING CODE 8010-0-M

[Release No. 34-22777; File No. SR-Amex-85-35]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange, Inc., Relating to Amendments to Amex Company Guide—Section 105

The American Stock Exchange, Inc. ("Amex") submitted on September 25, 1985, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend Section 105 of the Amex *Company Guide* to permit listing of warrants granting the issuer discretion temporarily to reduce the exercise price of the warrants. Section 105 currently prohibits listing of warrants with such provisions—known as "flush out" provisions—attached. Under the proposal, the price reduction will be permissible only if the company establishes a minimum period of ten business days within which such reduction will be in effect.[1] According to

[1] On December 12, 1985, the Amex filed Amendment No. 1 to the proposed rule change to provide that the Amex would list warrants providing the company the right to "reduce" the exercise price, so long as a minimum exercise period of ten business days was established. The Amex's original proposal would have allowed listing warrants if the company had the right to adjust the exercise price so long as a ten business day window period was established.

Continued

the Amex, the proposal will enable issuers to "encourage conversions of outstanding warrants into permanent capital," so long as the minimum period for possible exercise of the warrants is provided.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22581, October 29, 1985) and by publication in the **Federal Register** (50 FR 46376, November 7, 1985). No comments were received with respect to the proposed rule change.

The Commission finds that the proposal 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.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 8, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-1124 Filed 1-16-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22790; File No. SR-CBOE-85-49]

Self Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to extending the close of trading in CBOE index options from 3:10 P.M. to 3:15 P.M. (Chicago Time)

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 December 13, 1985 the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

Additions are italicized; deletions are bracketed.

Days and Hours of Business

Rule 6.1. No change.

. . . Interpretations and Policies:

.01 The Board of Directors has resolved that, except under unusual conditions as may be determined by the Board, hours during which transactions *in options on individual stocks* may be made on the Exchange shall correspond to the normal hours for business set forth in the rules of the primary exchange listing the stocks underlying CBOE options; provided, however, that transactions may be effected on the Exchange until ten minutes after the normal time set for the close of trading on such primary exchange.

.02 The Board of Directors has established different hours of trading for Government security options (Rule 21.10, Interpretation .01), index options (Rule 24.6) and foreign currency options (Rule 22.5).

Trading Rotations

Rule 6.2. No change.

. . . Interpretations and Policies:

.01–.02 No change.

.03 A closing trading rotation shall be employed for each series of individual stock options on the last business day prior to its expiration (hereinafter "closing rotation"). Open trading in such expiring series shall be permitted until 3:00 p.m. Chicago time. The closing rotation shall commence as soon thereafter as is practicable, or after a closing price of the stock in its primary market is established, whichever is later. Open trading on expiring series of index options shall be permitted on the last business day prior to expiration until [3:10] *3:15* p.m. Chicago time, but a closing rotation for such expiring series of index options shall not be employed.

Exercise of Option Contracts

Rule 11.1. No change.

. . . Interpretations and Policies:

.01 No change.

.02 With respect to index option contracts, Clearing Members must follow the procedures of the Clearing Corporation for tendering exercise notices, and members or Member Organizations also must follow the procedures set forth below:

(a) any member or Member Organization that intends to submit an exercise notice for 25 or more contracts in the same series on the same business day on behalf of an individual customer, Market-Maker or firm account must deliver an "exercise advice," on a form prescribed by the Exchange, to a place designated by the Exchange, no later than [3:10] *3:15* p.m. Chicago time on that day. For purposes of this rule, exercises for all accounts controlled by same individual must be aggregated.

(b) for any exercise less than 25 contracts, the following procedure applies:

(i) a memorandum to exercise any contract issued or to be issued in a customer or Market-Maker account at the Clearing Corporation must be received or prepared by the Member Organization no later than [3:10] *3:15* p.m. Chicago time and must be time stamped at the time it is received or prepared. Member Organizations must accept exercise instructions until [3:10] *3:15* p.m. Chicago time;

(ii) a memorandum to exercise any contract issued or to be issued in a firm account at the Clearing Corporation must be prepared by the Member Organization no later than [3:10] *3:15* p.m. Chicago time and must be time stamped at the time it is prepared;

(c) failure of any member to follow the procedures and meet the deadlines in this section .02 may result in the assessment of fines in an amount determined by the Exchange and may be referred to the Business Conduct Committee; and

(d) the above provisions do not apply to expiring series on the business day prior to expiration. The exercise cutoff time pursuant to Rule 11.1(b) for index option contracts shall be 5:30 p.m. Chicago time on the business day immediately prior to expiration.

Days and Hours of Business

Rule 24.6. *The Board of Directors has resolved that, except under unusual conditions as may be determined by the Board or its designee, transactions in index options may be effected on the Exchange between the hours of 8:30 a.m. Chicago time and 3:15 p.m. Chicago time.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received

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The Amex has stated that the amendment makes clear that listed companies will be able to use "flush out" provisions for warrants only to effect a reduction in the exercise price. *See* letter from Michael S. Emen, Vice President and Counsel, Amex, to Michael Cavalier, Branch Chief, Division of Market Regulation, Commission, dated December 12, 1985. Thus, the proposal does not encompass listing warrants when the issuer could increase the exercise price.

In addition, the Amex has indicated that its disclosure policies in sections 401–405 of the Amex *Company Guide* apply fully to any reduction by an issuer of the exercise price of warrants. Telephone conversation between Donald Nisonoff, Attorney, SEC, and Michael Emen, Vice President, Amex, on January 8, 1986.

on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) *Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

The purpose of the proposed rule change is to coordinate the daily close of trading in CBOE's index options, including the Standard & Poor's 100 Index options ("OEX"), with the close of trading in broad-based stock index futures traded elsewhere. At present, OEX market makers frequently assume positions in the Standard & Poor's 500 Index Future ("SP") traded at the Chicago Mercantile Exchange ("CME") to hedge their positions in OEX. Conversely, investors and traders with positions in SP often rely upon OEX to hedge their futures positions. Because trading at CBOE ceases at 3:10 p.m. (Chicago time) while trading at CME continues until 3:14 p.m., investors and market makers with positions in both OEX and SP are unable to adjust their positions in the former in response to price movements in the latter during the last five minutes of trading. Synchronizing the close of trading in OEX with the closing of SP should enhance the depth and liquidity of the index options marketplace.

The Exchange notes further that the tape runoff showing last sale information pertaining to components of OEX occasionally has continued beyond 3:10 p.m. Extending the trade day by five minutes will enable market participants to take such information into account in their trading activity.

The proposed amendments are consistent with the requirements of the Securities Exchange Act of 1934 ("the Act") and the rules and regulations thereunder applicable to the Exchange, and in particular section 6(b)(5) of the Act, in that they remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest.

(B) *Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that many be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 7, 1986.

Dated: January 13, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-1125 Filed 1-16-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22789; File No. SR-CBOE-85-51]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc.; Relating to Option Contracts Open for Trading

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 December 31, 1985, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

Additions are italicized; there are no deletions.

Option Contracts Open for Trading

Rule 5.5. No change.

. . . Interpretations and Policies:

.01–.05 No change.

.06 In unusual market conditions, the Exchange may add additional series of option contracts up to two strike prices above and two strike prices below the current price of the underlying security.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The Exchange's equity option strike price policy currently allows the addition of the next higher series of options when the price of the underlying security reaches the highest available strike price and the next lower series when the price of the underlying security reaches the lowest available strike price. The proposes rule change would allow the Exchange to add the next additional out-of-the-money strike prices in equity options warranted by unusual market conditions. As demonstrated by recently volatile stock market activity, stock prices can move precipitously through existing strike prices. As a stock price moves rapidly, the price of out-of-the-money options increases to take into account increased volatility. There also is a two day lead time from the time of announcement of adding a new strike price until it is available for trading.

The proposed rule change would thus permit the Exchange to address the two foregoing problems which unusual market conditions present: (1) not having adequate low priced out-of-the-money options for hedging purposes; and (2) not having sufficient lead time to add strike prices as necessary in response to dramatic price movement.

In March 1985, the Commission approved a modification to the strike price policy for index options which allowed the Exchange to add up to three out-of-the-money strike prices in index options. This new proposed rule change would allow the addition of a second out-of-the-money strike price in equity options in unusual market conditions, as opposed to the usual maintenance of one out-of-the-money strike price in equity options.

The Exchange believes that the proposed rule change is consistent with the provisions of the Securities Exchange Act of 1934, and in particular Section 6(b)(5) thereof in that the rule proposal is designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and, in general, protects investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 7, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 13, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-1126 Filed 1-16-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22778; File No. SR-MSTC-85-9]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Securities Trust Co. Relating to Commercial Paper Division

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 December 26, 1985, the Midwest Securities Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

A new Rule 5 is hereby added to MSTC Article II as follows:

Commercial Paper Division

Rule 5. The Corporation may establish a Commercial Paper Division (Division) to provide a system for recording commercial paper transactions on behalf of Division Participants. An applicant may become a Division Participant by filing with the Corporation a registration form or such other form as the Corporation may prescribe. Division Participants shall be subject to all applicable Rules and Procedures of the Corporation, except that they shall not be subject to Rule 2 of Article VI, regarding the Participants' Fund. The Corporation shall prescribe from time to time Procedures and other regulations in respect of the business of the Division, and each Division Participant shall be bound by such Procedures and regulations and any amendment thereto in the same manner it is bound by the provisions of the Rules of the Corporation. Division Participant shall pay the Corporation the amounts specified in the Division's fee schedule for Division services.

In addition, attached to the filing as Exhibit A are the proposed MSTC Commercial Paper Division Rules.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change represents the establishment of the MSTC Commercial Paper Division (Division), which provides a system for processing commercial paper transactions. As described below, the Division initially will be operated as a pilot program, with Chicago-area banks enrolled as Division Participants.

Recently MSTC acquired the Short Term Investment Clearing Service (STICS) from the Chicago Clearing House Association (CCHA). STICS is a system, devised by a major computer services vendor, for the processing of commercial paper transactions. CCHA has operated STICS since 1984 on behalf of its members, who are Chicago-area banks. With MSTC's acquisition of STICS from CCHA, MSTC will operate a commercial paper processing system, and CCHA will cease sponsoring such services.

During the pilot phase of the Division, Participants will be four Chicago banks who presently use the STICS system. As

reflected in the proposed rule change, each Division Participant will sign a Division Participant's Agreement whereby the applicant agrees to be bound by all MSTC Rules and Procedures insofar as they apply to Divison activity. However, since there will be no money settlements during the pilot period, Division Participants will not be bound by MSTC's Participants Fund Rules, nor will Division Participants be required to make Participants Fund Contributions. In the future, if Division Services are expanded to encompass money settlements which may cause financial exposure to MSTC, appropriate Division safeguards will be instituted and filed with the Commission.

As reflected in Exhibit A attached to the filing, MSTC has promulgated Division Rules to govern commercial paper processing. These rules in large part are derived from the STICS rules presently in operation. Certain changes have been made, however, to reflect MSTC's assumption of the STICS system. As a condition of participation, Division Participants agree to abide by these Rules.

The proposed Division Rules are designed to provide an efficient method to facilitate delivery, custody and presentment of commercial paper transactions among Participants. Divison Participants will access the system through computer terminals operated by a dial-up procedure.

The Division's system will generate reports reflecting Participants' positions and activity. In addition, the reports will generate settlement figures; however, all money settlements will be affected by the Participants independently outside the Division, and MSC will have no liability for settlement payments.

As described in the Division Rules attached to the filing as Exhibit A, a Participant may have several different roles in the system, reflecting its function in the commercial paper business. For example a Participant may be an Issuing Agent who has contracted to issue commercial paper on behalf of an issuer. In addition, a Participant may be a Custodian, who accepts from or delivers to other Participants issued commercial paper. A Participant may also serve as a Paying Agent who effects payments to Custodians on maturing commercial paper. MSTC will control a Participant's access to the system by using passwords—a separate password will be required to input a particular tranaction depending on whether the Participant is acting as an Issuing Agent, Custodian or Paying Agent.

The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 in that it provides for the prompt and accurate clearance of commercial paper transactions. The proposed rule change will facilitate commercial paper processing, reducing inefficient procedures and concomittant costs for commercial paper investors and persons facilitating transactions on behalf of investors.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Securities Trust Company does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commissioin may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 7, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 8, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-1127 Filed 1-16-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22779; File No. SR-PSDTC-85-14]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Securities Depository Trust Co. Amending its Schedule of Fees and Charges

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 16, 1985, the Pacific Securities Depository Trust Company ("PSDTC") filed with the Commission the proposed rule change described below. The Commission is publishing this notice to solicit comments on the proposed rule change.

The proposed rule change permits PSDTC to charge participants for Automated Transfer Service ("ATS") instructions that are rejected or cancelled by participants. PSDTC will charge participants $10.00 for each ATS instruction rejected or cancelled. An automated transfer instruction may be rejected for many reasons, including: (1) Invalid registration; (2) incorrect CUSIP numbers; (3) insufficient account positions; or (4) cessation of trading in a security.

PSDTC states in its filing that the proposed fee is intended to permit PSDTC to recover costs associated with rejected and cancelled transfer instructions. Those costs include, among others, expenses for data entry, microfilming, accounting adjustments and retrieval of stock certificates. In addition, PSDTC states that the proposed rule change is consistent with section 17A(b)(3)(D) of the Act because it provides for the equitable allocation of reasonable dues, fees and other charges.

The foregoing rule has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of the proposed rule change, the

Commission may summarily abrogate the change if it appears to the Commission that it is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of PSDTC. All submissions should refer to the file number in the caption above and should be submitted by February 7, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 8, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-1128 Filed 1-16-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of Procedural Regulations; Week Ended January 10, 1986

Subpart Q applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings. (See 14 CFR 302. 1701 et. seq.)

Date Filed	Docket No.	Description
June 7, 1986	43702	Air Niagara Ltd., c/o Air Niagara Ltd. 2450 Derry Road East, Hangar #6, Mississauga, Ontario L4T 3B6. Application of Air Niagara Ltd. pursuant to section 402 of the Act and Subpart Q of the Regulations request authority to operate: (1) Transborder, scheduled, all cargo flights between Toronto, Ontario and New York City, New York on small aircrafts, Groups B & C. (2) Transborder, scheduled, all cargo flights, between Toronto, Ontario and Buffalo, New York on large aircraft Group E. (3) Transborder, carrying persons and property (Cargo), charter flights between points in Canada and the United States on large and small aircraft. Answers may be filed by February 4, 1986.
Jan. 8, 1986	43709	Skystar International, Inc., c/o George T. Volsky, Esq., 4595 MacArthur Blvd. NW. #5, Washington, DC 20007. Application of Skystar International, Inc. pursuant to section 401(d)(1) of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity authorizing interstate and overseas scheduled air transportation of persons, property and mail: Between any point in any State in the United States or the District of Columbia, or any territory or possession of the United States, and any other point in any State of the United States or the District of Columbia, or any territory or possession of the United States. Conforming Applications, Motions to Modify Scope and Answers may be filed by February 5, 1986.
Do	43710	Skystar International, Inc., c/o George T. Volsky, Esq., 4595 McArthur Blvd., NW., #5, Washington, DC 20007. Application of Skystar International, Inc. pursuant to section 401(d) (1) of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity authorizing foreign scheduled air transportation of persons, property and mail: Between New York, N.Y. and Georgetown, Guyana; and Between New York, N.Y. and/or Miami, Fla. and Montego BaY. Jamaica. Conforming Applications, Motions to Modify Scope and Answers may be filed by February 5, 1986.
Jan. 10, 1986	43718	Sunworld International Airways, Inc., c/o John R. Sims, Jr., Sims, Walker & Steinfeld, P.C., 1275 K Street, NW., Suite 875, Washington, DC 20005. Application of Sunworld International Airways, Inc., pursuant to Section 401(d) (1) of the Act and Subpart Q of the Regulations request the inssuance of a certificate of public convenience and necessity authorizing it to engage in scheduled foreign air transportation of persons, property and mail: Between the co-terminal points Las Vegas and Reno, Nevada, and the terminal point Vancouver, British Columbia, Canada. Conforming Applications, Motions to Modify Scope and Answers may be filed by February 7, 1986

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc 86-1095 Filed 1-16-86; 8:45 am]

BILLING CODE 4910-62-M

Agreements Filed Under Sections 408 409, 412 and 414 During the Week Ending January 10, 1986

Answers may be filed within 21 days from the date of filing.

Date filed	Docket No.	Parties	Subject	Proposed effective date
Jan. 8, 1986	43704	Members of International Air Transport Association	Adjustment factors—Africa to Europe	Jan. 10, 1986.
Do	43705	Members of International Air Transport Association	PEX Fares from Europe to Central America	Apr. 1, 1986.
Jan. 9, 1986	47713 R-1—R-4	Members of International Air Transport Association	Amend Fares Between the UK and US Interior Points	Feb. 1, 1986.
Jan. 10, 1986	43717 R-1—R-3	Members of International Air Transport Association	TCI Construction Rule	Apr. 1, 1986.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-1096 Filed 1-16-86; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB Dec. 9, 1985—Jan. 9, 1986

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation, during the period December 9, 1985—January 9, 1986 to the Office of Management and Budget (OMB) for its approval in accordance

with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler or Annette Wilson, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 7th Street, SW., Washington, DC 20590, telephone (202) 426-1887, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "For Further Information Contact" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the **"FOR FURTHER INFORMATION CONTACT"** paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB from December 9, 1985—January 9, 1986.

DOT No: 2671
OMB No: 2125-0030
BY: Federal Highway Administration
Title: Outdoor Advertising and Junkyard Report
Form(s): FHWA-1424
Frequency: Annually
Respondents: State Highway agencies

Need/Use: For the FHWA to administer and monitor the control of outdoor advertising and junkyards as implemented by the States and mandated by the U.S. Congress.

DOT No: 2672
OMB No: 2125-0531
By: Federal Highway Administration
Title: Submission of Alternate Procedures for Processing Utility or Railroad Adjustments
Form(s): None
Frequency: On Occasion
Respondents: State highway agencies

Need/Use: The alternate procedures process allows the State highway agencies to act in the relative position of FHWA for reviewing and approving utility or railroad work for most typical utility and railroad adjustments on Federal-aid highway projects.

DOT No: 2673
OMB No: 2120-0524
By: Federal Aviation Administration
Title: High Density Traffic Airports Slot Allocation and Transfer Methods
Form(s): None
Frequency: On Occasion
Respondents: Air carriers and commuter operators

Need/Use: The FAA needs this information to make slot allocations and maintain accurate records on slot transfers at High Density Traffic Airports.

DOT No: 2674
OMB No: 2115-0115
By: United States Coast Guard
Title: 46 CFR Subchapter J Plan Approval and Records for Electrical Engineering Systems
Form(s): None
Frequency: On Occasion
Respondents: Shipyards and Naval Architects

Need/Use: The information provided is used to determine compliance and promote public safety of life at sea.

DOT No: 2675
OMB No: New
By: National Highway Traffic Safety Administration
Title: 49 CFR Part 543, Petitions for Exemption from the Vehicle Theft Prevention Standard
Form(s): None
Frequency: One-time only
Respondents: Businesses

Need/Use: Manufacturers of passenger automobiles may petition the Secretary for an exemption from the theft prevention standard if a line/lines of vehicles are equipped with an antitheft device, which is standard equipment and is determined by the Secretary to be as effective as the theft prevention standard.

DOT No: 2676
OMB No: 2133-0011
By: Maritime Administration
Title: War Risk Insurance—Applications and Related Information
Form(s): MA-355, MA-528, MA-828, MA-942
Frequency: On Occasion
Respondents: U.S. citizens owners/operators

Need/Use: To determine eligibility of applicant and vessel for participation in program and determining valuation of vessel.

DOT No: 2677
OMB No: 2133-0025
By: Maritime Administration
Title: Position Reporting System for Vessels
Form(s): CG-4796A
Frequency: Other—Every 48 hours at-sea, arrival and departure and changes to previous information
Respondents: Vessels at sea

Need/Use: Allow for marshalling of ships for national defense purposes and for search and rescue for safety of life at sea.

DOT No: 2678
OMB No: 2106-0018
By: Department of Transportation
Title: Reporting and Information Requirements Under the U.S.-Canada Nonscheduled Air Services Agreement
Form(s): None
Frequency: Monthly
Respondents: Canadian and U.S. airlines

Need/Use: Required pursuant to the U.S.—Canada Nonscheduled Air Services Agreement (CAB Order 82-8-132).

DOT No.: 2679
OMB No.: New
By: Federal Aviation Administration
Title: Parts Manufacturer Approval Survey
Form(s): None
Frequency: One-time Survey
Respondents: Businesses

Need/Use: This one-time survey is necessary for FAA to complete an evaluation of proposed changes to Subpart K, FAR Part 21. It will be used to provide data necessary to complete an E.O. 12291 and Regulatory Flexibility Act analysis to support potential rulemaking activities for Parts Manufacturer Approval.

DOT No.: 2680
OMB No.: New
By: Federal Highway Administration
Title: Nationwide Truck Activity and Commodity Survey
Form(s): None

Frequency: Other: 2 times within a 12 month period.
Respondents: Farms/Business or other for-profit/Small Businesses or organizations

Need/Use: To provide DOT essential data for the analysis of highway user charges, truck size and weight and weight issues, and related aspects of the Federal-aid Highway Program.

DOT No.: 2681
OMB No.: 2120–0036
By: Federal Aviation Administration
Title: Notice of Landing Area Proposal
Form(s): FAA Form 7480–1
Frequency: On Occasion
Respondents: Individuals, State or Local Governments, Farms, Businesses, Federal agencies, Small Businesses

Need/Use: FAR Part 157 requires that each person who intends to construct, activate or deactivate an airport, heliport or seaplane base, alter of activate a runway or taxiway or change the status of an airport to public use, shall notify the Administrator. This action is necessary to help to ensure aviation safety through current updated information.

DOT No.: 2683
OMB No.: 2106–0019
By: Office of the Secretary of Transportation
Title: Notice of Terms of Contract of Carriage (14 CFR Part 253)
Form(s): None
Frequency: Occasional
Respondents: U.S. airlines performing domestic scheduled passenger service

Need/Use: This rule prevents deception of air travellers by requiring carriers to disclose whether they incorporate terms by reference into the passenger contract.

DOT No.: 2684
OMB No.: 2120–0008
By: Federal Aviation Administration
Title: Certification and Operations: Air Carriers and Commercial Operators of Large Aircraft—FAR 121
Form(s): FAA Forms 8400–6 and 8070–1
Frequency: On Occasion
Respondents: Businesses

Need/Use: 14 CFR Part 121 prescribes the requirements governing air carrier operations. Ait carriers are the respondents and the information collected is used to determine operator compliance and applicant eligibility.

Issued in Washington, D.C. on January 13, 1986.

John E. Turner,

Director of Information Systems and Telecommunications.

[FR Doc. 86–1094 Filed 1–16–86; 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

Environmental Impact Statement; Travis County, TX

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 Travis County, Texas.

FOR FURTHER INFORMATION CONTACT: Gamaliel E. Olvera, District Engineer, Federal Highway Administration, 826 Federal Building, Austin, Texas 78701, Telephone: (512) 482–5966.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas State Department of Highways and Public Transportation (DHT), intends to prepare an environmental impact statement (EIS) on a proposal to upgrade a portion of U.S. Highway 290/State Highway 71 (US 290/SH 71) in Travis County, Texas, six or eight-lane controlled access freeway with frontage roads to control access to abutting property.

The highway section under study passes through the southern half of the City of Austin and is the major east/west arterial for the area. The corridor study begins at F.M. 1826 and extends east along U.S. 290 approximately 1.3 miles to S.H. 71; then along US 290/SH 71 approximately 7.4 miles to I.H. 35; then along S.H. 71 east 7.3 miles to F.M. 973 for a total project length of 16 miles.

The existing facility varies from a four-lane undivided facility to a six-lane highway. Overall the existing facility is inadequate to carry both existing and proposed traffic volumes. As stated US 290/SH 71 is the major east/west arterial for south Austin. Anticipated design year traffic volumes are expected to exceed existing volumes by 100%; for example, on one segment 1984 ADT volumes are 61,500 vpd and 2005 are anticipated to be 144,600 vpd. The existing facility can support current traffic volumes in only two locations, both east of I.H. 35 where traffic volumes are lowest. The remainder of the existing U.S. 290 east of I.H. 35 is congested much of each day with extended peak periods.

The proposed improvement of U.S. 290/SH 71 will safely and efficiently provide for the transportation needs of the area. The proposed freeway will separate thru traffic from local commercial volumes helping to alleviate congestion and shorten peak periods. By segregating short local trips from thru trips, access to local housing, businesses, schools and churches will be improved. The proposed improvement will benefit thru traffic by eliminating the usual delays and interruptions associated with city travel.

Four alternatives will be considered for this proposed action which includes alternative routes and features a no-build alternative.

There are currently no plans to hold a formal scoping meeting for this proposal. Several public meetings will be held in various geographical locations throughout the project area. A public hearing will be held following approval of the draft environmental impact statement. Adequate notice will be given through the news media concerning the time and location of all meetings and hearings.

To ensure that the full range of issues related to this proposed action 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.

Issued on January 2, 1986.

Gamaliel E. Olvera,

District Engineer Austin, Texas.

[FR Doc. 86–1087 Filed 1–16–86; 8:45 am]

BILLING CODE 4910–22–M

Research and Special Programs Administration

Technical Pipeline Safety Standards Committee, Advisory Committee Charter; Correction

SUMMARY: This notice corrects the filing date for the charter of the Committee published December 9, 1985 (50 FR 50248). The charter is amended as follows:

13. Filing Date. December 16, 1985. This is the effective date of the charter which will expire 2 years from that date unless sooner terminated.

Robert L. Paullin,

Director, Office of Pipeline Safety.

[FR Doc. 86–1093 Filed 1–16–86; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirement Submitted to OMB for Review

Dated: January 9, 1986.

The Department of Treasury has submitted the following public information collection requirement to

OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of this submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0064
Form Number: IRS Form 4029
Type of Review: Extension
Title: Application for Exemption from Tax on Self-Employment Income and Waiver of Benefits
OMB Number: 1545–0168
Form Number: IRS Form 4361
Type of Review: Extension
Title: Application for Exemption from Self-Employment Tax for Use by Ministers of Religious Orders and Christian Science Practitioners
Clearance Officer: Garrick Shear (202) 566–6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Robert Neal (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Bureau of the Public Debt

OMB Number: 1535–0020
Form Number: PD 4633; PD 4633–1 PD 4633–2
Type of Review: Reinstatement
Title: Requests for change in Status of Book Entry Treasury Bill Accounts
Clearance Officer: Peter Laugesen (202) 376–4102, Bureau of the Public Debt, Room 445, 999 E. Street, NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Joseph F. Maty,
Departmental Reports Management Office.
[FR Doc. 86–1119 Filed 1–16–86; 8:45 am]
BILLING CODE 4810–25–M

Internal Revenue Service

Performance Review Board Members

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of members of Senior Executive Service Performance Review Board.

DATE: Performance Review Board effective January 3, 1986.

FOR FURTHER INFORMATION CONTACT: DiAnn Kiebler, PM:HR:P:EX, Room 3213, 1111 Constitution Avenue, NW, Washington, DC 20224, Telephone No. (202) 566–4633 (not a toll free number).

SUPPLEMENTARY INFORMATION: Pursuant to section 4314(c)(4) of the Civil Service Reform Act of 1978, the members of the Internal Revenue Service's Senior Executive Service Performance Review Board for senior executives other than Assistant Commissioners, Regional Commissioners and executives in Inspection are as follows:

James I. Owens, Chairman, Deputy Commissioner;
John L. Wedick, Jr., Assistant Commissioner (Planning, Finance & Research);
Thomas A. Cardoza, Regional Commissioner, Southeast Region;
James D. Hallman, Regional Commissioner, Central Region;
Percy P. Woodard, Jr., Assistant Commissioner (Examination);
Thomas P. Coleman, Regional Commissioner, Western Region, Alternate;
Thomas J. Laycock, Assistant Commissioner (Computer Services), Alternate.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978 (43 FR 52122).

James I. Owens,
Acting Commissioner.
[FR Doc. 86–1043 Filed 1–16–86; 8:45 am]
BILLING CODE 4820–02–M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 12
Friday, January 17, 1986

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

DATE AND TIME: 2:00 p.m. (eastern time), Monday, January 27, 1986.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Votes
2. A Report on Commission Operations (Optional)
3. Proposed Compliance Manual Section 26. Selection and Analysis of Evidence

Closed

1. Proposed Commission Decision
2. Litigation Authorization: General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634–6748.

Dated: January 15, 1986.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 86–1242 Filed 1–15–86; 3:42 pm]

BILLING CODE 6750-06-M

2

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NO.: 86–710.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, January 16, 1986, 10:00 a.m.

THE FOLLOWING ITEMS HAVE BEEN ADDED TO THE AGENDA:

Revised Draft AO 1985–37
H. Richard Mayberry, Jr., Michigan State Chamber of Commerce and Grand Rapids Area Chamber of Commerce
Revised Draft AO 1985–38
Lance H. Olsen, on behalf of Congressman Fazio

* * * * *

DATE AND TIME: Wednesday, January 22, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: The meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

* * * * *

Special Open Meeting

DATE AND TIME: Wednesday, January 22, 1986, 2:00 p.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

MATTER TO BE CONSIDERED:

Oral Presentation of the LaRouche Campaign Regarding the Commission's Initial Repayment Determination

* * * * *

DATE AND TIME: Thursday, January 23, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the Public.

MATTERS TO BE CONSIDERED:

Setting of Dates of Future Meetings
Correction and Approval of Minutes
Draft AO 1985–42—Gene Taylor, Member of Congress
Routine Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202–523–4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 86–1190 Filed 1–15–86; 11:25 am]

BILLING CODE 6715-01-M

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FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 49 FR 1471, January 13, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: January 15, 1986, 10:00 a.m.

CHANGE IN THE MEETING: The following items have been added:

Item No. and Docket No. and Company

P–3—Project No. 1250–000, City of Pasadena, California, Water and Power Department
CAM–6—Docket No. ST82–106–001, Western Gas Supply Company

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–1243 Filed 1–15–86; 3:43 pm]

BILLING CODE 6717-02-M

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FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 1328, January 10, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Approximately 11:00 a.m., Wednesday, January 15, 1986, following a recess at the conclusion of the open meeting.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting: Appointment of new members to the Consumer Advisory Council.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: January 15, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–1244 Filed 1–15–86; 3:52 pm]

BILLING CODE 6201-10-M

5

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, January 22, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

DATED: January 14, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–1131 Filed 1–14–86; 4:41 pm]

BILLING CODE 6210–01–M

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SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of January 20, 1986.

Open meetings will be held on Tuesday, January 21, 1986, at 10:00 a.m. and on Friday, January 24, 1986, at 2:00 p.m., in Room 1C30. A closed meeting will be held on Tuesday, January 21, 1986, following the 10:00 a.m. open meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, January 21, 1986, at 10:00 a.m., will be:

1. Consideration of a proposed amendment to Securities Investor Protection Corporation ("SIPC") Bylaw Article II, Section 4(a)(5) regarding the advertising of SIPC coverage by its members. The proposed amendment would replace the "official explanatory statement" that broker-dealers are authorized to use in their advertising with two alternative statements. For further information, please contact Michael A. Macchiaroli at (202) 272–2904.

2. Consideration of two rule proposals submitted by the Chicago Board Options Exchange, Inc. requesting authorization to (1) implement on a permanent basis a retail automatic execution system ("RAES") for options on the S&P 100 Index and (2) commence a six month pilot program utilizing RAES for certain individual equity options. For further information, please contact Holly H. Smith at (202) 272–2415.

3. Consideration of whether an application by the Chicago Board of Trade for designation as a contract market to trade futures contracts on the Financial Times-Stock Exchange 100 Share Index satisfies the minimum requirements of Section 2(a)(1)(B)(ii) of the Commodities Exchange Act. For further information, please contact Alden Adkins at (202) 272–2843.

4. Consideration of whether to approve a proposed bylaw change filed by the Securities Investor Protection Corporation amending its bylaw relating to SIPC Fund assessments on SIPC members. For further information, please contact Harry Melamed at (202) 272–2412.

5. Consideration of whether to adopt amendments to Regulations S–X to require disclosure in certain circumstances of the nature and extent of registrants' repurchase and reverse repurchase agreements and the degree of risk involved in these transactions. For further information, please contact Wayne G. Pentrack at (202) 272–2130.

The subject matter of the closed meeting scheduled for Tuesday, January 21, 1986, following the 10:00 a.m. open meeting, will be:

Formal order of investigation.

Settlement of administrative proceedings of an enforcement nature.

Settlement of injunctive actions.

Litigation matter.

Institution of injunctive action.

The subject matter of the open meeting scheduled for Friday, January 24, 1986, at 2:00 p.m., will be:

The Commission will meet with representatives from the American Society of Corporate Secretaries to discuss matters of mutual interest, including among other things, tender offer regulation and shareholder communications. For further information, please contact Thomas Sweeney, at (202) 272–2589.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Ida Wurczinger at (202) 272–2014.

Dated: January 15, 1986.

John Wheeler,

Secretary.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–1245 Filed 1–15–86; 3:55 pm]

BILLING CODE 8010–01–M

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SYNTHETIC FUELS CORPORATION

SUMMARY: Interested members of the public are advised that a meeting of the Board of Directors of the United States Synthetic Fuels Corporation will be held at the time, date and place specified below. This public announcement is made pursuant to the open meeting requirements of section 116(f)(1) of the Energy Security Act (94 Stat. 611, 637; 42 U.S.C. 8701, 8712(f)(1)) and section 4 of the Corporation's Statement of Policy on Public Access to Board meetings.

Open Session

I. Call to Order—Chairman's Opening Remarks
II. Approval of Board Minutes
III. Consideration of Union Loan Gurantee Documentation
IV. Termination Plan and Budget
V. Forfeiture Funds (Retirement Plan)
VI. Omnibus Delegation of Authorities
VII. Officer Positions
VIII. Annual Report/Business Plan Report

TIME AND DATE: 10:00 a.m., January 21, 1986.

PLACE: 2121 K Street, NW., Room 503, Washington, DC 20586.

PERSON TO CONTACT FOR MORE INFORMATION: If you have any questions regarding this meeting, please contact Ms. Karen Hutchison, Director-Media Relations, at (202) 822–6455.

United States Synthetic Fuels Corporation.

March Coleman,

Assistant General Counsel-Corporate and Litigation.

January 14, 1986.

[FR Doc. 86–1208 Filed 1–15–86; 3:17 pm]

BILLING CODE 0000–00–M

Friday
January 17, 1986

Part II

National Aeronautics and Space Administration

14 CFR Part 1260

NASA Grant and Cooperative Agreement Handbook; Final Rule

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

[NASA NHB 5800.1B]

NASA Grant and Cooperative Agreement Handbook

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This document brings into consonance the current edition of the NASA Grant and Cooperative Handbook and The Code of Federal Regulations.

EFFECTIVE DATE: January 17, 1986.

FOR FURTHER INFORMATION CONTACT: W.A. Greene, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquaters, Washington, DC 20546, Telephone: 202–453–2119.

SUPPLEMENTARY INFORMATION:

Background

This document includes all changes and modifications to the Grant and Cooperative Agreement Handbook (codified in 14 CFR Part 1260). These changes are through December 31, 1984. No changes were made during 1985 and 1986. A detailed history of the changes was made available to the public in Handbook Instruction 84–2, dated December 3, 1984. Briefly, the changes consist of: (1) Implementation of statute and higher level regulations, including the Federal Acquisition Regulation and the NASA Supplement thereto; (2) adjustment to internal NASA procedures; (3) correction of references to the now obsolete NASA Procurement Regulations; and (4) extensive editorial changes and corrections.

Impact

This rule has been reviewed by the Office of Management and Budget (OMB) under the provisions of Executive Order 12291. NASA certifies that these changes will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 60 et seq.). Information collection approval numbers 2700–0045, 2700–0047, 2700–0048, and 2700–0049 have been assigned by OMB.

List of Subjects in 14 CFR Part 1260

Grants.

S.J. Evans,

Assistant Administrator for Procurement.

1. Part 1260 of Title 14 of the Code of Federal Regulations is revised to read as follows:

PART 1260—GRANTS AND COOPERATIVE AGREEMENTS

Authority: Pub. L. 97–258, 31 U.S.C. 6301 et seq.

Subpart 1—General

§ 1260.100 Purpose.

This part 1260, issued by the Assistant Administrator for Procurement under authority delegated by the Administrator, establishes for the National Aeronautics and Space Administration (NASA) uniform policies and procedures relating to the negotiation, award, and administration of research grants and cooperative agreements with educational institutions and other nonprofit organizations, under the authority of Pub. L. 97–258 (31 U.S.C. 6301 et seq.).

§ 1260.101 Applicability.

This part applies to all research grants and cooperative agreements made by NASA with educational institutions and other nonprofit organizations.

§ 1260.102 Arrangement of part.

This part is divided into subparts. Each one deals with a separate aspect of

research grants and cooperative agreements, and is further subdivided into sections.

§ 1260.103 Contents.

(a) This part 1260 constitutes NASA's implementation of the public laws, executive orders, Executive Branch agency circulars, acquisition regulations, NASA policy directives, and NASA management issuances applicable to NASA grants and cooperative agreements (see Exhibit F for a complete listing). Using various techniques ranging from explicit guidance to directing the use of other documents, it prescribes for NASA and grantee use the essential requirements for negotiation, award, and administration of grants and cooperative agreements.

(b) All aspects of this part 1260 are fully coordinated at the Headquarters level, including review by General Counsel. This affords the individual user uniform, agency-wide interpretation of the material cited in Exhibit F. For example, the applicable parts of OMB Circular A–110 are substantially included (although not always identified) in the appropriate sections. Thus, use of A–110 is unnecessary, except for those instances where this part 1260 specifically directs the use of A–110 sections.

(c) Every attempt is made to keep the part 1260 current; however, users are encouraged to contact the Headquarters Procurement Policy Division (Code HP) regarding questions, suggestions, and errors of omission or commission.

§ 1260.104 Amendment.

(a) *NASA Grant and Cooperative Agreement Handbook Instruction.* This handbook will be amended by issuance of printed loose-leaf Instructions containing revised or additional pages, sections, or subparts. Each revised or new page will bear, at the top, the date and the Instruction number. Instructions will be numbered consecutively. Changes to this part will be published in the **Federal Register.**

(b) *Procurement Notices.* Changes to the Handbook or clarifying guidance which only impact internal NASA operations may be issued in the regular Procurement Notice system maintained by the Procurement Policy Division, Code HP.

§ 1260.105 Dissemination and effective date of the part and amendments.

(a) The NASA grant and cooperative agreement handbook and Instructions will be distributed directly to NASA installations. The number of copies of the Handbook and Instructions will be distributed on the basis of the requirements furnished by each Headquarters Staff Office, Headquarters Program Office, and NASA installation to the Office of Procurement, NASA Headquarters, Procurement Policy Division (Code HP).

(b) Directors of Installations and the Procurement Policy Division at Headquarters will ensure that copies of the NASA Grant and Cooperative Agreement Handbook are distributed to all interested activities and individuals within their installation.

(c) Subscriptions to the NASA Grant and Cooperative Agreement Handbook and Instructions may be purchased by private concerns, universities, and individuals from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402. Instructions are automatically forwarded to subscribers upon issuance.

(d) Compliance with an amendment to the NASA Grant and Cooperative Agreement Handbook shall be effective with the date of issuance thereof, and shall be mandatory effective 60 days thereafter, except as may be otherwise prescribed in the Instruction or Procurement Notice.

§ 1260.106 Deviations.

(a) *Applicability.* A deviation shall be considered to be any of the following:

(1) When a prescribed grant or cooperative agreement clause is set forth verbatim in this part, use of a clause covering the same subject matter which varies from, or has the effect of altering, the prescribed clause, or changing its application;

(2) When a grant or cooperative agreement clause is set forth in this part, but not for use verbatim, use of a clause covering the same subject matter which is inconsistent with the intent, principle, and substance of the part clause or related coverage of the subject matter;

(3) Omission of any mandatory grant or cooperative agreement clause;

(4) When a NASA or other form is prescribed by this Handbook, use of any other form for the same purpose;

(5) Alteration of a NASA or other form prescribed in this part, except as authorized herein;

(6) When limitations are imposed by this part upon the use of a grant or cooperative agreement clause, form, procedure, or any other grant or cooperative agreement action, the imposition of lesser or greater limitations; or

(7) When a policy, procedure, method, or practice of conducting grant actions is prescribed in this part, any policy, procedure, method, or practice inconsistent therewith.

(8) Creation of a form for grantee use which constitutes a "Collection of Information" within the meaning of the Paperwork Reduction Act of 1980 (44 U.S.C. 35) and its implementation in 5 CFR Part 1320.

(b) *Approval of Deviations.* Deviations from this part 1260 will be authorized only when essential to effect necessary grant or cooperative agreement actions or where special circumstances make such deviations clearly in the best interests of the Government. Such deviations will be approved only by the Assistant Administrator for Procurement or a duly authorized representative.

(c) *Request for Deviations.* Requests for authority to deviate from this part 1260 shall be submitted to the Assistant Administrator for Procurement, NASA Headquarters (Code HP). Such requests shall be signed by the Procurement Officer of a field instation (or the Director of the Division in the case of the Headquarters Contracts and Grants Division) and shall be submitted as far in advance as exigencies of the situation will permit. Each request for a deviation shall contain as a minimum:

(1) Identification of the part requirement from which a deviation is sought;

(2) A full description of the deviation and the circumstances in which it will be used;

(3) A description of the intended effect of the deviation;

(4) A statement as to whether the deviation has been requested previously, and, if so, circumstances of the previous request.

(5) The name of the grantee or party to a cooperative agreement and identification of the grant or cooperative agreement affected, including the dollar value; and

(6) Detailed rationale for the request, including any pertinent background information that will contribute to a fuller understanding of the deviation sought.

§ 1260.107 Definitions.

As used throughout this Part 1260, the words and terms defined in this section shall have the meanings set forth below, unless the context in which they are used clearly requires a different meaning, or a different definition is prescribed for a particular subpart or portion thereof. In particular, the term "grant" applies to "grant" and "cooperative agreement" unless otherwise indicated.

(a) *Administrator.* The Administrator or Deputy Administrator of NASA.

(b) *Assistant Administrator for Procurement.* The head of the Office of Procurement, NASA Headquarters (Code H).

(c) *Basic Research.* Systematic, intensive study directed toward greater knowledge or understanding of the subject studies.

(d) *Educational Institution.* Any institution which (1) has a faculty, (2) offers courses of instruction, and (3) is authorized to award a degree upon completion of a specific course of study.

(e) *Equipment.* As used in this part, "equipment" is another term for nonexpendable personal property.

(1) *Government Furnished Equipment.* Equipment in the possession of, or acquired directly by, the Government and subsequently delivered or otherwise made available to a grantee.

(2) *Acquired Equipment.* Equipment purchased or fabricated with grant or cooperative agreement funds by a recipient, for the performance of research under its grant or cooperative agreement.

(f) *Grants Officer.* A contracting officer who has been delegated authority to award and administer grants and cooperative agreements.

(g) *Grant Specialist.* Any employee of NASA who is assigned the responsibility of negotiating with potential grantees the terms and conditions of specific grants and cooperative agreements, and the administration of such grants or cooperative agreements.

(h) *NASA.* The National Aeronautics and Space Administration.

(i) *Subcontract.* A written agreement between a grantee and a third party for the furnishing of services or supplies necessary to carry out the research under a grant or cooperative agreement.

(j) *Support.* Funding of a research project meeting NASA mission objectives.

(k) *Technical Officer.* The official of the cognizant NASA program office who is responsible for monitoring the technical aspects of the work under a grant or cooperative agreement.

§ 1260.108 Federal Acquisition Regulation (FAR, 48 CFR Ch 1).

(a) The FAR is the primary regulation for use by all Federal Executive Agencies in their acquisition of supplies and services with appropriated funds. On April 1, 1984, the FAR, together with agency supplemental regulations, replaced the Federal Procurement Regulation System (FPR), the Defense Acquisition Regulation (DAR), and the NASA Procurement Regulation (NPR, 41 CFR Ch. 18). At the same time, NASA issued its FAR Supplement (NFS, 48 CFR Ch. 18), which established agency-wide, uniform policies and procedures that implement and supplement (but do not repeat, paraphrase, or otherwise restate) the FAR.

(b) As the FAR deals only with procurement, it does not replace the general guidance for issuing and administering grants and cooperative agreements. However, NASA, as in the past, applies certain of its procurement regulations to grants and cooperative agreements. Previously, this was indicated by textual citations of or references to the NPR. Subsequent to April 1, 1984, a formerly unique reference may be replaced by a reference to the FAR, a reference to the NFS, or a reference to both.

(c) The numbering systems in both the FAR and NFS are essentially identical, except that the NFS is identified by a prefixed "18." For example, the government-wise guidance on unsolicited proposals appears in FAR 48 CFR Subpart 15.5, while NASA implementation and additional policies appear in NASA FAR Supplement 48 CFR Subpart 1815.5.

(d) Copies of the FAR and the NFS may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402. They are not available to the general public directly from NASA.

Subpart 2—Basic Policies

§ 1260.200 Authority.

NASA is authorized to award grants and cooperative agreements under Pub. L. 97–258, Money and Finance (63 U.S.C. 6301 et seq.). Pub. L. 97–258 saves the authority of Pub. L. 95–224 (31 U.S.C. 501 et seq.) which, in turn, saved the authority of the original "Grants Act" (42 U.S.C. 1891–2), including authorization for vesting title of equipment purchased with Federal funds in nonprofit organizations. Section 6306 contains an expanded authority for vesting title in other tangible personal property and applies to cooperative agreements and contracts as well as grants.

§ 1260.201 Policy.

(a) NASA policy is to use the grant instrument to sponsor required basic research at nonprofit institutions or organizations when it is desired (1) to accomplish a public purpose of support or stimulation in the area of basic research, (2) when no substantial NASA involvement in the technical performance is anticipated, (3) to provide latitude to investigators that will encourage maximum creativity, and (4) to have the minimum administration consistent with the public interest.

(b) NASA policy is to use the cooperative agreement for the same purpose as grants, except that substantial Federal involvement in significant aspects of the effort are necessary for its accomplishment.

(c) In addition, it is NASA policy to provide appropriate continuity of support in research sponsored under grants.

§ 1260.202 Proposals.

(a) General. An activity leading to a grant or cooperative agreement must be supported by a valid proposal from the prospective recipient organization. Grants and cooperative agreements are not considered to be subject to any statutory requirements for pre-award synopsis. Proposals are not categorized as "grant proposal" or "contract proposal." In many cases the proposals received will be unsolicited. However, instrument selection under Pub. L. 97–258 is independent of proposal type; therefore, grants and cooperative agreements can result from either solicited or unsolicited proposals. This paragraph emphasizes certain points and provides supplementary information on proposals in the grant environment.

(b) *Unsolicited Proposals.*—(1) *References.* FAR/NFS, 48 CFR Subparts 15.5 and 1815.5, contain basic guidance on unsolicited proposals applicable to all classes of performers. A booklet, entitled "Guidance for the Preparation and Submission of Unsolicited Proposals", is a plain English version of the regulation. It is issued pursuant to FAR Subpart 15.504 and should be provided in response to requests for proposal submission information.

(2) *Policy.* It is NASA policy to foster and encourage the submission of unsolicited proposals and, in particular, to develop policies and procedures which not only encourage their submission, but which avoid, to the extent possible, those factors which tend to discourage the generation and acceptance of innovative ideas by the unsolicited proposal mechanism. In this context, it is important to note that contact with agency technical personnel prior to proposal submission is permissible and is encouraged to determine if preparation of a formal submission is warranted. Such discussions, confined to the limited objectives of conveying to the potential offerer an understanding of the agency mission and needs relative to the type of effort contemplated, do not jeopardize the unsolicited status of any subsequently submitted proposal.

(3) *Proposal validity.* The validity of any proposal received should be verified. (See FAR, 48 CFR 15.503 and 15.507(a), and NFS, 48 CFR 1815.503(a)). If invalid proposals are received for funding action, the grants officer should give the institution an opportunity to provide the missing information. The sponsoring technical office should be notified of any substantive changes. In the event excessive delay or possible cancellation of the action is contemplated, the sponsoring office should be notified.

(4) *Foreign proposals.* Proposals from foreign sources are additionally subject to the provisions of NFS, 48 CFR 1815.570.

(5) *Acceptance.*—(i) The provisions of FAR, 48 CFR 15.507(b), and NFS, 48 CFR 1815.507, do not apply to unsolicited proposals which will result in grants or cooperative agreements.

(ii) The grants officer may commence negotiation with the proposer for the award of a research grant or cooperative agreement when

(A) An unsolicited proposal has received a favorable evaluation;

(B) The proposal is not of the character described in FAR, 48 CFR 15.507(a), i.e., it is not available to the Government without restriction from another source; it does not closely resemble a pending competitive acquisition requirement; and it demonstrates an innovative and unique method, approach, or concept.

(C) The sponsoring technical office supports its recommendation with a Justification for Acceptance of an Unsolicited Proposal (JAUP). The JAUP shall describe the facts and circumstances that preclude competition, along with consideration of the evaluation factors listed in FAR, 48 CFR 15.506–2(a). The JAUP shall be in writing and shall be submitted for approval of the Grants Officer after prior review and written concurrence by the head of the cognizant technical division or laboratory, as applicable. In reviewing the "Justification for Acceptance of an Unsolicited Proposal," the grants officer should bear in mind that the criteria of FAR, 48 CFR 15.506–2(a)(1), are also generally descriptive of work often suitable for support by a grant or cooperative agreement. Since proposals of this type are intellectual products, it is inappropriate and unrealistic to attempt to establish that no one else can perform similar work. It is only necessary to establish that the proposal is the only one available for the type of effort contemplated or has better promise than related or overlapping ones available for evaluation at the same time.

(c) *Solicited proposals.* As a result of the instrument selection criteria specified by Pub. L. 97–258, and NASA's implementation in § 1260.203, the award of a grant or cooperative agreement based on a solicited proposal may be appropriate. Grants and cooperative agreements based on solicited proposals are most likely to result from proposals submitted in response to "Announcements of Opportunity." This type of solicitation is governed by the terms of NHB 8030.6, "Guidelines for Acquisition of Investigations."

§ 1260.203 Criteria for selection of award instrument.

(a) *General.*—(1) This section provides guidance on the appropriate choice of award instruments consistent with Pub. L. 97–258 and Office of Management and Budget (OMB) implementation of that Law. Instrument selection will be made on the basis of this section, rather than on direct local interpretation of Pub. L. 97–258. This paragraph applies to all program and individual transactions where the choice of award instruments is within the administrative discretion of NASA and is not otherwise prescribed or limited by law. A variety of award instruments is available as the means for defining the terms and conditions and the nature of the relationship between NASA and eligible recipients. The award instruments are intended to be different in purpose, application, content, and nature. When properly employed, they create different relationships between the parties. Because of these differences, the decision to use a particular instrument to implement a particular purpose must be made deliberately.

(2) *Procurement Contracts.* A procurement contract shall be used as the legal instrument to reflect a relationship between the Federal Government and a recipient whenever (i) the principal purpose of the instrument is the acquisition by purchase, lease, or barter of property or services for the direct benefit or use of the Federal Government; or (ii) whenever NASA determines in a specific instance that the use of a type of procurement contract is appropriate.

(3) *Grants.* A grant agreement shall be used as the legal instrument to reflect a relationship between the Federal Government and a recipient whenever the principal purpose of the relationship is transfer of a thing of value to the recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than by acquisition, purchase, lease, or barter of property or services for the direct benefit or use of the Federal Government; and no substantial involvement is expected between NASA acting for the Federal Government and the recipient during performance of the contemplated activity.

(4) *Cooperative Agreements.* A cooperative agreement shall be used as the legal instrument to reflect a relationship between the Federal Government and a recipient whenever the principal purpose of the relationship is the transfer of a thing of value to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition by purchase, lease, or barter of property or services for the direct benefit or use of the Federal Government; and substantial involvement is expected between NASA, acting for the Federal Government, and the recipient during performance of the contemplated activity. Situations requiring use of cooperative agreements are limited. The examples and discussions set forth in paragraph (b) of this section shall be used in determining the existence of "substantial involvement."

(b) Factors to consider in the selection of award instrument. The cognizant technical officer shall recommened to the contracting officer of the funding installation the selection of the research support instrument (grant, cooperative agreement or contract), regardless of the type of proposal involved, taking into account statutory requirements, NASA policies for dealing with universities, the nature of the proposed research, the manner in which it will be performed, and the nature and extent of interaction between NASA and the performer. Research grants and cooperative agreements with nonprofit institutions of higher education or a nonprofit organizations whose primary purpose is the conduct of scientific research may be made only to support basic scientific research. Any exceptions must have the prior approval of the Assistant Administrator for Procurement. As a matter of policy, NASA does not generally award grants for donative assistance purposes, but only to meet program objectives; hence, consideration of any potential benefit accruing to the recipient is extraneous to determination of the support instrument. Since prime responsibility for the pursuit of most basic studies is with the university researcher, it is anticipated that the use of cooperative agreements will be limited to those situations where the project would not be possible without extensive NASA-university collaboration. The close NASA-investigator working relationship normally expected under a research

agreement does not constitute substantial involvement. Cooperative agreements would be appropriate, for instance, where a university investigator works for a substantial amount of time at a NASA center (or a NASA investigator works at the university), or when the NASA-university scientific collaboration is such that a jointly authored report is appropriate. The cooperative agreement special provision wording, required by § 1260.419, must state precisely the nature of the NASA-recipient cooperative interaction without which the effort would not be possible. Under no circumstances are cooperative agreements to be used solely to obtain the stricter control requirements typical of a contract. Subject to the statutory requirements set forth in paragraph (a) of this section, the characteristics generally inherent in grants, cooperative agreements, and contracts are as follows:

(1) *Characteristics of a grant instrument.*—(i) The principal purpose is to accomplish a NASA objective through stimulating or supporting the acquisition of knowledge or understanding of the subject or phenomena under study;

(ii) The exact course of the work and its outcome cannot be defined precisely and specific points in time for achievement of significant results cannot be realistically specified;

(iii) NASA desires, or the nature of the proposed investigation is such, that the grantee will bear prime responsibility for the conduct of the research, and exercises judgment and original thought toward attaining the scientific goals within broad parameters of the research areas proposed and the related resources provided;

(iv) The research problem is such that long term support (i.e., in excess of 1 year) is required for the study to mature to maximum scientific effectiveness (however, this does not preclude shorter-term grants in special cases);

(v) Meaningful technical reports (as distinguished from the Semiannual Status Reports) can be prepared only as new findings are made, rather than on a predetermined time schedule; and

(vi) Simplicity and economy in execution and administration are mutually desirable.

(2) Characteristics inherent in a cooperative agreement include the characteristics of a grant plus the following:

(i) Substantial NASA involvement in and contribution to the technical aspects of the effort are necessary for its accomplishment;

(ii) The project, conducted as proposed, would not be possible without extensive NASA-university technical collaboration; and

(iii) The nature of the collaboration can be clearly defined and specified in advance.

(3) Characteristics inherent in a contract are as follows:

(i) The principal purpose is the purchase for the direct use or benefit of NASA's well-defined, specific effort clearly required for the advancement of a programmed NASA mission or project;

(ii) The work to be conducted is directed closely toward the solution of a specific problem;

(iii) A specific service, piece of hardware, or improved performance of a specific device is the end product;

(iv) NASA considers it necessary, and it is reasonable in consideration of the nature of the project, to exercise control over the objectives, direction, specifications, costs or methods of the research, and schedule control is desirable and feasible;

(v) The work to be conducted is classified (however, access to security classified information may be given grantees where a demonstrated need exists);

(vi) The end result is clearly defined and/or parameters and specifications are prepared in advance of the work; and

(vii) A significant portion of the total effort will be performed by an organization other than the one submitting the proposal, and such portion will involve the development, fabrication or acquisition of instruments or hardware.

(4) Other instruments authorized by statute shall be used only after it has been determined, with the advice of General Counsel, that the action cannot be accomplished under a grant, cooperative agreement, or contract, as described above.

§ 1260.204 Processing the instruments.

(a) If a grant or cooperative agreement is selected as the research support instrument, negotiation will be by the funding installation, except for grants to foreign institutions subject to NPD 1362.1

(b) If the award is based on an unsolicited proposal, grants officers will ensure that the appropriate proposal control unit (at either the Installation or Headquarters or both) is informed of the acceptance action. Local installation procedural guidance or guidance from the Headquarters proposal control unit (the Office of Space Sciences and Applications, Code E) should be followed, as applicable.

(c) Grants officers at field installations and the Headquarters Contracts and Grants Division will furnish to the Procurement Management Division completed NASA Forms 1356, "C.A.S.E. Report on College and University Projects," after all awards, regardless of any exceptions arising from guidance applicable to actions in paragraphs (a) and (b) of this section (see § 1260.602).

§ 1260.205 Civil rights requirements nondiscrimination in certain federally funded programs.

(a) Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352; 42 U.S.C. 2000d–1), Title IX of the Education Amendments of 1972 (20 U.S.C. 1680 et seq.), section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) provide that no person in the United States shall, on the basis of race, color, national origin, sex, handicapped condition, or age be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance, and requires that each government agency which is empowered to extend such financial assistance shall issue rules or regulations effectuating these laws with respect to such programs or activities administered by the agency. NASA's Civil Rights regulations are published as 14 CFR Part 1250 and incorporated into NASA's directives system as NMI 2090, "Civil Rights Act-Nondiscrimination in Federally-Assisted Programs of NASA."

(b) For Civil Rights purposes, NASA determined that research grants and cooperative agreements made under the authority of Pub. L. 97–258 are within the purview of Title VI, Title IX, § 1260.504 and the Age Discrimination Act.

(c) Further implementation instructions, which set forth procedures and guidance and assign responsibility to NASA officials, are contained in 14 CFR Part 1250 (NMI 2090). No grant shall be made unless and until appropriate assurances of compliance with the National Aeronautics and Space Administration regulations under Title VI, Title IX, § 1260.504 and the Age Discrimination Act have been obtained as set forth in 14 CFR Part 1250 (NMI 2090).

§ 1260.206 Printing, binding, and duplicating.

Printing, binding, and duplicating required by NASA shall be obtained in accordance with the Government Printing and Binding Regulations published by the Joint Committee on Printing, Congress of the United States,

and NMI 1490.2, "Responsibilities, Procedures, and Standards for NASA Printing, Duplicating, and Binding." Technical proposals should be carefully reviewed to assure that unauthorized printing, binding, or volume duplicating constituting printing are not included in grants. When a proposed grant may involve printing, binding, or duplicating, close coordination will be effected with the Installation Central Printing Management Officer in the review process to ensure compliance with these regulations.

§ 1260.208 Clean Air and Federal Water Pollution Control Acts.

(a) Pursuant to regulations issued by authority of E.O. 11738 by the Environmental Protection Agency (EPA) and published in 40 CFR Part 15, no grant or subgrant or subcontract thereunder in excess of $100,000 shall be awarded, renewed, or extended, except as provided in paragraph (b), if any facility to be utilized thereunder or in the performance thereof is listed on the EPA "List of Violating Facilities," published pursuant to 40 CFR 15.20, the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub. L. 91–604), and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub. L 92–500). This list will be distributed periodically by EPA to all Federal agencies and published in the Federal Register.

(b) When the Administrator determines that the paramount interest of the United States so requires, the Administrator may exempt for a period not to exceed 1 year any individual grant, or any subgrant or subcontract thereunder, from the requirements of this section, and, by rule or regulation following consultation with the Administrator of the EPA, any class of grants or subgrants or subcontracts thereunder. The Administrator shall promptly notify the Administrator of the EPA of any of the exemptions authorized by the foregoing, and the justification therefore, which shall fully describe the purpose of the grant, subgrant, or subcontract and indicate the manner in which the paramount interest of the United States requires that the exemption be made.

(c) Requests for exemptions or renewals thereof shall be made to the Assistant Administrator for Procurement (Attn: Code HP), NASA Headquarters. Requests for individual exemptions shall list the recipient and the amount of the proposed grant, subgrant or subcontract and the title and name of the principal investigator. All requests, whether for individual or class exemptions, shall provide a complete justification as required in paragraph (b) of this section.

§ 1260.209 Patent rights in inventions.

(a) Pub. L. 96–517 (35 U.S.C. 200 et seq.) governs the disposition of rights in inventions made by small business firms and nonprofit organizations under contracts, grants and cooperative agreements for the performance of experimental, developmental, or research work funded in whole or in part by Federal agencies. This Act takes precedence over any other Acts, including section 305 of the National Aeronautics and Space Act of 1958, regarding the disposition of rights to such inventions. It took effect on July 1, 1981, and is applicable to all contracts, grants and cooperative agreements (including subcontracts) with small business firms and nonprofit organizations executed on or after that date. As to inventions "made" on or after July 1, 1981, in the performance of work under any such contracts, grants, or cooperative agreements (including subcontracts) executed prior to July 1, 1981, 1245.118 of the NASA Patent Waiver Regulation of July 1, 1981 (14 CFR 1245.1) may be applied. In addition, as to any Grant (or subcontract) entered into with a small business firm or domestic nonprofit organization on or after July 1, 1981, the Grantee (or Subcontractor) is authorized to substitute the current "Patent Rights—Retention by the Grantee" clause as required by this Grant for any previous revision of such clause.

(b) The implementation of Pub. L. 96–517 set forth in this part 1260 applies equally to all grants and cooperative agreements (including subcontracts thereunder) with domestic nonprofit institutions for experimental, developmental or research work to be performed in the United States, unless a deviation from such is approved pursuant to § 1260.106 of part 1260. The clause required by Pub. L. 96–517 to be made applicable to grants and cooperative agreements is set forth in Exhibit G of this part. Where a deviation is contemplated, Patent Counsel should be consulted for appropriate special condition (see § 1260.425) wording.

(c) If the grant is with a foreign organization, the installation Patent Counsel will be consulted to determine what patent rights in inventions should be accorded the grantee. A special condition clause, "Patent Rights—Foreign Grantees," must be used in such awards which either

(1) State guidance (Exhibit G) applicable to domestic grantees is applicable to the instant grantee, or

(2) Provide guidance to be used in lieu of Exhibit G. A deviation is not required for the use of or specific wording of these clauses.

(d) Reports required pursuant to § 1260.409(b) of this part shall be submitted to the grants officer, with a copy to the installation Patent Counsel.

Subpart 3—Award of Grants and Cooperative Agreements

§ 1260.301 Instruments.

(a) The grant or cooperative agreement instrument shall be brief in format, containing only those provisions necessary to protect the fundamental interests of the Government. To ease compliance problems within universities and nonprofit institutions, grants issued by all NASA installations are identical in format and printed content, and changes in grant requirements are made as infrequently as possible.

(b) In order to maintain the distinction between transactions entered into pursuant to section 203(c)(5) and other provisions of the Space Act of 1958 (such as patent licenses, out-bailments, reimbursable launch agreements, and international agreements) and cooperative agreements entered into pursuant to Pub. L. 97–258, the term "cooperative agreement" shall not be used to designate those agreements entered into under the Space Act but shall be used only to designate those cooperative agreements entered into pursuant to Pub. L. 97–258. Loans of Government personal property not associated with a contract, grant, or cooperative agreement under Pub. L. 97–258, and made under the Space Act of 1958, should be consummated as loan agreements under paragraph 1.211 and Part 3.400 of NHB 4200.1, "Equipment Management Manual."

(c) As set forth in § 1260.203(b), an initial determination shall be made by the technical office sponsoring the requirement of the appropriate instrument. Where that technical office recommends that a grant or cooperative agreement be used as the research instrument for supporting an unsolicited proposal, it shall prepare a "Justification for Acceptance of an Unsolicited Proposal". (See § 1260.202(b)(5).) The justification shall be in reasonable detail, shall adequately support the recommendation to award either a grant or cooperative agreement, and shall be approved by a responsible official designated for this purpose by the head of the program office concerned at Headquarters or field installation. In those instances where the transaction does not arise from an unsolicited

proposal, the technical office involved shall, in the procurement request, justify any recommendation to the grants officer for award of a grant or cooperative agreement, subject to the approval required above. The grants officer shall review the recommendations of the cognizant technical office and, upon concurrence therein, shall prepare and sign a statement prior to the award of each grant or cooperative agreement which justifies the use of such instrument under Pub. L. 97–258. The statement shall be placed in the official file maintained for the transaction. General Counsel should be consulted on questions of unique requirements and where additional assistance is otherwise determined to be necessary.

(d) Grants and cooperative agreements subject to Pub. L. 97–258 shall cite 31 U.S.C. 6304 or 31 U.S.C. 6305, as applicable, as the authority for their placement. Contracts shall cite the applicable authority contained in the FAR or the NFS.

(e) *Exception and deviations.*—(1) 31 U.S.C. 6303 allows the use of contracts "whenever an executive agency determines in a specific instance that the use of a type of procurement contract is appropriate." This provision accommodates situations in which an agency determines that specific public needs can be satisfied best using the procurement process. However, because the provision, if misused, could allow agencies to circumvent the criteria for use of procurement or assistance instruments, use of this authority is restricted to extraordinary circumstances, and only with prior approval of the Assistant Administrator for Procurement. (Deviations from policies and procedures shall be processed under NFS, 48 CFR 1801.4 or § 1260.106 of this part, as appropriate.)

(2) It is NASA's policy that non-monetary (zero dollar) grants or cooperative agreements shall not be used (except for no-cost time extensions).

§ 1260.302 Format.

NASA Form 1463, "Research Grant Award," NASA Form 1562, "Cooperative Agreement," and NASA Form 1463A, "Provisions for Research Grants and Cooperative Agreements," shall be used for the award of all NASA research grants and cooperative agreements pursuant to Pub. L. 97–258. Special conditions, if required by § 1260.420, shall be placed on the reverse of Form 1463, Form 1562 or on a separate page. In all instances, the heading, "Special Condition(s), Grant (Cooperative Agreement) N———", shall be used, followed by only the applicable special condition(s). Use of pre-printed checklists containing all special conditions or a separate page for each special condition is no longer authorized.

§ 1260.303 Allowable costs.

(a) OMB Circular A–21, "Cost Principles for Educational Institutions," OMB Circular A–122, "Cost Principles for Nonprofit Organizations," and OMB Circular A–110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations" govern the allowability of costs chargeable to research supported by NASA under grants and cooperative agreements. Regulations governing procurement contracts generally are not appropriate for application to grants and cooperative agreements.

(b) NASA normally allows full recovery of indirect expenses, but in no case shall an overhead rate used for determining grant or cooperative agreement amounts exceed, in equivalence, the most recent overhead rate at the recipient institution for comparable research contracts of the Government.

(c) Grant amounts determined at the time of the award shall not be reduced other than in case of revocation or in the event grant funds are not committed by the grantee prior to completion of the research involved.

(d) It is the responsibility of the recipient to manage the granted funds in such a manner that they cover the full period of the grant or cooperative agreement. NASA is not obligated to reimburse over-expenditures. However, this stricture does not preclude acceptance of a proposal requesting supplemental funding to extend the research.

§ 1260.304 Cost sharing.

(a) *General.* (1) In implementing the statutory requirement appearing in various NASA Appropriations Acts for cost sharing of research resulting from unsolicited proposals, NASA has, in the past, generally required that educational institutions share in the cost of such research. This requirement was derived from the understanding that there was generally extant a "mutuality of interest" (as that phrase appears in the statutes) in such relationships thereby bringing into play the cost-sharing requirement.

(2) Subsequent to Congressional concern on overly strict application of the cost sharing requirement, a NASA re-evaluation resulted in a determination that the activities of educational institutions under NASA research grants, cooperative agreements and contracts do not generally produce benefits that can be measured as having significance apart from the benefit intrinsic in the conducting of research for NASA. Therefore, in such instances, these agreements should not be subject to the cost-sharing requirement.

(3) If, in an individual case, cost-sharing is determined to be applicable pursuant to the NASA policy set forth in NFS, 48 CFR 1816.303, the procedures therein shall be followed, and the special condition clause for cost sharing set forth below shall be used.

(b) *Clause.* In grants and cooperative agreements to which cost sharing is applicable, the following clause shall be appended as a special condition:

Cost Sharing (January 1981)

The Grantee agrees to share in the cost of the research by charging to the Government not more than ——— per cent of the costs of performance determined to be allowable in accordance with paragraph 405 of the NASA Grant and Cooperative Agreement Handbook. The remaining ——— per cent, or more, of the allowable costs of performance so determined will constitute the Grantee's share and will not be charged to the Government under this grant or under any other grant or contract (including allocation to other grants or contracts as part of an independent research and development program). The Grantee will maintain records of all grant costs claimed by the Grantee as constituting part of its share and such records shall be subject to audit by the Government.

§ 1260.305 Long term stability.

(a) *General.* Research performed under grants and cooperative agreements tends to be long term. Stability of support is an important factor in achieving the most effective use of resources. Therefore, it is NASA policy to provide stability for research projects of a continuing nature by suitable long-term funding arrangements and timely renewal. Techniques for promoting stability follow.

(b) *Continuing awards.*—(1) *Definition.* A continuing award is a grant or cooperative agreement for which NASA obligates funds to support an effort for a 1-year period, and states an intention to support approximate levels of effort for an additional period of time provided funds are available and the results achieved warrant further support within the context of agency programs.

(2) *Duration and funding.* Continuing awards will normally be approved by the relevant Headquarters Program Office or center for periods not in excess of 3 years. Legal, along with concomitant fiscal obligations, however,

will be entered into for periods of 1 year. The award instrument will contain the following special condition which provides an estimate of an approximate level of funding for each of the following years:

Continuing Award (July 1984)

This is a continuing award. Contingent on the availability of funds, scientific progress of the project, and continued relevance to NASA programs, NASA anticipates continuing support at approximately the following levels:

Second year $ _____ Third year $ _____

It is the responsibility to the awardee to request such continued support by submitting a brief proposal, according to NASA procedures for unsolicited proposals.

(The phrase "Third year" will be omitted if inapplicable)

The above special condition is not to be used in multiple-year, including step-funded, awards.

(3) *Proposals and review.* The original proposal and its scientific evaluation is applicable to the entire period. Thus, neither an extensive new proposal nor new reviews are required for subsequent funding in the approved period, unless a special need for new reviews is indicated by monitoring of the project and of its reports, by major changes in the project or senior investigators, by the introduction of work outside the scope of the approved proposal, or by the need for substantial additional funding than that initially anticipated.

(4) *Requests for continued support.* A brief renewal proposal is required, as described in the special conditions of the award instrument for additional funding. Investigators shall be encouraged to contact the NASA technical officer for the project prior to proposal preparation to determine the amount of information required. An additional extended period may be proposed, upon the expiration of the approved period. A complete, new proposal, subject to full review, must be submitted for this purpose. If otherwise acceptable, NASA, at its option, may fund the proposal through a further continuing award or by a standard year-to-year agreement, if long-term effort is no longer anticipated.

(5) *Levels of continued support.* Normally, each year of a continuing award will be funded at the approximate level indicated in the original award instrument, subject to satisfactory scientific progress, availability of funds, and continued relevance to NASA programs. This is not, however, a binding commitment as changing NASA program constraints and developments within the project itself may dictate adjustments in the originally anticipated level.

(6) *Programmatic procedures.* Procurement request initiators who desire to use the continuing award technique should include in their procurement justification packages a brief statement requesting the use of the continuing award, including the expected levels for future periods.

(7) *Other conditions.* Except as noted above, all regulations, terms, and guidelines applicable to regular grants and cooperative agreements apply to continuing awards.

(c) *Step funding.*—(1) *Description of step funding.* A step funded research project is one for which funds are obligated over a 3-year period. In addition to full support for the first year's effort, funds are also obligated for a second year's operation at approximately two-thirds of the first year level, and for third year's effort at approximately one-third of the first year level. The typical funding schedule anticipates a continuation of the initially established levels in subsequent years, but this is not always the case—planned increases or decreases in level may be projected in advance. In any event, the full amount required to establish the desired steps must be obligated. (See Step Funding Illustration-Exhibit E.)

(2) *Procedures.* The documentation will clearly indicate that the step funding is appropriate and provide a suggested step schedule accommodating both the previously obligated and the new funding. Annual levels should be rounded to the nearest $1,000, where feasible. Annual continuation proposals should project the contemplated effort for 3 years in advance. Wherever possible, renewal or notification to the grantee that further support will not be forthcoming will be issued before the authorized level drops to the next lower step. Normally, step funded grants should not be allowed to expire if the total period of performance is less than 5 years. Except in cases of revocation, funds should not be de-obligated from the steps. Do not make "No Cost-time Extensions" to step-funded awards, except when they are in the last year and no additional obligations are planned. Annual funding dates may be changed, if necessary, by appropriately rescheduling the steps. The award instrument shall contain the following special condition for step funding.

Step Funding (July 1984)

This is a step funded grant. If the total amount allowed by the schedule on the face of the grant is not expended during the applicable period, the residual funds may be expended during the succeeding period. This carryover shall be brought to the attention of the Grants Officer when the Grantee submits its budget for the subsequent period.

(d) *Continuity.*—(1) *Period.* To reduce paperwork burdens on the public and to ensure maximum continuity, successive short periods of funding for less than 12 months should not be used except when absolutely necessary (e.g., when the alternative is disruption or cessation of the effort).

(2) *Continuations.* Grants and Cooperative Agreements will be renewed, if appropriate, prior to the instrument expiration date whenever possible. Although the procuring office has little control over the timely receipt of purchase requests, the procuring office is responsible for informing the technical officers on a timely basis of current lead-time requirements and for timely processing continuation agreements. Alternatively, if a grant is not to be renewed, the grantee should be given a minimum of 4 months advance notice of pending close-out (see § 1260.514(a)).

(3) *Instrument usage.* To eliminate the paperwork burdens associated with the close-out of a grant and negotiation of a new award for continuing the same efforts, ongoing efforts at the same institution will be continued by amending or supplementing the current instrument unless (i) there is a significant change in the nature of the work or the main investigators or (ii) if a new instrument is required as a matter of sound procurement practice. If a new instrument must be issued, the period of performance should be continuous with the previous award.

§ 1260.306 Numbering of instruments.

(a) *Grants.* (1) The identification numbering system for all research grants shall conform to NFS, 48 CFR 1804.7102–3, except that a NAG prefix shall be used in lieu of the NAS prefix. The prefix designation shall include the Center Identification Number; e.g., NAGW would be the Headquarters prefix designation and NAG5 would be the Goddard prefix designation. Grants will be sequentially numbered beginning with "1."

(2) This numbering system applies to all new research grants awarded beginning in Fiscal Year 1980. Existing grants identified with prefixes NGT and NGF will not be changed. Sequential numbers for new NGT and NGF grants are assigned by the Office of External Relations, Management Support Division.

(b) *Cooperative Agreements.* The numbering system for cooperative agreements shall be the same as for

§ 1260.306(a) (1) and (2), except that NCC (for centers) and NCCW (for Headquarters) prefixes shall be used in lieu of the NAG and NAGW prefixes.

§ 1260.307 Distribution of grants, cooperative agreements, and grant supplements.

Distribution of grants, cooperative agreements and grant supplements shall be made by the initiating office in accordance with its requirements, except that in all cases:

(a) At least one copy will be furnished to paying offices in order to support the payment file and shall be retained for audit purposes in accordance with § 1260.308.

(b) One copy, plus a copy of the grantees's proposal, will be furnished to the Scientific and Technical Information Branch, NIT, NASA Headquarters.

§ 1260.308 Retention of documents for on-site audit.

NASA's grants, cooperative agreements, and grant supplements designated in § 1260.307 are subject to on-site audit by the General Accounting Office. The original or a signed copy of each document, with supporting data, shall be retained by the installation to be available to the General Accounting Office for audit purposes. Records shall be retained for 3 years after completion.

§ 1260.309 Requirement for this part.

Proper administration of NASA grants and cooperative agreements requires that the recipents have access to this part because the grant provisions incorporate by reference part 1260 material on foreign travel, financial management, equipment and property, procurement standards and patent rights. Therefore, the following statement shall be included in or accompany letters transmitting grant and cooperative agreement instruments or supplements:

Proper administration of this award requires access to the current edition of the NASA Grant and Cooperative Agreement Handbook (NHB 5100.1), which is referenced in the award provisions. The Handbook, including running changes, is available only on a purchased subscription basis from Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

A subscription price should not be quoted, as it is set by GPO, not NASA and is subject to change.

Subpart 4—Research Grant and Cooperative Agreement Provisions

§ 1260.400 General.

The provisions set forth in this subpart shall be inserted in and made a part of all NASA grants and cooperative agreements subject to this part. Whenever the words "grant" or "Grantee" appear in these provisions, they shall be deemed to include, as appropriate, the words "cooperative agreement" and "recipient of cooperative agreement" respectively.

§ 1260.401 Technical reports and publications.

Technical Reports and Publications (April 1984)

(a) All measurement values employed in technical reports prepared under this grant shall be expressed in the International System of Units (SI). Expression in both SI units and customary units is acceptable where the use of SI units alone would obviously impair communications or reduce the usefulness of the report to the primary recipients. When both systems of units are used, SI units are to be stated first and customary units afterwards in parentheses. In each such case, the report shall state which system of units was used for the principal measurements and calculations.

(b) Publication to accomplish widest practicable and appropriate dissemination of research results is encouraged at any time during the course of the investigation. Examples of appropriate media for such dissemination are the learned journals, the proceedings of professional groups, conference presentations, and NASA scientific and technical publications. NASA Grantees may submit the results of their work for publication by whichever media they feel most appropriate. Publications and reports prepared under a grant shall contain a statement which acknowledges NASA's support and identifies the grant by number. Submissions for NASA scientific and technical publications shall be accompanied by manuscripts provided initially in draft. Upon agency review and approval, a reproducible copy shall be submitted in the style and format specified by NASA.

(c) Copies of preprints or manuscripts of each publication shall be provided to NASA for information at the time of submission for publication. Prior approval for publication is not required unless security classification is involved or the grant contains special conditions pertinent to publication of results. Should the preprint or manuscript contain a description of a "Subject Invention," such invention is to be disclosed to NASA as required by the "Patent Rights—Retention by Grantee" provision.

(d) Brief, informal Semiannual Status Reports, which shall include concise statements of the research accomplished during the report period, including full bibliographic references to, or abstracts of, publications, shall be submitted. This is a minimum reporting requirement, and Grantees are urged to submit interim reports to publish in the open literature or to present conference papers whenever the research has reached a point where it is logical to summarize the results, a research phase has been completed, or significant new findings are made.

(e) A final technical report will be submitted upon termination of support under a specific grant, whether or not support is continued under another grant number. The final report may be a comprehensive report of all research findings, suitable for printing as a permanent contribution to knowledge, or it may be a brief summary of the entire project. In either case, cumulated bibliographic references to, or abstracts of, all publications issued during the course of the research shall be included.

(f) Status and final technical reports shall have a title page that displays the title of the grant, the type of report, the name of the Principal Investigator, the period covered by the report, the name and address of the Grantee's institution, and the grant number.

(g) Five copies of all preprints, reprints, manuscripts, status and interim reports, and the final technical report shall be submitted to NASA. Three of these copies shall be sent to the NASA Technical Office designated on the cover page of the grant. The remaining two copies, one of which shall be of a quality suitable for microreproduction, shall be sent to: NASA Scientific & Technical Information Facility, P.O. Box 8757, Baltimore/Washington International Airport, Maryland 21240.

(h) In the event any status, interim, or final technical report submitted to NASA contains information describing a "Subject Invention" for which the Grantee has elected or may elect title, NASA will use reasonable efforts to delay public release by NASA or publication by NASA in a NASA technical report series, up until 6 months from the date of receipt, in order for a patent application to be filed *provided* that the Grantee identify the information and the "Subject Invention" to which it relates at the time of submittal.

§ 1260.402 Extensions.

Extensions (January 1981)

(a) It is NASA policy to provide maximum possible continuity in funding grant-supported research, and grants may be extended for additional periods of time. Any extension requiring additional funding must be supported by an unsolicited proposal submitted at least 4 months in advance of the expiration date of the grant. The period of performance shown in the grant documents is approximate, but extension for more than 30 days must be requested by application to the Grants Officer and approved in writing.

(b) When a grant is a continuing award or step funded, NASA will, if circumstances permit, make available additional funding to extend the period. The step funding is based on unsolicited proposals received prior to the completion of each year of full support. NASA shall be the sole judge of whether circumstances will permit this increase. This statement of policy should not be taken as a commitment by NASA.

§ 1260.403 Revocation and change in principal investigator.

Revocation and Change in Principal Investigator (August 1982)

It is a condition of each grant that it may be revoked in whole or in part by NASA after

consultation with the Grantee. In the event of revocation, the Grantee shall refund to NASA any unexpended funds that it has received under the grant, except such portion thereof as may be required by the Grantee to meet commitments which had in the judgment of NASA become firm prior to the effective date of revocation and are otherwise appropriate. Significantly reduced availability of the services of the principal investigator(s) named in the grant instrument may be grounds for revocation, unless alternative arrangements are made. The Grantee shall obtain the approval of the NASA Grants Officer to change the principal investigator or to continue the research work during a continuous period in excess of 3 months without the participation of an approved principal investigator.

§ 1260.404 Travel.

Travel (July 1984)

(a) Domestic travel is an appropriate charge to research grants, and NASA authorization for specific trips is not required. Expenditures for domestic travel shall not exceed $500 or 25% of the amount allotted for such travel in the approved proposal budget, whichever is greater, without the prior authorization of the NASA Grants Officer.

(b) All foreign travel must be clearly essential to the research effort and must, to be charged to a grant, have the prior approval of the NASA Grants Officer for each specific trip regardless of its inclusion in a proposal budget. Approvals will be made in accordance with the policies and procedures set forth in paragraph 516 of the Grant and Cooperative Agreement Handbook.

§ 1260.405 Allowable costs.

Allowable Costs (July 1984)

(a) OMB Circular A–21, "Cost Principles for Educational Institutions," OMB Circular A–122, "Cost Principles for Nonprofit Organizations," and OMB Circular A–110, "Grants and Agreements with Institutions of Higher Education, Hospital and other Nonprofit Organizations," as applicable, govern the allowability of costs chargeable to research sponsored by NASA under Grants and Cooperative Agreements.

(b) Payments to individuals for consultant services under a NASA Grant or Cooperative Agreement shall not exceed the daily equivalent of the maximum rate paid to a GS–18 Federal employee (exclusive of indirect cost, travel, per diem, clerical services, vacation, fringe benefits, and supplies).

§ 1260.406 Financial management.

Financial Management (July 1984)

(a) Payment. Advance payments by the Letter-of-Credit-Treasury Financial Communications System or Direct Treasury Check method will be made in accordance with procedural instructions furnished to the grantee by the Financial Management Office of the NASA installation which issued the grant. The grantee shall submit Federal Cash Transaction Reports (SF 272) quarterly to the aforementioned office.

(b) Management. The Grantee's financial management system shall meet the standards set forth in paragraph 511 of the NASA Grant and Cooperative Agreement Handbook.

(c) Records. Financial records, supporting documents, statistical records, and all other records (or microfilm copies) pertinent to this grant shall be retained for a period of 3 years, except that (1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved, and (2) Records for nonexpendable property acquired with grant funds shall be retained for 3 years after its final disposition. The retention period starts from the date of the submission of the final Federal Cash Transactions Report (SF 272). The Administrator of NASA and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the Grantee and of subrecipients to make audits, examinations, excerpts, and transcripts. All of the foregoing provisions shall apply to any subrecipient performing substantive work under this grant.

§ 1260.408 Equipment and other property.

Equipment and Other Property (March 1981)

(a) NASA research grants permit acquisition of technical property required for the conduct of research. Acquisition of property costing in excess of $1,000 and not included in the approved proposal budget requires the prior approval of the NASA Grants Officer unless the item is merely a different model of an item shown in the approved proposal budget.

(b) NASA grant funds shall not be used to purchase items such as furniture, furnishings, office equipment or other items of a nontechnical nature; exceptions to this require approval of the NASA Grants Officer and must be fully justified as essential to the research under the grant. Under no circumstances shall grant funds be used to acquire land or any interest therein, to acquire or construct facilities, or to procure passenger carrying vehicles.

(c) Title to equipment purchased with grant funds shall vest in the Grantee unless otherwise provided. The Government reserves the right to require transfer to itself title to items purchased at a cost of $1,000 or more. Such reservation is subject to the conditions of paragraph 505 of the NASA Grant and Cooperative Agreement Handbook.

(d) Title to Government-furnished property (including equipment, title to which has been transferred to the Government pursuant to subparagraph (c) prior to completion of the work) will remain with the Government.

(e) Title to expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of such property exceeding $1,000 in total aggregate fair market value, upon termination or completion of the grant or other agreement, and the property is not needed for any other Federally sponsored project or program, the recipient shall retain the property for use on non-Federally sponsored activities, or sell it, but must in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in accordance with subparagraph 6c, Attachment N to OMB Circular A–110.

(f) The Grantee shall maintain property records and otherwise manage nonexpendable personal property utilized in the performance of this grant in accordance with the provisions of Paragraph 509 of the NASA Grant and Cooperative Agreement Handbook. Grantees will submit annually an inventory listing of Government owned property in their custody to the Grants Officer. Such listings will be as of June 30, will be submitted by July 31, and will reflect the record elements required in Paragraph 509(b)(1) and beginning and ending dollar value totals for the period. Upon completion of the agreement or when the property is no longer needed, the recipient shall notify the Grants Officer, who will provide disposition instructions. The Grants Officer will provide a copy of each annual inventory listing to the NASA installation Financial Management Office upon receipt.

§ 1260.409 Patent rights—retention by the grantee.

Patent Rights—Retention by the Grantee (April 1984)

(a) The disposition of rights to inventions made in the performance of work under this grant will be made in accordance with Pub. L. 96–517 (94 Stat. 3019, 35 U.S.C. 200 et seq.) and NASA's implementing regulations, Exhibit G. The provisions (clause), entitled "Patent Rights—Retention by the Grantee" is set forth as Exhibit G of the NASA Grant and Cooperative Agreement Handbook, and is hereby made applicable to this Grant. The Grantee shall include an appropriate patent rights provision in accordance with paragraph (g) of Exhibit G in all subcontracts.

(b) All disclosures of Subject Inventions, election of rights, utilization reports, and other reports and information required by the aforementioned "Patent Rights" clause shall be submitted to the Grants Officer, with a copy to the Installation Patent Counsel. Copies of status and final reports bearing on patent matters shall also be sent to the Installation Patent Counsel.

§ 1260.410 Rights in data.

Rights in Data (January 1981)

The Grantee grants to the Government, for Governmental purposes, the right to publish, translate, reproduce, deliver, use and dispose of, and to authorize others to do so, all data, including reports, drawings, blueprints, and technical information resulting from the performance of work under this grant.

§ 1260.411 Security.

Security (January 1981)

Normally, NASA research grants do not involve classified defense information. However, if information is sought or developed by the Grantee that should be classified in the interests of national security, the NASA Grants Officer that issued the grant shall be notified immediately.

§ 1260.412 Civil rights.

Civil Rights (October 1983)

Work on NASA Grants is subject to the provisions of Title VI of the Civil Rights Act of 1964 (Public Law 88–352; 42 U.S.C. 2000d–1), Title IX of the Education Amendments of 1972 (20 U.S.C. 1680 et seq.), section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), and the NASA implementing regulations (14 CFR 1250).

§ 1260.413 Safety.

Safety (January 1981)

(a) The Grantee shall act responsibly in matters of safety and shall take all reasonable safety measures in performing under this grant. The Grantee shall comply with all applicable Federal, State, and local laws relating to safety. The Grantee shall maintain a record of, and will notify the NASA Grants Officer of any accident involving death, disabling injury or substantial loss of property. The Grantee will advise NASA of hazards that come to its attention as a result of the work under the grant through routine status reports furnished in compliance with the Grant.

(b) Where the work under this grant involves flight hardware, the hazardous aspects, if any, of such hardware will be identified, in writing, by the Grantee. Compliance with the provisions of this clause by subcontractors shall be the responsibility of the Grantee.

§ 1260.414 Subcontracts.

Subcontracts (August 1982)

(a) Approval of subcontracts for the purchase of property or equipment under this grant shall be obtained in accordance with the provision herein entitled "Equipment and other Property." All other subcontracts not provided for in the approved proposal budget require the prior consent of the Grants Officer.

(b) In accordance with the Small Business Amendments, Pub. L. 95–507, small and disadvantaged firms shall be utilized as subcontractors to Grantees to the maximum extent.

§ 1260.416 Communications.

Communications (July 1984)

The Principal Investigator may expect to be contacted by the NASA Technical Officer named on the cover page of the Grant in connection with the research aspects of the work under the grant. Inquiries regarding the research aspects of the grant should be directed to the NASA Technical Officer. However, written or oral communications of an administrative nature, such as approval of foreign travel, property matters, patent matters, extension of the term of the grant, etc., shall be channeled through the Grantee's business office to the Grants Officer, unless otherwise specified by the Grants Officer.

§ 1260.417 Clean air-water pollution control acts.

Clean Air-Water Pollution Control Acts (July 1984)

If this grant or supplement thereto is in excess of $100,000, the Grantee agrees to notify the Grants Officer promptly of the receipt, whether prior or subsequent to the Grantee's acceptance of this grant, of any communication from the Director, Office of Federal Activities, Environmental Protection Agency (EPA), indicating that a facility to be utilized under or in the performance of this grant or any subgrant or subcontract thereunder is under consideration to be listed on the EPA "List of Violating Facilities" published pursuant to 40 CFR 15.20. By acceptance of a Grant in excess of $100,000, the Grantee (a) stipulates that any facility to be utilized thereunder is not listed on the EPA "List of Violating Facilities" as of the date of acceptance; (b) agrees to comply with all requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. 1857 et seq. as amended by Pub. L. 91–604) and section 308 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq. as amended by Pub. L. 92–500) relating to inspection, monitoring, entry, reports and information, and all other requirements specified in the aforementioned Sections, as well as all regulations and guidelines issued thereunder after award of and applicable to the grant; and (c) agrees to include the criteria and requirements of this clause in every subgrant or subcontract hereunder in excess of $100,000, and to take such action as the Grants Officer may direct to enforce such criteria and requirements.

§ 1260.418 Procurement standards.

Procurement Standards (January 1981)

The Grantee's procurement practices shall meet the standards set forth in paragraph 512 of the NASA Grant and Cooperative Agreement Handbook.

§ 1260.419 Additional provision for cooperative agreements.

With respect to cooperative agreements under Pub. L. 97–258, it has been determined that the NASA guidelines and regulations applicable to grants will apply to cooperative agreements. The Cooperative Agreements, NASA Form 1562 (see Exhibit C), shall contain a special provision stating the nature of the recipient/NASA interaction in accordance with Pub. L. 97–258. That special provision is as follows:

Cooperative Agreement Special Provision (October 1983)

(a) This award is a Cooperative Agreement as it is anticipated that there will be substantial NASA involvement during performance of the effort. That is, the recipient can expect NASA collaboration or participation in the management of the project.

(b) NASA and the recipient mutually agree to the following statement of anticipated cooperative interactions which may occur during the performance of this effort.

(Insert here a concise statement of the exact nature of the cooperative interactions. (See § 1260.203(b) for guidance). In addition, note that the statement must deal with existing facts and not contingencies. Under no circumstances shall the statement be used as a work statement or an expanded grant title.)

§ 1260.420 Special conditions.

(a) In addition to the general provisions set forth in this Subpart, NASA grants and cooperative agreements are subject to various conditions which either are not applicable to all awards or are temporary in nature. Such conditions are not printed in NASA Form 1463A, "NASA Provisions for Research Grants and Cooperative Agreements" (Exhibit D), but are appended to specific grants, as applicable, in the format set forth in § 1260.302.

(b) The following special conditions clauses are authorized under the conditions set forth in the prescribing sections.

PATENT RIGHTS-FOREIGN GRANTEES, prescribed at § 1260.209(c).
COST SHARING, prescribed at § 1260.304(3)(b).
CONTINUING AWARD, prescribed at § 1260.305(b)(2).
STEP FUNDING, prescribed at § 1260.305(c)(2).
REPORTS SUBSTITUTION, prescribed at § 1260.605(a).

(c) All clauses inserted as "Special Conditions" shall be written out in full. Clauses shall not be incorporated by reference.

(d) Contemplated special conditions clauses which are not included in, or which differ in language from, the clauses referenced in (b), above, shall be considered as deviations and processed in accordance with § 1260.106.

Subpart 5—Administration of Research Grants and Cooperative Agreements

§ 1260.501 General.

(a) NASA assumes that, once a grant or cooperative agreement is made, the principal investigator, operating within the policies of the grantee institution, is in the best position to determine the means by which the research may be conducted most effectively. The term "grantee" refers to recipients of both grants and cooperative agreements. NASA wishes to avoid any action that might diminish the responsibility of the grantee and the investigator for making sound scientific and administrative judgments. Grantees and investigators are encouraged to seek the advice and

opinions of NASA on problems that may arise. Unless otherwise stated, the giving of such advice should not imply that the responsibility for final decisions has shifted to NASA. The primary concern of NASA is that granted funds be used in a manner that will make a maximum contribution to the scientific area under investigation. It is expected that grantees and investigators will also direct their efforts to this end. Therefore, the grantee may change the methods and procedures employed in performing the research as scientific judgment dictates without the need to obtain NASA approval. However, it is expected that significant changes in methods or procedures will be discussed in the status or technical reports.

(b) The grantee shall obtain the approval of the NASA grants officer to change the principal investigator or to continue the research work during a continuous period in excess of 3 months without the participation of an approved principal investigator.

§ 1260.502 Instrument.

A NASA grant or cooperative agreement is consummated by an instrument signed by the NASA Administrator, or duly authorized representative, and contains the provisions set forth in Subpart 4 of this part.

§ 1260.503 Instrument period.

(a) Normally, NASA grants and cooperative agreements are made or extended for periods of 1 to 3 years at a time. Longer periods may be appropriate in some instances, provided step (§ 1260.305(c)) continuing (§ 1260.305(b)) or full funding is used. Any other arrangements in which there is not at least partial funding throughout the period of performance are prohibited. Short periods should be avoided as noted in § 1260.305(d)(1). As stated in the instrument, the period is approximate; the beginning and ending dates are not specified with precision. The instrument period begins approximately on the date thereof and extends for approximately the length of time specified. However, when progress of research under the grant or cooperative agreement is delayed and circumstances make it necessary to request an extension of the period without additional funds, the policy of NASA is to permit extensions in time, upon written request.

(b) When it appears that the research contemplated will be completed within 30 days after the approximate ending date, a request for extension of the instrument period will be unnecessary. If it appears, however, that the additional time required for completion of the research will exceed 30 days, a request for extension must be made by the grantee. Any extension requiring additional funding must be supported by an unsolicited proposal and submitted at least 4 months in advance of the expiration date of the grant or cooperative agreement.

§ 1260.504 Adherence to original budget estimates.

(a) NASA believes that the principal investigator, operating within the established policies of the grantee, is the individual best qualified to determine the manner in which the grant or cooperative agreement funds may be used most effectively to accomplish the proposed research. Although NASA assumes no responsibility for overspent budgets, the investigator and the grantee institution are free to spend grant or cooperative agreements funds for the proposed research without strict adherence to individual allocations within total budgets, except as provided in §§ 1260.404 and 1260.408. Under no circumstances, however, may grant or cooperative agreements funds be used to acquire land or any interest therein, to acquire or construct facilities or to procure passenger carrying vehicles. Purchase of furniture, furnishings, office equipment, or other items of a nontechnical nature require the prior approval of the NASA grants officer as provided in § 1260.408.

(b) Controls and limitations on expenditures for specific items under NASA grants or cooperative agreements shall be in accordance with the provisions of § 1260.405.

(c) If any of the actions requiring approval in accordance with § 1260.405 of this part have received specific NASA approval during the proposal and award process, a further approval shall not be required. Whenever practical, the approvals shall be given at the time of the project award or extension to avoid any delays during the course of the project.

(d) Approval requirements relating to expenditures under grants and cooperative agreements, in addition to those provided for in § 1260.405, shall not be imposed except in accordance with the deviation procedure of § 1260.106 or as specifically required by statute.

§ 1260.505 Use, disposition, and vesting of title to research equipment.

(a) *Background.* (1) Support of research in educational institutions provides substantial long-term and indirect benefits, as well as the immediate research results. In addition to the obvious academic advantages of such support, individual and institutional capabilities to perform relevant research are enhanced, and the number of scientists and graduates with research interests in areas of concern to the nation generally, and to NASA in particular, is increased. Adequate modern research equipment in universities serves to maximize these direct and supplemental benefits.

(2) NASA funds research in academic areas in which the university has, and expects to maintain, a capacity for research and education. The research equipment that it acquires has, therefore, an especially high potential for continuing effective use at the acquiring institution. The legitimate interest of both NASA and the university, as well as the long-term national interest, require that any decision by the agency to take title for the purpose of transferring grantee equipment to another location reflect careful consideration of all relevant factors. This should include comparison of the expected beneficial use at the present location with that expected at the new location possible deleterious effects of removal, and the administrative and relocation costs involved.

(b) *Policy.* The following policies will be reflected, as appropriate, in the negotiation and the documentation of NASA research grants, cooperative agreements and supplements thereto and in related correspondence.

(1) Title to equipment purchased with grant and cooperative agreement funds vests in the grantee institution, and the equipment does not automatically follow the principal investigator when he or she leaves the institution. Title to Government-furnished equipment remains with the Government. In accordance with Pub. L. 94–519, NASA policy is not to furnish acquired excess property to grantees as NASA would in such event have to pay 25% of the original acquisition cost of the equipment to the Treasury. In the event application of this policy proves to be extremely disadvantageous to NASA in a specific situation, a deviation may be requested (§ 1260.106). When Government-furnished equipment is reported excess by a grantee, the grants officer will report the equipment to the installation property disposal officer for further NASA use. If NASA has no further need for the property, it shall be declared excess and reported to the General Services Administration. Appropriate disposition instructions will be issued to the recipient after completion of the Federal-wide review.

(2) NASA may require transfer to it of title to individual items on coherent systems (paragraph (b)(8) of this section) of major grantee acquired equipment purchased at a cost of more than $1,000 subject to the following conditons:

(i) The equipment shall be appropriately identified to the recipient in writing.

(ii) NASA shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If NASA fails to issue disposition instructions within the 120 calendar day period, the grantee shall apply the standards of subparagraphs 6b and 6c, Attachment N to OMB Circular A–110, as appropriate.

(iii) When NASA exercises its right to take title, the equipment shall be subject to the provisions for federally-owned nonexpendable property discussed in § 1260.408, paragraph (f) of the clause.

(iv) When title is transferred to the Federal Government, the provisions of subparagraph 6c(2)(b), Attachment N to OMB Circular A–110, shall be followed.

(3) Title to minor equipment items (costing individually $1,000 or less) is not subject to transfer to the agency, except under the conditions of paragraph (b)(8) of this section.

(4) NASA procedures does not require a grantee to transfer title to grant or cooperative agreement-acquired equipment directly to another actual or potential grantee or contractor. Such transfers are accomplished by the Government's taking title and issuing the equipment to the second institution as Government-furnished equipment.

(5) NASA normally will not recover equipment that a grantee desires to retain for reissuance to another institution or to a NASA installation, unless it is specifically required for NASA work at the new location. Exceptions will be made only in highly unusual situations where title transfer is clearly in the best interest of the Government.

(6) Cost sharing by NASA and a grantee in the acquisition of individual items or coherent systems (paragraph (b)(8) of this section) of equipment, in response to a statutory requirement for cost-sharing or in any way that could result in joint ownership, shall normally be avoided.

(7) When cost sharing by NASA and a grantee in the acquisition of major equipment items or coherent systems cannot be avoided, and the NASA contribution will exceed $1,000, agreement regarding NASA retention of its option to take title and the conditions under which the option (if retained) will be exercised, shall be reached and documented prior to purchase. NASA shall have no option to take title if its contribution is $1,000 or less.

(8) When two or more components are fabricated into a single coherent system in such a way that the components lose their separate identities and their separation would render the system useless for its original purpose, the components will be considered as integral parts of a single system. If such a system includes grantee-owned components (for cost sharing or other purposes), paragraph (b)(7) of this section applies. The requirement that NASA seek agreement to retain its option to take title shall further apply where it is expected that one or more grant-acquired components costing $1,000 or less will be fabricated into a single coherent system costing in excess of $1,000. However, an item that is used ancillary to a system, without loss of its separate identity and usefulness, will be considered as a separate item and not as an integral component of the system.

(c) *Procedures.*—(1) When a decision is made to revoke or discontinue support of a grant or cooperative agreement, the grants officer shall notify the grantee in writing of the requirement under the instrument for submission of a final inventory report of Government-owned equipment.

(2) When the cognizant NASA technical officer or program manager desires that NASA take title to a major item of grantee purchased equipment, the technical officer shall request the grants officer to obtain information regarding the grantee's desire to retain the equipment, the use to which it would be put in the absence of further NASA support of the grant or cooperative agreement, and any substantial deleterious effects of removal of the equipment.

(3) The grants officer shall obtain the information and provide copies to the technical officer and the Headquarters Supply and Equipment Management Branch for their coordinated review and recommendation regarding acquisition of title. The technical officer shall inform the grants officer of the recommendation by means of a memoradum concurred in by the Supply and Equipment Management Branch.

(4) When NASA acquires title to major items of grantee purchased equipment, the grants officer shall notify both the cognizant NASA installation financial management officer and supply and equipment management officer so that proper entries can be made in financial and property accounting records.

§ 1260.506 Revocation.

(a) *Policy.* When a university grant or cooperative agreement is terminated at other than its planned end date, the result can be a significant disruption in the university educational activities. NASA has established excellent relationships with hundreds of universities, including a credibility for responsibly understanding and handling the problems experienced by educational institutions. This has resulted in the retention of highly qualified investigators on NASA work and participation of the most able graduate students. To maintain that credibility, suspension or revocation of grants or cooperative agreements prior to the planned completion date must be reserved for those few exceptional situations which cannot be handled any other way.

(b) *Suspension.* When a grantee has failed to comply with the terms of a grant or cooperative agreement, NASA may, on reasonable notice to the grantee, temporarily suspend the grant or cooperative agreement, withhold further payments, and prohibit the grantee from incurring additional obligations of funds, pending corrective action by the grantee or a decision by NASA to revoke the grant. NASA will allow all necessary and proper costs that the grantee could not reasonably avoid during the period of suspension.

(c) *Revocation.*—(1) NASA grants and cooperative agreements may be revoked in whole or in part by NASA after consultation with the grantee, except that a revocation shall not affect any financial commitment which, in the judgment of NASA, had become firm prior to the effective date of the revocation and is otherwise appropriate. Revocation is a right reserved by NASA, which may be exercised at any time, and encompasses actions of a type commonly referred to as "Termination for Cause" or "Termination for Convenience." Upon revocation, the grantee shall reduce, insofar as possible, the amount of outstanding commitments and repay by check made payable to the National Aeronautics and Space Administration, the uncommitted balance of all funds that have been paid to the grantee by NASA under the terms of the particular grant or cooperative agreement.

(2) The grantee shall communicate with NASA whenever it has reason to believe that circumstances may necessitate revocation of the grant or cooperative agreement. The most common cause for revocation would be the inability or failure of the grantee to carry out the research for which the

grant or cooperative agreement was made or to adhere to the other conditions set forth in the instrument.

(d) *Principal Investigator.* As a general rule, the availability of the services of the principal investigator named in the instrumnet is a decisive factor in NASA's decision to award the grant or cooperative agreement. Consequently, NASA should be informed immediately whenever it appears that the principal investigator will find it impossible to continue to direct the research. (See § 1260.501(b)). Significantly reduced availability of the services of the principal investigator may be grounds for revocation, unless alternative arrangements are made.

(e) *University grants and cooperative agreements.* Before suspending or revoking in its entirety any grant or cooperative agreement with a university, the matter shall be coordinated within NASA as prescribed in NMI 8340.1, "Actions Leading to Decisions to Terminate University Grants and Contracts for the Convenience of the Government".

§ 1260.507 Transfer of grants or cooperative agreements to other institutions.

Awards cannot be transferred from one institution to another. However, when the principal investigator changes his or her organizational affiliation and desires support for the research at a new location, he or she must submit a new proposal via the appropriate officials of the new institution. Although such a proposal will be reviewed in the normal manner, every effort will be made to expedite a decision. Regardless of the action taken on the new proposal, final reports on the original grant or cooperative agreement, describing the scientific progress and expenditure to date, will be required if that instrument is revoked.

§ 1260.508 Delegation of administration.

(a) *Background.* It is often advantageous to the government to consolidate certain grant administration functions in one agency or to have one agency perform functions in behalf of another. Some functions, such as audit and civil rights matters, are handled at the agency level, while other functions require specific delegation on a grant-by-grant basis. This paragraph is concerned with the latter type of function.

(b) *Policy.* Pursuant to government-wide "cross-servicing" policy, it is NASA's policy to delegate property administration and other selected functions to the Office of Naval Research (ONR), subject to limitations and conditions in (c)–(e) below.

(c) *Procedures.* Delegations will be made in generally the same fashion as delegations for contracts, using NASA Form 1430, "Letter of Contract Administration Delegation, General;" NASA Form 1430A, "Letter of Contract Administration Delegation, Special Instructions;" and NASA Form 1431, "Letter of Acceptance of Contract Administration Delegation." The Grants Officer will inform the grantee in writing that the delegation has been made and provide specific instructions regarding items which shall be sent to ONR in addition to or in variance with existing guidance in this Handbook or the Grant Provisions.

(d) *Types of administration.*—(1) *Property administration.* In most instances, practical necessity dictates delegation to ONR of the performance of property administration (review and approval of grantees' property control procedures, and on-site surveys of grantees' property control systems) and plant clearance (screening, redistribution and disposal of Government property from grantees' work sites). Therefore, the Grants Officer will normally delegate these functions for each grant except:

(i) When there will be no government-furnished property or grantee-acquired property, or

(ii) When the work will be performed in the vicinity of the sponsoring NASA installation and ONR administrative services are not reasonably available. Installations will use standard special instruction wording on the Form 1430A, as provided in Exhibit A. Questions related to the delegation of property administration should be posed to the Headquarters Supply and Equipment Management Branch, Code NIE.

(2) *Close-out.*—(i) Grant close-out may be delegated to ONR when the grants officer determines that such delegation enables timely close-out, optimizes NASA resources, or is otherwise cost effective. Close-out delegation must be preceded or accompanied by a Property Administration and Plant Clearance Delegation (if any grantee purchased or Government-Furnished property (GFP) is involved. Installations will use standard special instruction wording on the Form 1430A, as provided in Exhibit A, Figure 2. Note that paras. 4 (f) and (g) on the Form must be completed for each delegation. Paragraph 4(f) will normally be marked "YES", unless an exception in paragraph (d)(1), above, applies.

(ii) Delegations consist of all functions set forth in § 1260.514, except the "final property inventory," which is delegated separately pursuant to paragraph (d)(1), above. Delegations may be made at any time, but preferably no later than when the determination to discontinue the effort is made by the technical officer (see § 1260.514(a)). ONR shall obtain the approval of the grants officer prior to initiating close-out. If the delegation is made after the work is completed, the grants officer shall provide ONR with copies of the final reports received. To expedite close-out, grants officers shall timely respond to ONR inquiries, preferably within 30 days. Grants officers shall inform individuals named on Form 1430A, Item 4(g) (A) that a delegation has been made and (B) of the requirement for timely responses to any inquiries received directly from ONR.

(e) *Other functions.* Special situations may arise in which delegation of functions other than property administration or close-out is appropriate. Such cases typically affect a limited number of grants or a single grantee. In rare instances delegation to an agency other than ONR may be in order. Procedural guidance shall be obtained from the Procurement Policy Division prior to making such delegations.

(f) *Conformance.* Existing delegations which vary substantially from the requirements of this § 1260.508 or grants for which no delegations have been made will be brought into conformance by April 1, 1985. After April 1, 1985, ONR is not required to honor nonconforming delegations.

§ 1260.509 Property management standards.

(a) *Definitions.* The following definitions apply for the purpose of this paragraph:

(1) *Real property.* Real property means land, including land improvements, structures and appurtenances thereto, but excluding movable machinery and equipment.

(2) *Personal property.* Personal property means property of any kind except real property. It may be tangible—having physical existance, or intangible—having no physical existance, such as patents, inventions, and copyrights.

(3) *Nonexpendable personal property.* Nonexpendable personal property means tangible personal property having a useful life of more than 2 years and an acquisition cost of $500 or more per unit. A recipient may use its own definition of nonexpendable personal property, provided the definition would at least include all tangible personal property as defined above. "Equipment" as used in this part, is another term for nonexpendable personal property.

(4) *Expendable personal property.* Expendable personal property refers to all tangible personal property other than nonexpendable personal property.

(5) *Excess personal property.* Excess personal property means any personal property under the control of any Federal agency which is not required for its needs and the discharge of its responsibilities, as determined by the Head thereof.

(6) *Acquisition cost of purchased nonexpendable personal property.* Acquisition costs of an item of purchased nonexpendable personal property means the net invoice unit price of the property, including the cost of modifications, attachments, accessories, or auxiliary apparatus, necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty, or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(7) *Exempt property.* Exempt property means that tangible personal property acquired in whole or in part with Federal funds and title to which is vested in the recipient without further obligation to the Federal Government, except as provided in § 1260.505(b)(2).

(b) Property management standards for nonexpendable personal property. As prescribed by OMB Circular A–110, the recipient's property management standards for nonexpendable personal property shall include the following procedural requirements:

(1) Property records shall be maintained accurately and shall include:

(i) A description of the property,

(ii) Manufacturer's serial number, model number, national stock number, or other identification number.

(iii) Source of the property, including grant or other agreement number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.

(vi) Percentage (at the end of the budget year) of Federal participation in the cost of the project or program for which the property was acquired. (Not applicable to property furnished by the Federal Government.)

(vii) Location, use and condition of the property and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Federal sponsoring agency for its share.

(2) Property owned by the Federal Government must be marked to indicate Federal ownership.

(3) A physical inventory of property shall be taken and the results reconciled with the property records at least once every 2 years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(4) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented; if the property was owned by the Federal Government, the recipient shall promptly notify the grants officer.

(5) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(6) Where the recipient is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.

(c) *Exempt Property.* Title to nonexpendable personal property acquired with project funds shall be vested in the recipient upon acquisition unless it is determined that to do so is not in furtherance of the objectives of the Federal sponsoring agency. When title is vested in the recipient, the recipient shall have no other obligation or accountability to the Federal Government for its use or disposition, except as provided in § 1260.505(b)(2).

§ 1260.510 Screening of requests for government-furnished equipment.

(a) Pursuant to NASA NMI 4000.2, "NASA Equipment Utilization," an agencywide Equipment Visibility System (EVS) has been established to identify and effect optimum use and reuse of Government-owned equipment items of high value and reuse potential. The EVS and this paragraph apply only to grantee requests for Government-furnished equipment. Requests for grantee acquired equipment are neither required nor encouraged to be screened through the EVS.

(b) When a grantee requests Government-furnished equipment of $1,000 or more, the grants officer shall screen the item through the installation's EVS coordinator. Screening requests shall list the manufacturer, model number, description, national stock number, estimated cost, and any other information deemed necessary by the EVS coordinator to properly identify the item. Urgent requests may be screened by telephone.

(c) When suitable equipment is located through the foregoing procedures, the holding installation will place a "freeze" on the item for 10 working days, pending shipping instructions. Extension of the freeze period must be requested through the EVS Coordinator if shipping instructions cannot be furnished within the required period. (See paragraph 5.307, NASA Equipment Management Manual, NHB 4200.1.)

§ 1260.511 Standards for grantee's financial management systems.

As prescribed by OMB Circular A–110, "Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organization," the grantee's financial management system shall provide for:

(a) Accurate, current, and complete disclosure of the financial results of the project.

(b) Records that identify adequately the source and application of funds for the grant or cooperative agreement. These records shall contain information pertaining to the award, authorizations, obligations, unobligated balances, assets, outlays, and income.

(c) Effective control over and accountability for all funds, property, and other assets. The grantee shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

(d) Comparison of actual outlays with obligated amounts for the grant or cooperative agreement.

(e) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the grantee. When advances are made by a letter-of-credit method, the grantee shall make drawdowns as close as possible to the time of making disbursements.

(f) Procedures for determining the reasonableness, allowability, and allocability of costs in accordance with the provisions of § 1260.405 of this part and any other terms of the grant or cooperative agreement.

(g) Accounting records that are supported by source documentation.

(h) Examinations in the form of audits or internal audits. Such audits shall be made by qualified individuals who are sufficiently independent of those authorizing the expenditure of NASA funds to produce unbiased opinions,

conclusions or judgments. They shall meet the independence criteria along the lines of Chapter 3, Part 3, of the U.S. General Accounting Office publication, "Standards for Audit of Government Organizations, Programs, Activities and Functions." These examinations are intended to ascertain the effectiveness of the financial management systems and internal procedures that have been established to meet the terms and conditions of the agreements. It is not intended that each agreement awarded to the grantee be examined. Generally, examinations should be conducted on an organization-wide basis to test the fiscal integrity of financial transactions, as well as compliance with the terms and conditions of the NASA grants and other agreements. Such tests would include an appropriate sampling of NASA agreements. Examinations will be conducted with reasonable frequency, on a continuing basis or at scheduled intervals, usually annually, but not less frequently than every 2 years. The frequency of these examinations shall depend upon the nature, size, and the complexity of the activity. These examinations do not relieve the cognizant Federal audit agency of its audit responsibilities, but may affect the frequency and scope of such audits.

(i) A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

§ 1260.512 Procurement standards.

As prescribed by OMB Circular A-110, the grantee's procurement practices shall be subject to the following standards:

(a) The grantee shall maintain a code of standards of conduct that shall govern the performance of its officers, employees or agents engaged in the awarding and administration of contracts using NASA funds. No employee, officer, or agent shall participate in the selection, award, or administration of a contract in which NASA funds are used, where, to his or her knowledge, there exists a financial interest on the part of (1) that person, (2) that person's immediate family or partners, or (3) any organization in which that person or an immediate family member or partner has a financial interest or with whom he or she is negotiating or has any arrangement concerning prospective employment. The grantee's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. Such standards shall provide for disciplinary actions to be applied for violation of such standards by the recipients' officers, employees, or agents.

(b) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The grantee should be alert to organizational conflicts of interest or noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids, or requests for proposals should be excluded from competing for such procurements, except when the grantor agency gives approval to a grantee's request to waive this requirement for a particular procurement. Awards shall be made to the holder/offeror whose bid/offer is responsive to the solicitation and is most advantageous to the grantee—price and other factors considered. Solicitations shall clearly set forth all requirements that the bidder/offeror must fulfull in order for the bid/offer to be evaluated by the grantee. Any and all bids/offers may be rejected when it is in the grantee's interest to do so.

(c) The grantee shall establish procurement procedures that provide for, at a minimum, the following procedural requirements:

(1) Proposed procurement actions shall follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(2) Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such a description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" descriptions may be used as a means to define the performance or other salient requirements of a procurement and, when so used, the specific features of the named brand which must be met by bidders/offerors shall be specified.

(3) Positive efforts shall be made by the grantee to utilize small and disadvantaged business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts utilizing NASA funds.

(4) The types of procuring instruments used, e.g., fixed-price contracts, cost reimbursable contracts, purchase orders, incentive contracts, shall be determined by the grantee but must be appropriate for the particular procurement and for promoting the best interest of the program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(5) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, and accessibility to other necessary resources.

(6) Some form of price or cost analysis should be made in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability, and allowability.

(7) Procurement records and files for purchases in excess of $10,000 shall include the following:

(i) Basis for contractor selection;

(ii) Justification for lack of competition when competitive bids or offers are not obtained;

(iii) Basis for award, cost, or price.

(8) A system of contract administration shall be maintained to ensure contractor conformance with terms, conditions, and specifications of the contract, and to ensure adequate and timely follow-up of all purchases.

(d) The grantee shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. These provisions shall also be applied to subcontracts.

(1) Contracts in excess of $10,000 shall contain contractual provisions or conditions that will allow for administrative, contractual, or legal remedies in instances in which contractors violate or breach contract terms and provide for such remedial actions as may be appropriate.

(2) All contracts in excess of $10,000 shall contain suitable provisions for termination by the grantee, including the manner by which termination will be affected, and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default, as well as conditions where the contract may be

terminated because of circumstances beyond the control of the contractor.

(3) All contracts awarded by grantees and their contractors or subgrantees having a value of more than $10,000 shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR Part 60).

(4) All negotiated contracts (except those of $10,000 or less) awarded by grantees shall include a provision to the effect that the grantee, NASA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific project, for the purpose of making audits, examinations excerpts, and transcriptions.

§ 1260.514 Closeout procedures.

The closeout of a grant or cooperative agreement is the process by which NASA determines that all applicable administrative actions and all required work under the instrument have been completed by the Grantee and NASA. Close-out procedures consist of the following steps:

(a) *Initiation.* As a basis for close-out initiation, the grants officer shall determine from the NASA technical officer that work under a particular grant will not be continued or is completed. Close-out should be initiated within 90 days of this determination. The Grantee will be given advance notification of pending close-out and reminded of the final documentation required. To the extent practicable, such notification will be made prior to the grant's ending date.

(b) *Reports submission.* The grants officer will ensure that all required final reports have been received by the appropriate NASA offices. Specifically:

(1) Final Technical Report (see §§ 1260.401(e)–(g) and 1260.605(b)).

(2) Final Report of Inventions and Subcontracts (see §§ 1260.209(d), 1260.401(c), and 1260.605(b) and Exhibit G(f)(5)).

(3) Final Financial Report (see §§ 1260.406(a), 1260.603 and 1260.605(c)).

(4) Final Property Inventory (see §§ 1260.408(f), 1260.505, and 1260.604). The final reports should normally be obtained within 90 days of completion of the effort; however, NASA may authorize additional time for this purpose.

(c) *Reports certification.* The grants officer will obtain from the appropriate NASA reports recipients' written certification that the above-noted reports are satisfactory and that all actions relating to them have been completed, or will assist a requesting office in achieving this condition. In reviewing the certifications for completeness of actions, note that:

(1) If there are excess funds, the grantee is required (OMB Circular A–110) to immediately refund any balance of unobligated (unencumbered) cash that NASA has advanced or paid. Alternately, NASA shall make prompt payments for any remaining allowable reimbursable costs under the agreement being closed out.

(2) Final audit of NASA grants normally occurs as a part of scheduled overall audits performed by the cognizant audit agency. Therefore, requests for audit of specific grants in conjunction with close-out are generally unnecessary and should be reserved for unusual circumstances. In any event, if a final audit has not been performed prior to the close-out of the grant or cooperative agreement, NASA shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from any subsequent audit.

(3) The property certification should indicate that disposal of any remaining Government property has been made as directed and that NASA has been compensated for any residual inventory (see § 1260.408(c)–(f)). Upon receipt of all four certifications, a grant is considered to be administratively complete. Close-out may be cited as the date the grants officer subsequently documents the file that all actions required by this section and by internal installation procedures have in her or his judgement been satisfactorily completed and that no further actions are necessary.

(d) *Prohibitions.* Forms, procedures, or requirementsts (regardless of modifications) applicable to contracts shall not be used for Grants unless otherwise authorized in this part. Grantees shall not be requested to complete forms or supply information other than normally encompassed in (b), above, except in unusual situations. Any general exception requires a deviation (§ 1260.106).

§ 1260.515 Novation and change of name agreements.

All novation agreements and change of name agreements of the grantee, prior to execution, shall be reviewed by General Counsel for legal sufficiency. FAR/NFS, 48 CFR Subparts 42.12 and 1842.12, shall be followed for general guidance. Where possible, novation is preferable to termination followed by a new award or any other procedure which causes unnecessary paperwork or disrupts on-going research efforts.

§ 1260.516 Foreign travel.

(a) Foreign travel is travel outside of the United States, its territories and possessions, and Canada. For grantees not situated in the aforementioned areas, it is travel outside of the grantee's country.

(b) Prior approval by the grants officer is required for charging the cost of foreign travel to a NASA grant. Review and approval are needed on a case-by-case basis for each specific trip, even when an approved proposal anticipated a foreign travel requirement.

(c) Travel charges may be approved when the travel is clearly in the best interests of NASA. The following criteria shall be observed in considering travel requests:

(1) Foreign travel costs by grantee personnel may be approved and charged to NASA grants for presentation of papers at meetings, conferences, or symposia; participation in meetings, conferences, or symposia as session chairpersons, discussion leaders, special invitees, or official staff members of the sponsoring group; "on-site" field work; and, in exceptionally meritorious cases, visits to scientific or technical organizations and attendance at international conferences when the travel is related to work under a NASA grant.

(2) Foreign travel costs ordinarily will not be approved for the sole purpose of visting or attending meetings, unless fully warranted by clear and recognizable direct benefits to the project; meetings of national (as distinguished from international) bodies, unless the travel is constructively associated with other approved goals, or foreign meetings that are predominantly American in either attendance or presented papers.

(3) NASA normally will pay the cost of foreign travel to present results of NASA-funded studies only if (i) the results have been previously reported to NASA and (ii) the presentation will be before an international conference or symposium having substantial multinational representation. (Where these criteria are not met, see NMI 2220.2.)

(4) Certified air carriers, if available, will be used in adherence with the guidelines of Section 5 of the International Air Transportation Act of 1974.

(d) Allowability of foreign travel costs normally will not be contingent on prior review or approval of papers to be presented, unless a special condition which specifically requires such review and approval (see § 1260.420(d)) has been appended to the grant.

(e) The traveler or traveler's organization will be responsibile for the cost of travel for which approval has not been obtained.

(f) The following procedures will be followed:

(1) Requests for foreign travel authorizations under NASA grants are subject to initial consideration by the NASA Technical Officer, to policy overview by the International Affairs Division, and to approval by the grants officer.

(2) It is the responsibility of the Technical Officer to provide the grants officer with information establishing whether or not the individual travel requests are consistent with the criteria stated in paragraph (c) above.

(3) The International Affairs Division is responsible for reviewing and concurring in travel to Communist areas. For foreign travel that involves any foreign area studies—political, programmatic, sociological or site surveys, geological studies, the collection of natural specimens, or similar activities—approval or concurrence of the foreign government involved must be obtained through the International Affairs Division.

(4) The Grants Officer is responsible for notifying the requestor, in writing, whether or not the travel request has been approved and, if it is approved, will request a brief technical trip report. A copy of the approved request and trip report will be provided to the International Affairs Division.

Subpart 6—Reports

§ 1260.600 General.

This subpart prescribes reports designed to provide records and statistics for management purposes and to comply with statutory requirements.

§ 1260.601 Individual procurement action report (NASA Form 507).

The Individual Procurement Action Report (NASA Form 507) is designed to provide essential procurement records and statistics through a single, uniform reporting program as a basis for required recurring and special reports to the President, the Congress, the Department of Labor, the Office of Emergency Preparedness, the General Accounting Office, the Small Business Administration, and other Federal agencies. The preparation and utilization of NASA Form 507 has been made an integral part of the agencywide system for the recording and reporting of financial and contractual status (FACS). Complete instructions covering the operation of this system are contained in the NASA Financial Management Manual and NFS, 48 CFR 1804.670.

§ 1260.602 Committee on academic science and engineering (CASE) reports.

NASA Form 1356, "Committee on Academic Science and Engineering (C.A.S.E.) Report on College and University Projects" is either submitted with funded procurement requests pursuant to NMI 5101.12, "Policy and Procedures Concerning Procurement," or in the case of certain non-funded actions, initiated by the procuring office. All NASA Forms 1356 will be completed, checked, and promptly forwarded to the Procurement Management Division, NASA Headquarters (Code HM), in accordance with the instructions on the form and NFS, 48 CFR 1804.676.

§ 1260.603 Federal cash transactions report (SF 272).

Federal Cash Transactions Reports (SF 272) will be submitted quarterly as a condition of receiving advance payments, in accordance with instructions to be provided by the Financial Management Office of the installation which issued the grant. Any questions regarding payment should be directed to the Financial Management Officer of that installation.

§ 1260.604 Annual inventory listing of government-owned property.

As provided in § 1260.408(f) of this part, an annual inventory listing of Government-owned property will be submitted by July 31 of each year, including the information specified in § 1260.509 and beginning and ending dollar value totals for the reporting period. In the final inventory, the Grantee shall account for any property acquired with Federal funds, or received from the Government, in accordance with the provisions of § 1260.408 of this part.

§ 1260.605 Status and final reports.

(a) Five copies of a brief, informal, Semiannual Status Report, including a concise statement of the research accomplished during the report period, shall be submitted. At the specific request of the Technical Officer, this requirement may be modified by use of the following special condition:

Reports Substitution (July 1984)

Technical reports may be substituted for the required Semi-annual Status Reports. The title page of such reports shall clearly indicate that the substitution has been made, showing the period covered by the originally required status report.

(b) Upon completion of the research, the Grantee shall submit five copies of a final technical report which summarizes the results of the entire project. Citation of publications resulting from the research, or abstracts thereof, may serve as all or part of this final report. Research results not intended for publication in technical journals must be in the format prescribed for NASA Technical Notes. In addition, the Grantee will report to NASA whether or not any inventions required to be reported under the grant or cooperative agreement have been made in the performance of work thereunder.

(c) A properly certified final Federal Cash Transactions Report, SF 272, is required for each grant and cooperative agreement. Standard Forms 272 for regular quarterly reporting as provided in § 1260.603, and for a final report are forwarded to the business office of the grantee institution, together with the copy of the instrument; additional forms may be requested. Two copies of the final SF 272 should be forwarded to NASA within 90 calendar days after work under the grant or cooperative agreement has been completed.

Appendix—Listing of Exhibits

Exhibit A—Delegation of Administration—Figure 1, Property Administration (NASA Form 1430A) and Figure 2, Closeout (NASA Form 1430A).

Exhibit B—Research Grant Award (NASA Form 1463).

Exhibit C—Cooperative Agreement (NASA Form 1562).

Exhibit D—NASA Provisions for Research Grants and Cooperative Agreements (NASA Form 1463A).

Exhibit E—Step Funding Illustration.

Exhibit F—Regulatory Bases.

The preceding list of exhibits are included in the NASA Grant and Cooperative Agreement Handbook which may be obtained by the Grantee as set forth in § 1260.309.

Exhibit G.—Patent Rights—Retention by the Grantee (April 1984)

(a) *Definitions.*—(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

(2) "Subject Invention" means any invention of the Grantee conceived or first actually reduced to practice in the performance of work under this grant.

(3) "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process

or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(4) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) "Small Business Firm" means a domestic small business concern as defined at section 2 of Pub. L. 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement, and subcontracting at 13 CFR 121.3–8 and 13 CFR 121.3–13, respectively, will be used.

(6) "Nonprofit Organization" means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501 (c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any domestic nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(b) *Allocation of principal rights.* The Grantee may retain the entire right, title, and interest throughout the world to each Subject Invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any Subject Invention in which the Grantee retains title, the Federal Government shall have a non-exclusive, non-transferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the Subject Invention throughout the world.

(c) Invention Disclosure, Election of Title, and Filing of Patent Applications by Grantee.

(1) The Grantee will disclose each Subject Invention to NASA within 2 months after the inventor discloses it in writing to Grantee personnel responsible for patent matters. The disclosure to NASA shall be in the form of a written report and shall identify the grant under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to NASA, the Grantee will promptly notify NASA of the acceptance of any manuscript describing the invention for the publication or of any on sale or public use planned by the Grantee.

(2) The Grantee will elect in writing whether or not to retain title to any such invention by notifying NASA within 12 months of disclosure to Grantee personnel responsible for patent matters; provided that in case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by NASA to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Grantee will file its initial patent application on an elected invention within 2 years after election or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after publication, on sale, or public use. The Grantee will file patent applications in additional countries within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to NASA, election, and filing may, at the discretion of NASA, be granted.

(d) Conditions When the Government May Obtain Title. The Grantee will convey to NASA, upon written request, title to any Subject Invention:

(1) If the Grantee fails to disclose or elect the Subject Invention within the times specified in (c) above, or elects not to retain title. NASA may only request title within 60 days after learning of the Grantee's failure to report or elect within the specified times.

(2) In those countries in which the Grantee fails to file patent applications within the time specified in (c) above; provided, however, that if the Grantee has filed a patent application in a country after the times specified in (c), above, but prior to its receipt of the written request of NASA, the Grantee shall continue to retain title in that country.

(3) In any country in which the Grantee decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a Subject Invention.

(e) *Minimum rights to grantee.*—(1) The Grantee will retain a nonexclusive, royalty-free license throughout the world in each Subject Invention to which NASA obtains title, except if the Grantee fails to disclose the Subject Invention within the times specified in (c), above. The Grantee's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Grantee is a party and includes the right to grant sublicenses of the same scope to the extent the Grantee was legally obligated to do so at the time the grant was awarded. The license is transferable only with the approval of NASA, except when transferred to the successor of that part of the Grantee's business to which the invention pertains.

(2) The Grantee's domestic license may be revoked or modified by NASA to the extent necessary to achieve expeditious practical application of the Subject Invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in NASA's Patent Licensing Regulation, 14 CFR 1245.2. This license will not be revoked in that field of use or the geographical areas in which the Grantee has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of NASA to the extent the Grantee, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, NASA will furnish the Grantee a written notice of its intention to revoke or modify the license, and the Grantee will be allowed 30 days (or such time as may be authorized by NASA for good cause shown by the Grantee) after the notice to show cause why the license should not be revoked or modified. The Grantee has the right to appeal, in accordance with NASA Patent Licensing Regulation, 14 CFR 1245.2, any decision concerning the revocation or modification of its license.

(f) *Grantee Action to Protect the Government's Interest.*—(1) The Grantee agrees to execute or to have executed and promptly deliver to NASA all instruments necessary to—

(i) Establish or confirm the rights the Government has throughout the world in those Subject Inventions to which the Grantee elects to retain title, and

(ii) Convey title to NASA when requested under (d) above, and to enable the Government to obtain patent protection throughout the world in that Subject Invention.

(2) The Grantee agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Grantee each Subject Invention made under grant in order that the Grantee can comply with the disclosure provisions of (c) above, and to execute all papers necessary to file patent applications on Subject Inventions and to establish the Government's rights in the Subject Inventions. This disclosure format should require, as a minimum, the information required by (c)(1) above. The Grantee shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Grantee will notify NASA of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Grantee agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a Subject Invention, the following statement: "This invention was made with Government support under (identify the grant) awarded by NASA. The Government has certain rights in this invention."

(5) The Grantee shall furnish the Grants Officer:

(i) Interim reports every twelve (12) months from the date of this grant, listing all Subject Inventions required to be disclosed during that period, or stating that there were no such Subject Inventions;

(ii) A final report prior to close out of the grant listing (A) all Subject Inventions or stating that there were none and (B) all subcontracts containing a patent rights clause or stating that there were none;

(iii) Notification of all subcontracts for experimental, developmental, research, design or engineering work and identification of the patent rights clause (either the "New Technology" clause as required by NASA FAR Supplement, 48 CFR 1827.373(b), or the "Patent Rights—Retention by the Grantee (Short Form)" clause as required by NASA FAR Supplement, 48 CFR 1827.373(a), and a copy of the subcontract upon request;

(iv) Upon request, the filing date, serial number, and title; a copy of the patent application (including an English translation when available); and a patent number and issue date for any Subject Invention in any country in which the Grantee has applied for patents.

(g) *Subcontracts.*—(1) The Grantee will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or nonprofit organization. The subcontractor will retain all rights provided for the Grantee in this clause, and the Grantee will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's Subject Inventions.

(2) The Grantee will include in all other subcontracts, regardless of tier, for experimental, developmental, research, design or engineering work the patent rights clause as required by NASA FAR Supplement, 48 CFR 1827.373(b).

(3) In the case of subcontracts, at any tier, when the prime award with NASA was a contract (but not a grant or cooperative agreement), NASA, subcontractor, and the contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and NASA with respect to those matters covered by this clause.

(h) *Reporting on Utilization of Subject Inventions.* The Grantee agrees to submit on request periodic reports no more frequently than annually on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by the Grantee or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Grantee, and such other data and information as NASA may reasonably specify. The Grantee also agrees to provide additional reports as may be requested by NASA in connection with any march-in proceeding undertaken by NASA in accordance with paragraph (j) of this clause. To the extent data or information supplied under this section is considered by the Grantee, its licensee or assignee to be privileged and confidential and is so marked, NASA agrees that, to the extent permitted by Law, it will not disclose such information to persons outside the Government.

(i) *Preference for United States Industry.* Notwithstanding any other provision of this clause, the Grantee agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any Subject Invention in the United States unless such person agrees that any products embodying the Subject Invention or produced through the use of the Subject Invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by NASA upon a showing by the Grantee or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in Rights.* The Grantee agrees that with respect to any Subject Invention in which it has acquired title, NASA has the right in accordance with the procedures established by the NASA Procurement Regulation which are consistent with OMB CIRCULAR A–124 to require the Grantee, an assignee, or exclusive licensee of a Subject Invention to grant a non-exclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Grantee, assignee, or exclusive licensee refuses such a request, NASA has the right to grant such a license itself if NASA determines that:

(1) Such action is necessary because the Grantee or assignee has not taken, or is not expected to take, within a reasonable time, effective steps to achieve practical application of the Subject Invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Grantee, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations, and such requirements are not reasonably satisfied by the Grantee, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any Subject Invention in the United States is in breach of such agreement.

(k) *Special Provisions for Grants with Nonprofit Organizations.* If the Grantee is a nonprofit organization, it agrees that:

(1) Rights to a Subject Invention in the United States may not be assigned without the approval of NASA, except where such assignment is made to an organization which has as one of its primary functions the management of inventions and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention provided that such assignee will be subject to the same provisions as the Grantee;

(2) The Grantee may not grant exclusive licenses under United States patents or patent applications in Subject Inventions to persons other than small business firms for a period in excess of the earlier of—

(i) Five years from first commercial sale or use of the invention; or

(ii) Eight years from the date of the exclusive license excepting that time before regulatory agencies necessary to obtain premarket clearance, unless on a case-by-case basis, NASA approves a longer exclusive license. If exclusive field of use licenses are granted, commercial sale or use in one field of use will not be deemed commercial sale or use as to other fields of use, and a first commercial sale or use with respect to a product of the invention will not be deemed to end the exclusive period to different subsequent products covered by the invention.

(3) The Grantee will share any royalties collected on a Subject Invention with the inventor; and

(4) The balance of any royalties or income earned by the Grantee with respect to Subject Inventions, after payment of expenses (including payments to inventors) incidental to the administration of Subject Inventions, will be utilized for the support of scientific research or education.

(l) *Communications.* NASA shall designate a New Technology Representative and a Patent Representative to be the central point of contact for administering this clause in accordance with the procedures of NASA FAR Supplement, 48 CFR 1827.373(e). The Grantee shall include such designation in all subcontracts containing either this clause or the clause required by NASA FAR SUPPLEMENT, 48 CFR 1827.373(b). The Grantee will forward a copy of all disclosures of Subject Inventions, election of rights, interim and final reports, and other reports and information required by this clause to the Installation Patent Counsel in addition to furnishing such information to the Grants Officer.

[FR Doc. 86–988 Filed 1–16–86; 8:45 am]

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federal register

Friday
January 17, 1986

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 1 et al.
Federal Acquisition Regulation; Final Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 4, 5, 6, 8, 9, 10, 13, 14, 15, 17, 19, 22, 25, 27, 28, 30, 31, 32, 36, 42, 45, 46, 47, 48, 49, 52, and 53

[Federal Acquisition Circular 84-12]

Federal Acquisition Regulation

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular (FAC) 84-12 amends the Federal Acquisition Regulation (FAR) with respect to the following: Addition of Department of Treasury as Member to the Civilian Agency Acquisition Council; Definition of "Classified Information"; Conversion of Order of Precedence Provisions to Clauses; Small Business Size Standards; Correction to Cross Reference to Trade Agreements Act; Foreign Selling Costs; Materials Reimbursement Authority Under FAR 52.246-6 and 52.232-7; Evaluation of Contractor Performance; Threshold Correction (45.105(b)(4)); Revision to FAR 52.245-5(e); Revision of Standard Form (SF) 279 to Implement CICA; and, Editorial Corrections.

EFFECTIVE DATE: January 20, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523-4755, Room 4041, GS Bldg., Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

Public Comments

Public comments have not been solicited with respect to the revisions in FAC 84-12 since such revisions either (a) do not alter the substantive meaning of any coverage in the FAR having a significant impact contractors or offerors, or (b) do not have a significant effect beyond agency internal operating procedures.

Regulatory Flexibility Act

Pursuant to the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), it has been determined that this final rule will not have a significant economic impact on a substantial number of small entities because this final rule does not involve any issues requiring public comment, as defined in the Regulatory Flexibility Act, and therefore, no regulatory flexibility analysis has been prepared.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not contain collection requirements which require the approval of OMB under 44 U.S.C. 301 et seq.

List of Subjects in 48 CFR Parts 1, 2, 4, 5, 6, 8, 9, 10, 13, 14, 15, 17, 19, 22, 25, 27, 28, 30, 31, 32, 36, 42, 45, 46, 47, 48, 49, 52, and 53

Government procurement.

Dated: January 14, 1986.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Federal Acquisition Circular

[Number 84-12]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-12 is effective January 20, 1986.

Eleanor R. Spector,

Deputy Assistant Secretary of Defense for Procurement.

Terence C. Golden,

Administrator, General Services Administration.

S.J. Evans,

Assistant Administrator for Procurement.

Federal Acquisition Circular (FAC) 84-12 amends the Federal Acquisition Regulation (FAR) as specified below. The following is a summary of the amendments:

Item I—Addition of Department of the Treasury as Member to the Civilian Agency Acquisition Council

FAR 1.201-1 is amended to add the Department of the Treasury in the listing of members of the Civilian Agency Acquisition Council.

Item II—Definition of "Classified Information"

This change to FAR 4.401 revises the definition of the term "classified information" to clarify the meaning of the word "information", and reference Executive Order 12356. This change will remove technical inconsistencies that are not substantive in nature.

Item III— Conversion of Order of Precedence Provisions to Clauses

Changes to FAR 14.201-7 and 15-406-3 are made to implement the joint Council conclusion that FAR provisions concerning order of precedence should be converted to contract clauses.

Item IV—Small Business Size Standards

The Small Business Administration (SBA) prescribed detailed definitions for small business concerns (size standards) in 13 CFR Part 121, as authorized by the Small Business Act (15 U.S.C. 632). FAR Part 19 is revised to incorporate revised size standards coverage and to add FAR 19.001, Definitions. These changes are necessary to accommodate the Small Business Administration's revisions to 13 CFR Part 121, as published in the **Federal Register** on February 9, 1984 (49 FR 5024).

This Item supersedes and cancels Item V of FAC 84-1, dated March 26, 1984.

Item V—Correction to Cross Reference to Trade Agreements Act

FAR 25.109(d) prescribes the use of the clause at 52.225-3, and is amended to conform with drafting conventions.

Item VI—Foreign Selling Costs

The FAR 31.205-38 revision is necessary to ensure that foreign selling costs are not reimbursed on contracts for U.S. Government requirements, and to comply with the FY 1985 Continuing Resolution Authority, Section 8102.

Item VII—Materials Reimbursement Authority Under FAR 52.246-6 and 52.232-7

This change is to amend the FAR to correct an inappropriate cross reference in the contract clauses entitled Payments Under Time-and-Materials and Labor-Hour Contracts, and provide a necessary alternate to the clause to tailor it for use in labor-hour contracts.

Item VIII—Evaluation of Contractor Performance

The change to FAR 36.201(a)(1) provides the same treatment of Standard Form (SF) 1420, Performance Evaluation (Construction), that the FAR provides for SF 1421, Performance Evaluation (Architect-Engineer).

Item IX—Threshold Correction (45.105(b)(4))

The change to FAR 45.105(b)(4) is to bring the dollar ceiling specified with respect to records of Government property (in FAR 45.105(b)(4)) into alignment with the corresponding dollar ceiling in the pertinent contract clause prescription in FAR 45.106(d)(1).

Item X—Revision to FAR 52-245-5(e)

This editorial change has been made to eliminate the redundancy from FAR clause 52.245-5(e), and to make the language identical to FAR clause 52-

245-2(e)(1) where the same policy is expressed.

Item XI—Revision of Standard Form (SF) 279 to Implement CICA

The change to FAR 53.301-279 provides an illustration of the April 1985 edition of SF 279.

Item XII—Editorial Corrections

Editorial changes are included to reflect the recodifications of Title 31 of the U.S. Code, as well as minor editorial corrections.

Therefore, 48 CFR Chapter 1 is amended as set forth below.

1. The authority citation for 48 CFR Parts 1, 2, 4, 5, 6, 8, 9, 10, 13, 14, 15, 17, 19, 22, 25, 27, 28, 30, 31, 32, 36, 42, 45, 46, 47, 48, 49, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.201-1 [Amended]

2. Section 1.201-1 is amended by removing in paragraph (b)(1) the words "and Transportation" and alphabetically inserting "Transportation, and Treasury,".

PART 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

3. Section 2.101 is amended by removing in the definition "Executive agency" the reference "31 U.S.C. 846" and inserting in its place the reference "31 U.S.C. 9101".

PART 4—ADMINISTRATIVE MATTERS

4. Section 4.401 is amended by revising the definition "Classified information" to read as follows:

4.401 Definitions.

* * * * *

"Classified information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced by or for, or under the control of the United States Government, and determined pursuant to Executive Order 12356, April 2, 1982 (47 FR 14874, April 6, 1982) or prior orders to require protection against unauthorized disclosure, and is so designated.

4.703 [Amended]

5. Section 4.703 is amended by removing in paragraph (b)(1) the reference "4.702(a)" and inserting in its place the reference "4.703(a)".

PART 5—PUBLICIZING CONTRACT ACTIONS

PART 6—COMPETITION REQUIREMENTS

6. Part 5 is transferred from Subchapter A to Subchapter B. Part 6 added at 50 FR 1729, January 11, 1985, is redesignated from Subchapter A to Subchapter B.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.404-2 [Amended]

7. Section 8.404-2 is amended by removing in paragraph (a)(4) the reference "31 U.S.C. 856" and inserting in its place the reference "31 U.S.C. 9101".

8.408 [Amended]

8. Section 8.408 is amended by removing in paragraph (c) the reference "Subpart 46.6" and inserting in its place the reference "Subpart 46.7".

PART 9—CONTRACTOR QUALIFICATIONS

9.407-3 [Amended]

9. Section 9.407-3 is amended by removing in paragraph (c)(2) the words "proceeding as may ensure" and inserting in their place the words "proceedings as may ensue".

8.407-4 [Amended]

10. Section 9.407-4 is amended by removing in paragraph (a) the words "unless proceedings".

9.701 [Amended]

11. Section 9.701 is amended by removing in the introductory text of the definition "Pool" the reference "19.101" and inserting in its place the reference "19.001".

PART 10—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

10.007 [Amended]

12. Section 10.007 is amended by removing in the first sentence of paragraph (a)(4) the reference "(FM)" and inserting in its place the reference "(FCM)".

PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

13.105 [Amended]

13. Section 13.105 is amended by removing the period at the end of paragraph (a) and inserting the words "established by Section 15(j) of the Small Business Act (15 U.S.C. 644(j)) (see Pub. L. 95-507).".

13.507 [Amended]

14. Section 13.507 is amended by removing in paragraph (c) the reference "31 U.S.C. 530" and inserting in its place the reference "31 U.S.C. 3324(d)(2)".

PART 14—SEALED BIDDING

15. Section 14.201-6 is amended by revising paragraph (f) to read as follows:

14.201-6 Solicitation provisions.

* * * * *

(f) The contracting officer shall insert in invitations for bids to which the uniform contract format applies, the provision at 52.214-12, Preparation of Bids.

* * * * *

16. Section 14.201-7 is amended by adding paragraph (d) to read as follows:

14.201-7 Contract Clauses.

* * * * *

(d) When contracting by sealed bidding, the contracting officer shall insert the clause at 52.214-29, Order of Precedence—Sealed Bidding, in solicitations and contracts to which the uniform contract format applies.

14.404-2 [Amended]

17. Section 14.404-2 is amended by removing in paragraph (k) the reference "31 U.S.C. 203" and inserting in its place the reference "31 U.S.C. 3727".

14.503-1 [Amended]

18. Section 14.503-1 is amended by inserting a period in the third sentence of paragraph (i), following the word "negotiation", and deleting the remainder of the sentence.

PART 15—CONTRACTING BY NEGOTIATION

19. Section 15.406-3 is revised to read as follows:

15.406-3 Part II—Contract clauses.

(a) *Section I, Contract clauses.* The contracting officer shall include in this section the clauses required by law or by this regulation and any additional clauses expected to be included in any resulting contract, if these clauses are not required in any other section of the uniform contract format.

(b) When contracting by negotiation, the contracting officer shall insert the clause at 52.215-33, Order of Precedence, in solicitations and contracts to which the uniform contract format applies.

(c) Any alteration pertaining to the contract shall be included in this section

as part of the clause at 52.252–4, Alterations in Contract. See Part 52, Solicitation Provisions and Contract Clauses. Clauses that are incorporated by reference shall be included in this section (see 52.102–1(c)).

15.407 [Amended]

20. Section 15.407 is amended by removing paragraph (f) and redesignating paragraphs (g) and (h) as paragraphs (f) and (g).

15.804–3 [Amended]

21. Section 15.804–3 is amended by inserting at the end of paragraph (e)(2) after the semicolon, the word "or".

15.1004 [Amended]

22. Section 15.1004 is amended by removing the reference "(see 14.407–8)" and inserting in its place the reference "(see Subpart 33.1)".

PART 17—SPECIAL CONTRACTING METHODS

17.102–1 [Amended]

23. Section 17.102–1 is amended by removing in the second sentence of paragraph (a) the reference "31 U.S.C. 665" and inserting in its place the reference "31 U.S.C. 1341(a)(1)".

17.103–2 [Amended]

24. Section 17.103–2 is amended by removing in paragraph (j)(1) the reference "(see 17.103–5)" and inserting in its place the reference "(see 17.105)".

17.500 [Amended]

25. Section 17.500 is amended by removing in the first sentence the reference "31 U.S.C. 686" and inserting in its place the reference "31 U.S.C. 1535".

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

26. Section 19.001 is added to read as follows:

19.001 Definitions.

"Concern," as used in this part, means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity) with a place of business located in the United States and which makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, material and/or labor, etc. "Concern" includes but is not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of making affiliation findings (see 19.101) any business entity, whether organized for profit or not, and any foreign business entity, i.e., any entity located outside the United States, shall be included.

"Determination of eligibility," as used in this part, means the written determination issued by the SBA or the Department of Labor certifying that the holder is a manufacturer or regular dealer under the Walsh-Healey Public Contracts Act (see 22.608–2(f)(2)).

"Industry," as used in this part, means all concerns primarily engaged in similar lines of activity, as listed and described in the Standard Industrial Classification (SIC) Manual.

"Small business concern" means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on government contracts, and qualified as a small business under the criteria and size standards in 13 CFR Part 121 (see 19.102). Such a concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

"Small disadvantaged business concern" means a small business concern that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock owned by one or more socially and economically disadvantaged individuals and has its management and daily business controlled by one or more such individuals.

(a) "Socially disadvantaged individuals" means individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their qualities as individuals.

(b) " Economically disadvantaged individuals" means socially disadvantaged individuals whose ability to compete in the free enterprise system is impaired due to diminished opportunities to obtain capital and credit as compared to others in the same line of business who are not socially disadvantaged. Individuals who certify that they are members of named groups (Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans) are to be considered socially and economically disadvantaged.

(1) "Asian-Indian Americans" means United States citizens whose origins are in India, Pakistan, or Bangladesh.

(2) "Asian-Pacific Americans" means United States citizens whose origins are in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands, the Northern Mariana Islands, Laos, Cambodia, or Taiwan.

(3) "Native Americans" means American Indians, Eskimos, Aleuts, and native Hawaiians.

Subpart 19.1 [Amended]

27. Subpart 19.1 is amended by removing in the title the words "Terms and".

28. Section 19.101 is amended by revising the terms "Affiliates" and "Annual receipts"; by adding the term "Number of employees"; and by removing the remainder of the terms as follows:

19.101 Explanation of terms.

"Affiliates." As used in this subpart, business concerns are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or another concern controls or has the power to control both. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships; *provided,* that restraints imposed by a franchise agreement are not considered in determining whether the franchisor controls or has the power to control the franchisee, if the franchisee has the right to profit from its effort, commensurate with ownership, and bears the risk of loss or failure. Any business entity may be found to be an affiliate, whether or not it is organized for profit or located inside the United States.

(a) *Nature of Control.* Every business concern is considered as having one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

(b) *Meaning of "party or parties."* The term "party" or "parties" includes, but is not limited to, two or more persons with an identity of interest such as members of the same family or persons with common investments in more than one concern. In determining who controls or has the power to control a concern,

persons with an identity of interest may be treated as though they were one person.

(c) *Control through stock ownership.* (1) A party is considered to control or have the power to control a concern, if the party controls or has the power to control 50 percent or more of the concern's voting stock.

(2) A party is considered to control or have the power to control a concern, even though the party owns, controls, or has the power to control less than 50 percent of the concern's voting stock, if the block of stock the party owns, controls, or has the power to control is large, as compared with any other outstanding block of stock. If two or more parties each owns, controls, or has the power to control, less than 50 percent of the voting stock of a concern, and such minority block is equal or substantially equal in size, and large as compared with any other block outstanding, there is a presumption that each such party controls or has the power to control such concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact does not exist.

(3) If a concern's voting stock is distributed other than as described above, its management (officers and directors) is deemed to be in control of such concern.

(d) *Stock options and convertible debentures.* Stock options and convertible debentures exercisable at the time or within a relatively short time after a size determination and agreements to merge in the future, are considered as having a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements are treated as though the rights held thereunder had been exercised.

(e) *Voting trusts.* If the purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may qualify as a small business within the size regulations, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not valid within the appropriate jurisdiction. However, if a voting trust is entered into for a legitimate purpose other than that described above, and it is valid within the appropriate jurisdiction, it may be considered valid for the purpose of a size determination, provided such consideration is determined to be in the best interest of the small business program.

(f) *Control through common management.* A concern may be found as controlling or having the power to control another concern when one or more of the following circumstances are found to exist, and it is reasonable to conclude that under the circumstances, such concern is directing or influencing, or has the power to direct or influence, the operation of such other concern.

(1) *Interlocking management.* Officers, directors, employees, or principal stockholders of one concern serve as a working majority of the board of directors or officers of another concern.

(2) *Common facilities.* One concern shares common office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operation, or where such concerns were formerly affiliated.

(3) *Newly organized concern.* Former officers, directors, principal stockholders, and/or key employees of one concern organize a new concern in the same or a related industry or field operation, and serve as its officers, directors, principal stockholders, and/or key employees, and one concern is furnishing or will furnish the other concern with subcontracts, financial or technical assistance, and/or facilities, whether for a fee or otherwise.

(g) *Control through contractual relationships*—(1) *Definition of a joint venture for size determination purposes.* A joint venture for size determination purposes is an association of persons and/or concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out a single specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. A joint venture is viewed as a business entity in determining power to control its management.

(2) *Joint venture—procurement and property sale assistance*—Concerns bidding on a particular procurement or property sale as joint venturers are considered as affiliated and controlling or having the power to control each other with regard to performance of the contract. Moreover, an ostensible subcontractor which is to perform primary or vital requirements of a contract may have a controlling role such to be considered a joint venturer affiliated on the contract with the prime contractor. A joint venture affiliation finding is limited to particular contracts unless the SBA size determination finds general affiliation between the parties.

(3) Where a concern is not considered as being an affiliate of a concern with which it is participating in a joint venture, it is necessary, nevertheless, in computing annual receipts, etc., for the purpose of applying size standards, to include such concern's share of the joint venture receipts (as distinguished from its share of the profits of such venture).

(4) *Franchise and license agreements.* If a concern operates or is to operate under a franchise (or a license) agreement, the following policy is applicable: In determining whether the franchisor controls or has the power to control and, therefore, is affiliated with the franchisee, the restraints imposed on a franchisee by its franchise agreement shall not be considered, provided that the franchisee has the right to profit from its effort and the risk of loss or failure, commensurate with ownership. Even though a franchisee may not be controlled by the franchisor by virtue of the contractual relationship between them, the franchisee may be controlled by the franchisor or others through common ownership or common management, in which case they would be considered as affiliated.

"Annual receipts." (a) Annual receipts of a concern which has been in business for 3 or more complete fiscal years means the annual average gross revenue of the concern taken for the last 3 fiscal years. For the purpose of this definition, gross revenue of the concern includes revenues from sales of products and services, interest, rents, fees, commissions and/or whatever other sources derived, but less returns and allowances, sales of fixed assets, interaffiliate transactions between a concern and its domestic and foreign affiliates, and taxes collected for remittance (and if due, remitted) to a third party. Such revenues shall be measured as entered on the regular books of account of the concern whether on a cash, accrual, or other basis of accounting acceptable to the U.S. Treasury Department for the purpose of supporting Federal income tax returns, except when a change in accounting method from cash to accrual or accrual to cash has taken place during such 3-year period, or when the completed contract method has been used.

(1) In any case of a change in accounting method from cash to accrual or accrual to cash, revenues for such 3-year period shall, prior to the calculation of the annual average, be restated to the accrual method. In any case, where the completed contract method has been used to account for revenues in such 3-year period, revenues must be restated

on an accrual basis using the percentage of completion method.

(2) In the case of a concern which does not keep regular books of accounts, but which is subject to U.S. Federal income taxation, "annual receipts" shall be measured as reported, or to be reported to the U.S. Treasury Department, Internal Revenue Service, for Federal income tax purposes, except that any return based on a change in accounting method or on the completed contract method of accounting must be restated as provided for in the preceding paragraphs.

(b) Annual receipts of a concern that has been in business for less than 3 complete fiscal years means its total receipts for the period it has been in business, divided by the number of weeks including fractions of a week that it has been in business, and multiplied by 52. In calculating total receipts, the definitions and adjustments related to a change of accounting method and the completed contract method of paragraph (a) above, are applicable.

"Number of employees" is a measure of the average employment of a business concern and means its average employment, including the employees of its domestic and foreign affiliates, based on the number of persons employed on a full-time, part-time, temporary, or other basis during each of the pay periods of the preceding 12 months. If a business has not been in existence for 12 months, "number of employees" means the average employment of such concern and its affiliates during the period that such concern has been in existence based on the number of persons employed during each of the pay periods of the period that such concern has been in business. If a business has acquired an affiliate during the applicable 12-month period, it is necessary, in computing the applicant's number of employees, to include the affiliate's number of employees during the entire period, rather than only its employees during the period in which it has been an affiliate. The employees of a former affiliate are not included, even if such concern had been an affiliate during a portion of the period.

29. Section 19.102 is amended by removing the second sentence of paragraph (a) and inserting in its place the words "(See 13 CFR 121.)" and by revising paragraphs (f) and (g) to read as follows:

19.102 Size standards.

* * * * *

(f) Any concern which submits a bid or offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is deemed to be a small business when—

(1) In the case of Government acquisitions set aside for small businesses, such nonmanufacturer must furnish in the performance of the contract the product of a small business manufacturer or producer, which end product must be manufactured or produced in the United States.

The term "nonmanufacture" includes a concern which can manufacture or produce the product referred to in the specific acquisition but does not do so in connection with that acquisition. For size determination purposes there can be only one manufacturer of the end item being procured. The manufacturer of the end item being acquired is the concern which, with its own forces, transforms inorganic or organic substances including raw materials and/or miscellaneous parts or components into such end item. Whether a bidder on a particular acquisition is the manufacturer or a nonmanufacturer for the purpose of a size determination need not be consistent with whether such concern is or is not a manufacturer for the purpose of the Walsh-Healey Act.

(2) A concern which purchases items and packages them into a kit is considered to be a nonmanufacturer small business and can qualify as such for a given acquisition if it meets the size qualifications of a small nonmanufacturer for the acquisition, and if more than 50 percent of the total value of the kit and its contents is accounted for by items manufactured by small business.

(3) If the acquisition is subject to and is actually procured under "small purchase procedures", such nonmanufacturer may furnish any domestically produced or manufactured product.

(4) For the purpose of receiving a Certificate of Competency on an unrestricted acquisition, a small business nonmanufacturer may furnish any domestically produced or manufactured product. The applicable size standard shall be that of the wholesale industry of the item being acquired.

(g) The industry size standards are set forth in the following table. The table column labeled "SIC" follows the standard industrial classification code as published by the Government in the Standard Industrial Classification Manual. The Manual is intended to cover the entire field of economic activities. It classifies and defines activities by industry categories and is the source used by SBA as a guide in defining industries for size standards. The number of employees or annual receipts indicates the maximum allowed for a concern, including its affiliates, to be considered small.

BILLING CODE 6820-61-M

FAC 84—12 JANUARY 20, 1986

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS 19.102

SIC	Description	Size standards in number of employees or millions of dollars
		Final Rule
Division A—Agriculture		
Major Group 01—Agricultural Production—Crops		
0111-0191	Agricultural Production—Crops, except 0181.	[1] $0.1
0181	Ornamental Floriculture and Nursery Products.	$0.5
Major Group 02—Agricultural Production—Livestock		
0211	Beef Cattle Feedlots (Custom)	$1.0
0212-0291	Agricultural Production—Livestock, except 0211 and 0252.	$0.1
0252	Chicken Eggs	$1.0
Major Group 07—Agricultural Services		
All SIC's		$3.5
Major Group 08—Forestry		
All SIC's		$3.5
Major Group 09—Fishing, Hunting, and Trapping		
All SIC's		$2.0
Division B—Mining		
Major Group 10—Metal Mining		
1011	Iron Ores	500
1021	Copper Ores	500
1031	Lead and Zinc Ores	500
1041	Gold Ores	500
1044	Silver Ores	500
1051	Bauxite and Other Aluminum Ores.	500
1061	Ferroalloy Ores, Except VAnadium.	500
1081	Metal Mining Services	$3.5
1092	Mercury Ores	500
1094	Uranium-Radium-Vanadium Ores.	500
1099	Metal Ores, Not Elsewhere Classified.	500
Major Group 11—Anthracite Mining		
1111	Anthracite	500
1112	Anthracite Mining Services	$3.5
Major Group 12—Bituminous Coal and Lignite Mining		
1211	Bituminous Coal and Lignite	500
1213	Bituminous Coal and Lignite Mining Services.	$3.5
Major Group 13—Oil and Gas Extraction		
1311	Crude Petroleum and Natural Gas.	500
1321	Natural Gas Liquids	500
1381	Drilling Oil and Gas Wells	500
1382	Oil and Gas Field Exploration Services.	$3.5
1389	Oil and Gas Field Services, N.E.C.	$3.5
Major Group 14]Mining and Quarrying of Non-Metallic Minerals, Except Fuels		
1411	Dimension Stone	500
1422	Crushed and Broken Limestone.	500
1423	Crushed and Broken Granite	500
1429	Crushed and Broken Stone, N.E.C.	500
1442	Construction Sand and Gravel	500
1446	Industrial Sand	500
1452	Bentonite	500
1453	Fire Clay	500
1454	Fuller's Earth	500
1455	Kaolin and Ball Clay	500
1459	Clay, Ceramic, and Refractory Minerals, N.E.C.	500
1472	Barite	500
1473	Fluorspar	500
1474	Potash, Soda, and Borate Minerals.	500
1475	Phosphate Rock	500
1476	Rock Salt	500
1477	Sulfur	500
1479	Chemical and Fertilizer Mineral Mining, N.E.C.	500
1481	Nonmetallic Minerals (Except Fuels) Services.	$3.5
1492	Gypsum	500
1496	Talc, Soapstone, and Pyrophyllite.	500
1499	Miscellaneous Nonmetallic Minerals, N.E.C.	500
Division C—Construction		
Major Group 15—Building Construction—General Contractors and Operative Builders		
1521	General Contractors—Single-Family House.	$17.0
1522	General Contractors—Residential Buildings, Other Than Single-Family.	$17.0
1531	Operative Builders	$17.0
1541	General Contractors—Industrial Buildings and Warehouses.	$17.0
1542	General Contractors—Nonresidential Buildings, Other Than Industrial Buildings and Warehouse.	$17.0
Major Group 16—Construction Other Than Building Construction—General Contractors		
1611	Highway and Street Construction, Except Elevated Highways.	$17.0
1622	Bridge, Tunnel, and Elevated Highway Construction.	$17.0
1623	Water, Sewer, Pipe Line, Communication and Power Line Construction.	$17.0
1629	Heavy Construction, Except Dredging, N.E.C.	$17.0
1629	Dredging and Surface Cleanup Activities. [14]	$9.5
Major Group 17—Construction—Special Trade Contractors		
1711	Plumbing, Heating (Except Electric), and Air Conditioning.	$7.0
1721	Painting, Paper Hanging, and Decorating.	$7.0
1731	Electrical Work	$7.0
1741	Masonry, Stone Setting, and Other Stonework.	$7.0
1742	Plastering, Drywall, Acoustical, and Insulation Work.	$7.0
1743	Terrazzo, Tile, Marble, and Mosaic Work.	$7.0
1751	Carpentering	$7.0

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1752	Floor Laying and Other Floor Work, N.E.C.	$7.0
1761	Roofing and Sheet Metal Work	$7.0
1771	Concrete Work	$7.0
1781	Water Well Drilling	$7.0
1791	Structural Steel Erection	$7.0
1793	Glass and Glazing Work	$7.0
1794	Excavating, and Foundation Work.	$7.0
1795	Wrecking and Demolition Work	$7.0
1796	Installation or Erection of Building Equipment, N.E.C.	$7.0
1799	Special Trade Contractors, N.E.C.	$7.0
xl	Base House Maintenance.[18]	$7.0
	Division D—Manfacturing[1]	
	Major Group 20—Food and Kindred Products	
2011	Meat Packing Plants	500
2013	Sausages and Other Prepared Meat Products.	500
2016	Poultry Dressing Plants	500
2017	Poultry and Egg Processing	500
2021	Creamery Butter	500
2022	Cheese, Natural and Processed.	500
2023	Condensed and Evaporated Milk.	500
2024	Ice Cream and Frozen Deserts.	500
2026	Fluid Milk	500
2032	Canned Specialties	1,000
2033	Canned Fruits, Vegetables, Preserves, Jams, and Jellies.[3]	500
2034	Dried and Dehydrated Fruits, Vegetables, and Soup Mixes.	500
2035	Pickled Fruits and Vegetables, Vegetable Sauces and Seasonings, and Salad Dressings.	500
2037	Frozen Fruit, Fruit Juices, and Vegetables.	500
2038	Frozen Specialties	500
2041	Flour and Other Grain Mill Products.	500
2043	Cereal Breakfast Foods	1,000
2044	Rice Milling	500
2045	Blended and Prepared Flour	500
2046	Wet Corn Milling	750
2047	Dog, Cat, and Other Pet Food	500
2048	Prepared Feeds and Feed Ingredients for Animals and Fowls, N.E.C.	500
2051	Bread and Other Bakery Products, Except Cookies and Crackers.	500
2052	Cookies and Crackers	750
2061	Cane Sugar, Except Refining Only.	500
2062	Cane Sugar Refining	750
2063	Beet Sugar	750
2065	Candy and Other Confectionery Products.	500
2066	Chocolate and Cocoa Products.	500
2067	Chewing Gum	500
2074	Cottonseed Oil Mills	500
2075	Soybean Oil Mills	500
2076	Vegetable Oil Mills, Except Corn, Cotton-seed, and Soybean.	1,000
2077	Animal and Marine Fats and Oils.	500
2079	Shortening, Table Oils, Margarine and Other Edible Fats and Oils, N.E.C.	750
2082	Malt Beverages	500
2083	Malt	500
2084	Wines, Brandy, and Brandy Spirits.	500
2085	Distilled, Rectified, and Blended Liquors.	750
2086	Bottled and Canned Soft Drinks and Carbonated Waters.	500
2087	Flavoring Extracts and Flavoring Sirups, N.E.C.	500
2091	Canned and Cured Fish and Seafoods.	500
2092	Fresh or Frozen Packaged Fish and Seafoods.	500
2095	Roasted Coffee	500
2097	Manufactured Ice	500
2098	Macaroni, Spaghetti, Vermicelli, and Noodles.	500
2099	Food Preparations, N.E.C	500
	Major Group 21—Tobacco Manufactures	
2111	Cigarettes	1,000
2121	Cigars	500
2131	Tobacco (Chewing and Smoking) and Snuff.	500
2141	Tobacco Stemming and Redrying.	500
	Major Group 22—Textile Mill Products	
2211	Broad Woven Fabric Mills, Cotton.	1,000
2221	Broad Woven Fabric Mills, Man-Made Fiber and Silk.	500
2231	Broad Woven Fabric Mills, Wool (Including Dyeing and Finishing).	500
2241	Narrow Fabrics and Other Smallwares Mills: Cotton, Wool, Silk, and Man-Made Fiber.	500
2251	Women's Full Length and Knee Length Hosiery.	500
2252	Hosiery, Except Women's Full Length and Knee Length Hosiery.	500
2253	Knit Outerwear Mills	500
2254	Knit Underwear Mills	500
2257	Circular Knit Fabric Mills	500
2258	Warp Knit Fabric Mills	500
2259	Knitting Mills	500
2261	Finishers of Broad Woven Fabrics of Cotton.	1,000
2262	Finishers of Broad Woven Fabrics of Man-Made Fiber and Silk.	500
2269	Finishers of Textiles, N.E.C	500
2271	Woven Carpets and Rugs	50
2272	Tufted Carpets and Rugs	500
2279	Carpets and Rugs, N.E.C.	500
2281	Yarn Spinning Mills: Cotton, Man-Made Fibers, and Silk.	500
2282	Yarn Texturizing, Throwing, Twisting, and Winding Mills: Cotton, Man-Made Fibers, and Silk.	500
2283	Yarn Mills, Wool, Including Carpet and Rug Yarn.	500
2284	Thread Mills	500
2291	Felt Goods, Except Woven Felts and Hats.	500
2292	Lace Goods	500
2293	Paddings and Upholstery Filling.	500
2294	Processed Waste and Recovered Fibers and Flock.	500
2295	Coated Fabrics, Not Rubberized.	1,000
2296	Tire Cord and Fabric	1,000
2297	Nonwoven Fabrics	500
2298	Cordage and Twine	500
2299	Textile Goods, N.E.C	500
	Major Group 23—Apparel and Other Finished Products Made from Fabrics and Similar Materials	
2311	Men's, Youths', and Boys' Suits, Coats and Overcoats.	500

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PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS 19.102

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		Final Rule
2321	Men's Youths', and Boys' Shirts (Except Work Shirts) and Nightwear.	500
2322	Men's Youths', and Boys' Underwear.	500
2323	Men's Youths', and Boys' Neckwear.	500
2327	Men's Youths', and Boys' Separate Trousers.	500
2328	Men's Youths', and Boys' Work Clothing.	500
2329	Men's Youths', and Boys' Clothing, N.E.C.	500
2331	Women's Misses', and Juniors' Blouses, Waists, and Shirts.	500
2335	Women's Misses', and Juniors' Dresses.	500
2337	Women's Misses', and Juniors' Suits, Skirts, and Coats.	500
2339	Women's Misses', and Juniors' Outerwear, N.E.C.	500
2341	Women's Misses', Children's and Infants' Underwear and Nightwear.	500
2342	Brassieres, Girdles, and Allied Garments.	500
2351	Millinery	500
2352	Hats and Caps, Except Millinery.	500
2361	Girls', Children's, and Infants' Dresses, Blouses, Waists, and Shirts.	500
2363	Girls', Children's, and Infants' Coats and suits.	500
2369	Girls', Children's, and Infants' Outerwear, N.E.C.	500
2371	Fur Goods	500
2381	Dress and Work Gloves, Except Knit and All-Leather.	500
2384	Robes and Dressing Gowns	500
2385	Raincoats and Other Waterproof Outer Garments.	500
2386	Leather and Sheep Lined Clothing.	500
2387	Apparel Belts	500
2389	Apparel and Accessories, N.E.C.	500
2391	Curtains and Draperies	500
2392	Housefurnishings, Except Curtains and Draperies.	500
2393	Textile Bags	500
2394	Canvas and Related Products	500
2395	Pleating, Decorative and Novelty Stitching, and Tucking for the Trade.	500
2396	Automotive Trimmings, Apparel Findings, and Related Products.	500
2397	Schiffli Machine Embroideries	500
2399	Fabricated Textile Products, N.E.C.	500
	Major Group 24—Lumber and Wood Products, Except Furniture	
2411	Logging Camps and Logging Contractors.	500
2421	Sawmills and Planing Mills, General.	500
2426	Hardwood Dimension and Flooring Mills.	500
2429	Special Products Sawmills, N.E.C.	500
2431	Millwork	500
2434	Wood Kitchen Cabinets	500
2435	Hardwood Veneer and Plywood.	500
2436	Softwood Veneer and Plywood	500
2439	Structural Wood Members, N.E.C.	500
2441	Nailed and Lock Corner Wood Boxes and Shook.	500
2448	Wood Pallets and Skids	500
2449	Wood Containers, N.E.C	500
2451	Mobile Homes	500
2452	Prefabricated Wood Buildings and Components.	500
2491	Wood Preserving	500
2492	Particleboard	500
2499	Wood Products, N.E.C.	500
	Major Group 25—Furniture and Fixtures	
2511	Wood Household Furniture, Except Upholstered.	500
2512	Wood Household Furniture, Upholstered.	500
2514	Metal Household Furniture	500
2515	Mattresses and Bedsprings	500
2517	Wood Television, Radio, Phonograph, and Sewing Machine Cabinets.	500
2519	Household Furniture, N.E.C	500
2521	Wood Office Furniture	500
2522	Metal Office Furniture	500
2531	Public Building and Related Furniture.	500
2541	Wood Partitions, Shelving, Lockers, and Office and Store Fixtures.	500
2542	Metal Partitions, Shelving, Lockers, and Office and Store Fixtures.	500
2591	Drapery Hardware and Window Blinds and Shades.	500
2599	Furniture and Fixtures, N.E.C	500
	Major Group 26— Paper and Allied Products	
2611	Pulp mills	750
2621	Paper Mills, Except Building Paper Mills.	750
2631	Paperboard Mills	750
2641	Paper Coating and Glazing	500
2642	Envelopes	500
2643	Bags, Except Textile Bags	500
2645	Die-Cut Paper and Paperboard and Cardboard.	500
2646	Pressed and Molded Pulp Goods.	750
2647	Sanitary Paper Products	500
2648	Stationery, Tablets, and Related Products.	500
2649	Converted Paper and Paperboard Products, N.E.C.	500
2651	Folding Paperboard Boxes	500
2652	Set-up Paperboard Boxes	500
2653	Corrugated and Solid Fiber Boxes.	500
2654	Sanitary Food Containers	750
2655	Fiber Cans, Tubes, Drums, and Similar Products.	500
2661	Building Paper and Building Board Mills.	750
	Major Group 27—Printing, Publishing, and Allied Industries	
2711	Newspapers: Publishing, Publishing and Printing.	500
2721	Periodicals: Publishing, Publishing and Printing.	500
2731	Books: Publishing, Publishing and Printing.	500
2732	Book Printing	500
2741	Miscellaneous Publishing	500
2751	Commercial Printing, Letterpress, and Screen.	500
2752	Commercial Printing, Lithographic.	500
2753	Engraving and Plate Printing	500
2754	Commercial Printing, Gravure	500
2761	Manifold Business Forms	500
2771	Greeting Card Publishing	500
2782	Blankbooks, Looseleaf Binders and Devices.	500
2789	Bookbinding and Related Work	500
2791	Typesetting	500
2793	Photoengraving	500
2794	Electrotyping and Stereotyping	500
2795	Lithographic Platemaking and Related Services.	500
	Major Group 28—Chemicals and Allied Products	
2812	Alkalies and Chlorine	1,000
2813	Industrial Gases	1,000

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		Final Rule
2816	Inorganic Pigments	1,000
2819	Industrial Inorganic Chemicals, N.E.C.	1,000
2821	Plastics Materials, Synthetic Resins, and Nonvulcanizable Elastomers.	750
2822	Synthetic Rubber (Vulcanizable Elastomers).	1,000
2823	Cellulosic Man-Made Fibers	1,000
2824	Synthetic Organic Fibers, Except Cellulosic.	1,000
2831	Biological Products	500
2833	Medicinal Chemicals and Botanical Products.	750
2834	Pharmaceutical Preparations	750
2841	Soap and Other Detergents, Except Specialty Cleaners.	750
2842	Specialty Cleaning, Polishing, and Sanitation Preparations.	500
2843	Surface Active Agents, Finishing Agents, Sulfonated Oils and Assistants.	500
2844	Perfumes, Cosmetics, and Other Toilet Preparations.	500
2851	Paints, Varnishes, Lacquers, Enamels, and Allied Products.	500
2861	Gum and Wood Chemicals	500
2865	Cyclic (Coal Tar) Crudes, and Cyclic Intermediates, Dyes, and Organic Pigments (Lakes and Toners).	750
2869	Industrial Organic Chemicals, N.E.C.	1,000
2873	Nitrogenous Fertilizers	1,000
2874	Phosphatic Fertilizers	500
2875	Fertilizers, Mixing Only	500
2879	Pesticides and Agricultural Chemicals, N.E.C.	500
2891	Adhesives and Sealants	500
2892	Explosives	750
2893	Printing Ink	500
2895	Carbon Black	500
2899	Chemicals and Chemical Preparations, N.E.C.	500
	Major Group 29—Petroleum Refining and Related Industries	
2911	Petroleum Refining [4]	1,500
2951	Paving Mixtures and Blocks	500
2952	Asphalt Felts and Coatings	750
2992	Lubricating Oils and Greases	500
2999	Products of Petroleum and Coal, N.E.C.	500
	Major Group 30—Rubber and Miscellaneous Plastics Products	
3011	Tires and Inner Tubes [5]	1,000
3021	Rubber and Plastics Footwear	1,000
3031	Reclaimed Rubber	750
3041	Rubber and Plastics Hose and Belting.	500
3069	Fabricated Rubber Products, N.E.C.	500
3079	Miscellaneous Plastics Products.	500
	Major Group 31—Leather and Leather Products	
3111	Leather Tanning and Finishing	500
3131	Boot and Shoe Cut Stock and Findings.	500
3142	House Slippers	500
3143	Men's Footwear, Except Athletic.	500
3144	Women's Footwear, Except Athletic.	500
3149	Footwear, Except Rubber, N.E.C.	500
3151	Leather Gloves and Mittens	500
3161	Luggage	500
3171	Women's Handbags and Purses.	600
3172	Personal Leather Goods, Except Women's Handbags and Purses.	500
3199	Leather Goods, N.E.C.	500
	Major Group 32—Stone, Clay, Glass, and Concrete Products	
3211	Flat Glass	1,000
3221	Glass Containers	750
3229	Pressed and Blown Glass and Glassware, N.E.C.	750
3231	Glass Products, Made of Purchased Glass.	500
3241	Cement, Hydraulic	750
3251	Brick and Structural Clay Tile	500
3253	Ceramic Wall and Floor Tile	500
3255	Clay Refractories	500
3259	Structural Clay Products, N.E.C.	500
3261	Vitreous China Plumbing Fixtures and China and Earthenware Fittings and Bathroom Accessories.	750
3262	Vitreous China Table and Kitchen Articles.	500
3263	Fine Earthenwear (Whiteware) Table and Kitchen Articles.	500
3264	Porcelain Electrical Supplies	500
3269	Pottery Products, N.E.C.	500
3271	Concrete Block and Brick	500
3272	Concrete Products, Except Block and Brick.	500
3273	Ready-Mixed Concrete	500
3274	Lime	500
3275	Gypsum Products	1,000
3281	Cut Stone and Stone Products	500
3291	Abrasive Products	500
3292	Asbestos Products	750
3293	Gaskets, Packing, and Sealing Devices.	500
3295	Minerals and Earths, Ground or Otherwise Treated.	500
3296	Mineral Wool	750
3297	Nonclay Refractories	750
3299	Nonmetallic Mineral Products, N.E.C.	500
	Major Group 33—Primary Metal Industries	
3312	Blast Furnaces (Including Coke Ovens), Steel Works, and Rolling Mills.	1,000
3313	Electrometallurgical Products	750
3315	Steel Wire Drawing and Steel Nails and Spikes.	1,000
3316	Cold Rolled Steel Sheet, Strip, and Bars.	1,000
3317	Steel Pipe and Tubes	1,000
3321	Gray Iron Foundries	500
3322	Malleable Iron Foundries	500
3324	Steel Investment Foundries	500
3325	Steel Foundries, N.E.C.	500
3331	Primary Smelting and Refining of Copper.	1,000
3332	Primary Smelting and Refining of Lead.	1,000
3333	Primary Smelting and Refining of Zinc.	750
3334	Primary Production of Aluminum.	1,000
3339	Primary Smelting and Refining of Nonferrous Metals, N.E.C.	750
3341	Secondary Smelting and Refining of Nonferrous Metals.	500
3351	Rolling, Drawing, and Extruding of Copper.	750
3353	Aluminum Sheet, Plate, and Foil.	750
3354	Aluminum Extruded Products	750
3355	Aluminum Rolling and Drawing, N.E.C.	750
3356	Rolling, Drawing, and Extruding of Nonferrous Metals, Except Copper and Aluminum.	750
3357	Drawing and Insulating of Nonferrous Wire.	1,000

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3361	Aluminum Foundries (Castings)	500
3362	Brass, Bronze, Copper, Copper Base Alloy Foundries (Castings).	500
3369	Nonferrous Foundries (Castings), N.E.C.	500
3398	Metal Heat Treating	750
3399	Primary Metal Products, N.E.C.	750
	Major Group 34—Fabricated Metal Products, Except Machinery and Transportation Equipment	
3411	Metal Cans	1,000
3412	Metal Shopping Barrels, Drums, Kegs, and Pails.	500
3421	Cutlery	500
3423	Hand and Edge Tools, Except Machine Tools and Hand Saws.	500
3425	Hand Saws and Saw Blades	500
3429	Hardware, N.E.C.	500
3431	Enameled Iron and Metal Sanitary Ware.	750
3432	Plumbing Fixture Fittings and Trim (Brass Goods).	500
3433	Heating Equipment, Except Electric and Warm Air Furnaces.	500
3441	Fabricated Structural Metal	500
3442	Metal Doors, Sash, Frames, Molding, and Trim.	500
3443	Fabricated Plate Work (Boiler Shops).	500
3444	Sheet Metal Work	500
3446	Architectural and Ornamental Metal Work.	500
3448	Prefabricated Metal Buildings and Components.	500
3449	Miscellaneous Metal Work	500
3451	Screw Machine Products	500
3452	Bolts, Nuts, Screws, Rivets, and Washers.	500
3462	Iron and Steel Forgings	500
3463	Nonferrous Forgings	500
3465	Automotive Stampings	500
3466	Crowns and Closures	500
3469	Metal Stampings, N.E.C.	500
3471	Electroplating, Plating, Polishing, Anodizing, and Coloring.	500
3479	Coating, Engraving, and Allied Services, N.E.C.	500
3482	Small Arms Ammunition	1,000
3483	Ammunition, Except for Small Arms, N.E.C.	1,500
3484	Small Arms	1,000
3489	Ordnance and Accessories, N.E.C.	500
3493	Steel Springs, Except Wire	500
3494	Valves and Pipe Fittings, Except Plumbers' Brass Goods.	500
3495	Wire Springs	500
3496	Miscellaneous Fabricated Wire Products.	500
3497	Metal Foil and Leaf	500
3498	Fabricated Pipe and Fabricated Pipe Fittings.	500
3499	Fabricated Metal Products, N.E.C.	500
	Major Group 35—Machinery, Except Electrical	
3511	Steam, Gas, and Hydraulic Turbines and Turbine Generator Set Units.	1,000
3519	Internal Combustion Engines, N.E.C.	1,000
3523	Farm Machinery and Equipment.	500
3524	Garden Tractors and Lawn and Garden Equipment.	500
3531	Construction Machinery and Equipment.	750
3532	Mining Machinery and Equipment, Except Oil Field Machinery and Equipment.	500
3533	Oil Field Machinery and Equipment.	500
3534	Elevators and Moving Stairways.	500
3535	Conveyors and Conveying Equipment.	500
3536	Hoists, Industrial Cranes, and Monorail Systems.	500
3537	Industrial Trucks, Tractors, Trailers, and Stackers.	750
3541	Machine Tools, Metal Cutting Types.	500
3542	Machine Tools, Metal Forming Types.	500
3544	Special Dies and Tools, Die Sets, Jigs and Fixtures, and Industrial Molds.	500
3545	Machine Tool Accessories and Measuring Devices.	500
3546	Power Driven Hand Tools	500
3547	Rolling Mill Machinery and Equipment.	500
3549	Metalworking Machinery, inery, N.E.C.	500
3561	Pumps and Pumping Equipment.	500
3562	Ball and Roller Bearings	750
3563	Air and Gas Compressors	500
3564	Blowers and Exhaust and Ventilation Fans.	500
3565	Industrial Patterns	500
3566	Speed Changers, Industrial High Speed Drives, and Gears.	500
3567	Industrial Process Furnaces and Ovens.	500
3568	Mechanical Power Transmission Equipment, N.E.C.	500
3569	General Industrial Machinery and Equipment, N.E.C.	500
3572	Typewriters	1,000
3573	Electronic Computing Equipment.	1,000
3574	Calculating and Accounting Machines, Except Electronic Computing Equipment.	1,000
3576	Scales and Balances, Except Laboratory.	500
3579	Office Machines, N.E.C.	500
3581	Automatic Merchandising Machines.	500
3582	Commercial Laundry, Dry Cleaning, and Pressing Machines.	500
3585	Air Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment.	750
3586	Measuring and Dispensing Pumps.	500
3589	Service Industry Machines, N.E.C.	500
3592	Carburetors, Pistons, Piston Rings, and Valves.	500
3599	Machinery, Except Electrical, N.E.C.	500
	Major Group 36—Electrical and Electronic Machinery, Equipment, and Supplies	
3612	Power, Distribution, and Specialty Transformers.	750
3613	Switchgear and Switchboard Apparatus.	750
3621	Motors and Generators	1,000
3622	Industrial Controls	750
3623	Welding Apparatus, Electric	500
3624	Carbon and Graphite Products	750
3629	Electrical Industrial Apparatus, N.E.C.	500
3631	Household Cooking Equipment	750
3632	Household Refrigerators and Home and Farm Freezers.	1,000
3633	Household Laundry Equipment	1,000
3634	Electric Housewares and Fans	750
3635	Household Vacuum Cleaners	750
3636	Sewing Machines	750

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3639	Household Appliances, N.E.C.	500
3641	Electric Lamps	1,000
3643	Current-Carrying Wiring Devices.	500
3644	Noncurrent-Carrying Wiring Devices.	500
3645	Residential Electric Lighting Fixtures.	500
3646	Commercial, Industrial, and Institutional Electric Lighting Fixtures.	500
3647	Vehicular Lighting Equipment	500
3648	Lighting Equipment, N.E.C.	500
3651	Radio and Television Receiving Sets, Except Communication Types.	750
3652	Phonograph Records and Prerecorded Magnetic Tape.	750
3661	Telephone and Telegraph Apparatus.	1,000
3662	Radio and Television Transmitting, Signaling, and Detection Equipment and Apparatus.	750
3671	Radio and Television Receiving Type Electron Tubes, Except Cathode Ray.	1,000
3672	Cathode Ray Television Picture Tubes.	750
3673	Transmitting, Industrial, and Special Purpose Electron Tubes.	750
3674	Semiconductors and Related Devices.	500
3675	Electronic Capacitors	500
3676	Resistors, for Electronic Applications.	500
3677	Electronic Coils, Transformers, and Other Inductors.	500
3678	Connectors, for Electronic Applications.	500
3679	Electronic Components, N.E.C.	500
3691	Storage Batteries	500
3692	Primary Batteries, Dry and Wet	1,000
3693	Radiographic X-ray, Fluoroscopic X-ray, Therapeutic X-ray, and Other X-ray Apparatus and Tubes; Electromedical and Electrotherapeutic Apparatus.	500
3694	Electrical Equipment for Internal Combustion Engines.	750
3699	Electrical Machinery, Equipment, and Supplies, N.E.C.	500
	Major Group 37—Transportation Equipment	
3711	Motor Vehicles and Passenger Car Bodies.	1,000
3713	Truck and Bus Bodies	500
3714	Motor Vehicle Parts and Accessories.	500
3715	Truck Trailers	500
3716	Motor Homes	1,000
3721	Aircraft	1,500
3724	Aircraft Engines and Engine Parts.	1,000
3728	Aircraft Parts and Auxiliary Equipment, N.E.C.[15]	1,000
3731	Ship Building and Repairing	1,000
3732	Boat Building and Repairing	500
3743	Railroad Equipment	1,000
3751	Motorcycles, Bicycles, and Parts.	500
3761	Guided Missiles and Space Vehicles.	1,000
3764	Guided Missile and Space Vehicle Propulsion Units and Propulsion Unit Parts.	1,000
3769	Guided Missile and Space Vehicle Parts and Auxiliary Equipment, N.E.C.	1,000
3792	Travel Trailers and Campers	500
3795	Tanks and Tank Components	1,000
3799	Transportation Equipment, N.E.C.	500
	Major Group 38—Measuring, Analyzing, and Controlling Instruments; Photographic, Medical, and Optical Goods; Watches and Clocks	
3811	Engineering, Laboratory, Scientific, and Research Instruments and Associated Equipment.	500
3822	Automatic Controls for Regulating Residential and Commercial Environments and Appliances.	500
3823	Industrial Instruments for Measurement, Display, and Control of Process Variables, and Related Products.	500
3824	Totalizing Fluid Meters and Counting Devices.	500
3825	Instruments for Measuring and Testing of Electricity and Electrical Signals.	500
3829	Measuring and Controlling Devices, N.E.C.	500
3832	Optical Instruments and Lenses.	500
3841	Surgical and Medical Instruments and Apparatus.	500
3842	Orthopedic, Prosthetic, and Surgical Appliances and Supplies.	500
3843	Dental Equipment and Supplies.	500
3851	Ophthalmic Goods	500
3861	Photographic Equipment and Supplies.	500
3873	Watches, Clocks, Clockwork Operated Devices, and Parts.	500
	Major Group 39—Miscellaneous Manufacturing Industries	
3911	Jewelry, Precious Metal	500
3914	Silverware, Plated Ware, and Stainless Steel Ware.	500
3915	Jewelers' Findings and Materials, and Lapidary Work.	500
3931	Musical Instruments	500
3942	Dolls	500
3944	Games, Toys, and Children's Vehicles; Except Dolls and Bicycles.	500
3949	Sporting and Athletic Goods, N.E.C.	500
3951	Pens, Mechanical Pencils, and Parts.	500
3952	Lead Pencils, Crayons, and Artists' Materials.	500
3953	Marking Devices	500
3955	Carbon Paper and Inked Ribbons.	500
3961	Costume Jewelry and Costume Novelties, Except Precious Metal.	500
3962	Feathers, Plumes, and Artificial Trees and Flowers.	500
3963	Buttons	500
3964	Needles, Pins, Hooks and Eyes, and Similar Notions.	500
3991	Brooms and Brushes	500
3993	Signs and Advertising Displays	500
3995	Burial Caskets	500
3996	Linoleum, Asphalted-Felt-Base, and Other Hard Surface Floor Coverings, N.E.C.	750
3999	Manufacturg and Terminal Establishments.	500
	Major Group 41—Local and Suburban Transit and Interurban Highway Passenger Transportation	
4111	Local and Suburban Transit	$3.5
4119	Local Passenger Transportation, N.E.C.	$3.5
4121	Taxicabs	$3.5
4131	Intercity and Rural Highway Passenger Transportation	$3.5

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PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS 19.102

SIC	Description	Size standards in number of employees or millions of dollars
		Final Rule
4141	Local Passenger Transportation Charter Service.	$3.5
4142	Passenger Transportation Charter Service, Except Local.	$3.5
4151	School Buses.	$3.5
4171	Terminal and Joint Terminal Maintenance Facilities for Motor Vehicle Passenger Transportation.	$3.5
4172	Maintenance and Service Facilities for Motor Vehicle Passenger Transportation.	$3.5
	Major Group 42—Motor Freight Transportation and Warehousing	
4212	Local Trucking Without Storage.[6]	$12.5
4213	Trucking, Except Local.	$12.5
4214	Local Trucking With Storage	$12.5
4221	Farm Product Warehousing and Storage.	$12.5
4222	Refrigerated Warehousing.	$12.5
4224	Household Goods Warehousing and Storage.	$12.5
4225	General Warehousing and Storage.	$12.5
4226	Special Warehousing and Storage, N.E.C.	$12.5
4231	Terminal and Joint Terminal Maintenance Facilities for Motor Freight Transportation.	$3.5
	Major Group 44—Water Transportation [7]	
4411	Deep Sea Foreign Transportation.	500
4421	Transportation to and Between Non-contiguous Territories.	500
4422	Coastwise Transportation	500
4423	Intercoastal Transportation	500
4431	Great Lakes-St. Lawrence Seaway Transportation.	500
4441	Transportation on Rivers and Canals.	500
4452	Ferries.	500
4453	Lighterage.	500
4454	Towing and Tugboat Service	$3.5
4459	Local Water Transportation, N.E.C.	500
4463	Marine Cargo Handling	$12.5
4464	Canal Operation.	$3.5
4469	Water Transportation Services, N.E.C.	$3.5
	Major Group 45—Transportation by Air [7]	
4511	Air Transportation, Certificated Carriers.	1,500
4521	Air Transportation, Noncertificated Carriers [8].	1,500
4582	Airports and Flying Fields	$3.5
4583	Airport Terminal Services	$3.5
	Major Group 46—Pipe Lines, Except Natural Gas	
4612	Crude Petroleum Pipe Lines	1,500
4613	Refined Petroleum Pipe Lines	1,500
4619	Pipe Lines, N.E.C	$17.0
	Major Group 47—Transportation Services	
4712	Freight Forwarding	$12.5
4722	Arrangement of Passenger Transportation.	$3.5
4723	Arrangement of Transportation of Freight and Cargo.	$3.5
4742	Rental of Railroad Cars With Care of Lading.	$3.5
4743	Rental of Railroad Cars Without Care of Landing.	$3.5
4782	Inspection and Weighing Services Connected With Transportation.	$3.5
4783	Packing and Crating	$12.5
4784	Fixed Facilities for Handling Motor Vehicle Transportation, N.E.C.	$3.5
4789	Services Incidental to Transportation, N.E.C.	$3.5
	Major Group 48—Communications	
4832	Radio Broadcasting	$3.5
4833	Television Broadcasting	$7.0
4899	Communication Services, N.E.C.	$7.5
	Major Group 49—Electric, Gas, and Sanitary Services	
4911	Electric Services	4 million megawatt hrs.
4941	Water Supply	$3.5
4952	Sewerage Systems	$3.5
4953	Refuse Systems [9]	$6.0
4959	Sanitary Services, N.E.C.	$3.5
4961	Steam Supply	$6.0
4971	Irrigation Systems	$3.5
	Division F—Wholesale Trade	
	Major Group 50—Wholesale Trade—Durable Goods	
5012	Automobiles and Other Motor Vehicles.	500
5013	Automotive Parts and Supplies	500
5014	Tires and Tubes	500
5021	Furniture	500
5023	Home Furnishings	500
5031	Lumber, Plywood, and Millwork	500
5039	Construction Materials, N.E.C.	500
5041	Sporting and Recreational Goods and Supplies.	500
5042	Toys and Hobby Goods and Supplies.	500
5043	Photographic Equipment and Supplies.	500
5051	Metals Service Centers and Offices.	500
5052	Coal and Other Minerals and Ores.	500
5063	Electrical Apparatus and Equipment, Wiring Supplies and Construction Materials.	500
5064	Electrical Appliances, Television and Radio Sets.	500
5065	Electronic Parts and Equipment.	500
5072	Hardware	500
5074	Plumbing and Heating Equipment and Supplies (Hydronics).	500
5075	Warm Air Heating and Air Conditioning Equipment and Supplies.	500
5078	Refrigeration Equipment and Supplies.	500
5081	Commercial Machines and Equipment.	500
5082	Construction and Mining Machinery and Equipment.	500
5083	Farm and Garden Machinery and Equipment.	500
5084	Industrial Machinery and Equipment.	500
5085	Industrial Supplies	500
5086	Professional Equipment and Supplies.	500
5087	Service Establishment Equipment and Supplies.	500
5088	Transportation Equipment and Supplies, Except Motor Vehicles.	500
5093	Scrap and Waste Materials	500
5094	Jewelry, Watches, Diamonds and Other Precious Stones.	500
5099	Durable Goods, N.E.C.	500

SIC	Description	Size standards in number of employees or millions of dollars
		Final Rule
	Major Group 51—Wholesale Trade—Nondurable Goods	
5111	Printing and Writing Paper	500
5112	Stationery Supplies	500
5113	Industrial and Personal Service Paper.	500
5122	Drugs, Drug Proprietaries, and Druggists' Sundries.	500
5133	Piece Goods (Woven Fabrics)	500
5134	Notions and Other Dry Goods	500
5136	Men's and Boys' Clothing and Furnishings.	500
5137	Women's, Children's and Infants' Clothing and Accessories.	500
5139	Footwear	500
5141	Groceries, General Line	500
5142	Frozen Foods	500
5143	Dairy Products	500
5144	Poultry and Poultry Products	500
5145	Confectionery	500
5146	Fish and Seafoods	500
5147	Meats and Meat Products	500
5148	Fresh Fruits and Vegetables	500
5149	Groceries and Related Products, N.E.C.	500
5152	Cotton	500
5153	Grain	500
5154	Livestock	500
5159	Farm-Product Raw Materials, N.E.C.	500
5161	Chemicals and Allied Products	500
5171	Petroleum Bulk Stations and Terminals.	500
5172	Petroleum and Petroleum Products Wholesalers, Except Bulk Stations and Terminals.	500
5181	Beer and Ale	500
5182	Wines and Distilled Alcoholic Beverages.	500
5191	Farm Supplies	500
5194	Tobacco and Tobacco Products.	500
5198	Paints, Varnishes, and Supplies.	500
5199	Nondurable Goods, N.E.C.	500
	Division G—Retail Trade	
	Major Group 52—Building Materials, Hardware, Garden Supply, and Mobile Home Dealers	
5211	Lumber and Other Building Materials Dealers.	$3.5
5231	Paint, Glass, and Wallpaper Stores.	$3.5
5251	Hardware Stores	$3.5
5261	Retail Nurseries, Lawn and Garden Supply Stores.	$3.5
5271	Mobile Home Dealers	$6.5
	Major Group 53—General Merchandise Stores	
5311	Department Stores	$13.5
5331	Variety Stores	$5.5
5399	Miscellaneous General Merchandise Stores.	$3.5
	Major Group 54—Food Stores	
5411	Grocery Stores	$13.5
5422	Freezer and Locker Meat Provisioners.	$3.5
5423	Meat and Fish (Seafood) Markets.	$3.5
5431	Fruit Stores and Vegetable Markets.	$3.5
5441	Candy, Nut, and Confectionery Stores.	$3.5
5451	Dairy Products Stores	$3.5
5462	Retail Bakeries—Baking and Selling.	$3.5
5463	Retail Bakeries—Selling Only	$3.5
5499	Miscellaneous Food Stores	$3.5

SIC	Description	Size standards in number of employees or millions of dollars
		Final Rule
	Major Group 55—Automotive Dealers and Gasoline Service Stations	
5511	Motor Vehicle Dealers (New and Used).	$11.5
5521	Motor Vehicle Dealers (Used Only).	$11.5
5531	Auto and Home Supply Stores	$3.5
5541	Gasoline Service Stations	$4.5
5551	Boat Dealers	$3.5
5561	Recreational and Utility Trailer Dealers.	$3.5
5571	Motor cycle Dealers	$3.5
5599	Automotive Dealers, N.E.C.[10]	$3.5
	Major Group 56—Apparel and Accessory Stores	
5611	Men's and Boys' Clothing and Furnishings Stores.	$4.5
5621	Women's Ready-to-Wear Stores.	$4.5
5631	Women's Accessory and Specialty Stores.	$3.5
5641	Children's and Infants' Wear Stores.	$3.5
5651	Family Clothing Stores	$4.5
5661	Shoe Stores	$4.5
5681	Furriers and Fur Shops	$3.5
5699	Miscellaneous Apparel and Accessory Stores.	$3.5
	Major Group 57—Furniture, Home Furnishings, and Equipment Stores	
5712	Furniture Stores	$3.5
5713	Floor Covering Stores	$3.5
5714	Drapery, Curtain, and Upholstery Stores.	$3.5
5719	Miscellaneous Home Furnishing Stores.	$3.5
5722	Household Appliance Stores	$4.5
5732	Radio and Television Stores	$4.5
5733	Music Stores	$3.5
	Major Group 58—Eating and Drinking Places	
5812	Eating Places (Except Food Services).	$3.5
5812	Food Services	$10.0
5813	Drinking Places (Alcoholic Beverages).	$3.5
	Major Group 59—Miscellaneous Retail	
5912	Drug Stores and Proprietary Stores.	$3.5
5921	Liquor Stores	$3.5
5931	Used Merchandise Stores	$3.5
5941	Sporting Goods Stores and Bicycle Shops.	$3.5
5942	Book Stores	$3.5
5943	Stationery Stores	$3.5
5944	Jewelry Stores	$3.5
5945	Hobby, Toy, and Game Shops	$3.5
5946	Camera and Photographic Supply Stores.	$3.5
5947	Gift, Novelty, and Souvenir Shops.	$3.5
5948	Luggage and Leather Goods Stores.	$3.5
5949	Sewing, Needlework, and Piece Goods Stores.	$3.5
5961	Mail Order Houses	$12.5
5962	Automatic Merchandising Machine Operators.	$3.5
5963	Direct Selling Establishments	$3.5
5982	Fuel and Ice Dealers, Except Fuel Oil Dealers and Bottled Gas Dealers.	$3.5
5983	Fuel Oil Dealers	$6.0
5984	Liquefied Petroleum Gas (Bottled Gas) Dealers.	$3.5
5992	Florists	$3.5

SIC	Description	Size standards in number of employees or millions of dollars
		Final Rule
5993	Cigar Stores and Stands	$3.5
5994	News Dealers and Newsstands.	$3.5
5999	Miscellaneous Retail Stores, N.E.C.	$3.5
	Division H—Finance, Insurance, and Real Estate [11]	
	Major Group 63—Insurance	
6331	Fire, Marine, and Casualty Insurance.	1,500
	Major Group 64—Insurance Agents, Brokers, and Service	
6411	Insurance Agents, Brokers, and Service.	$3.5
	Major Group 65—Real Estate	
8515	Operators of Residential Mobile Home Sites.	$3.5
	Leasing of Building Space to the Federal Government by Owners. [12]	$10.0
	Division I—Services	
	Major Group 70—Hotels, Rooming Houses, Camps, and Other Lodging Places	
7011	Hotels, Motels, and Tourist Courts.	$3.5
7021	Rooming and Boarding Houses.	$3.5
7032	Sporting and Recreational Camps.	$3.5
7033	Trailering Parks and Camp Sites for Transients.	$3.5
7041	Organization Hotels and Lodging Houses, on Membership Basis.	$3.5
	Major Group 72—Personal Services	
7211	Power Laundries, Family and Commercial.	$7.0
7212	Garment Pressing, and Agents for Laundries and Dry Cleaners.	$3.5
7213	Linen Supply	$7.0
7214	Diaper Service	$7.0
7215	Coin-operated Laundries and Dry Cleaning.	$3.5
7216	Dry Cleaning Plants, Except Rug Cleaning.	$2.5
7217	Carpet and Upholstery Cleaning.	$2.5
7218	Industrial Launderers	$7.0
7219	Laundry and Garment Services, N.E.C.	$3.5
7221	Photographic Studios, Portrait	$3.5
7231	Beauty Shops	$3.5
7241	Barber Shops	$3.5
7251	Shoe Repair Shops, Shoe Shine Parlors, and Hat Cleaning Shops.	$3.5
7261	Funeral Service and Crematories.	$3.5
7299	Miscellaneous Personal Services.	$3.5
	Major Group 73—Business Services	
7311	Advertising Agencies	$3.5
7312	Outdoor Advertising Services	$3.5
7313	Radio, Television, and Publishers' Advertising Representatives.	$3.5
7319	Advertising, N.E.C.	$3.5
7321	Consumer Credit Reporting Agencies, Mercantile Reporting Agencies, and Adjustment and Collection Agencies.	$3.5
7331	Direct Mail Advertising Services.	$3.5
7332	Blueprinting and Photocopying Services.	$3.5
7333	Commercial Photography, Art, and Graphics.	$3.5
7339	Stenographic Services; and Reproduction Services, N.E.C.	$3.5
7341	Window Cleaning	$3.5
7342	Disinfecting and Exterminating Services.	$3.5
7349	Cleaning and Maintenance Services to Dwellings and Other Buildings, N.E.C.	$8.0
7351	News Syndicates	$3.5
7361	Employment Agencies	$3.5
7362	Temporary Help Supply Services.	$ 3.5
7369	Personnel Supply Services, N.E.C. [13]	$13.5
	Base Maintenance Facilities Management [17]	$3.5
7372	Cornputer Programming and Other Software Services.	$7.0
7374	Data Processing Services	$7.0
7379	Computer Related Services, N.E.C.	$12.5
7391	Research and Development Laboratories. [14]	500
7392	Management, Consulting, and Public Relations Services.	$3.5
7393	Detective Agencies and Protective Services.	$6.0
7394	Equipment Rental and Leasing Services.	$3.5
7395	Photofinishing Laboratories	$3.5
7396	Trading Stamp Services	$3.5
7397	Commercial Testing Laboratories.	$3.5
7399	Business Services, N.E.C.	$3.5
	Major Group 75—Automotive Repair, Services, and Garages	
7512	Passenger Car Rental and Leasing, Without Drivers.	$12.5
7513	Truck Rental and Leasing, Without Drivers.	$12.5
7519	Utility Trailer and Recreational Vehicle Rental.	$3.5
7523	Parking Lots	$3.5
7525	Parking Structures	$3.5
7531	Top and Body Repair Shops	$3.5
7534	Tire Retreading and Repair Shops.	$7.0
7535	Paint Shops	$3.5
7538	General Automotive Repair Shops.	$3.5
7539	Automotive Repair Shops, N.E.C.	$3.5
7542	Car Washes	$3.5
7549	Automotive Services, Except Repair and Car Washes.	$3.5
	Major Group 76—Miscellaneous Repair Services	
7622	Radio and Television Repair Shops.	$3.5
7623	Refrigeration and Air Conditioning Service and Repair Shops.	$3.5
7629	Electrical and Electronic Repair Shops, N.E.C.	$3.5
7631	Watch, Clock, and Jewelry Repair.	$3.5
7641	Reupholstery and Furniture Repair.	$3.5
7692	Welding Repair	$3.5
7694	Armature Rewinding Shops	$3.5
7699	Repair Shops and Related Services, N.E.C. [15]	$3.5

SIC	Description	Size standards in number of employees or millions of dollars
		Final Rule
	Major Group 78—Motion Pictures	
7813	Motion Picture Production, Except for Television.	$14.5
7814	Motion Picture and Tape Production for Television.	$14.5
7819	Services Allied to Motion Picture Production.	$14.5
7823	Motion Picture Film Exchanges.	$14.5
7824	Film or Tape Distribution for Television.	$14.5
7829	Services Allied to Motion Picture Distribution.	$3.5
7832	Motion Picture Theaters, Except Drive-in.	$3.5
7833	Drive-in Motion Picture Theaters.	$3.5
	Major Group 79—Amusement and Recreation and Entertainment Groups	
7932	Billiard and Pool Establishments.	$3.5
7933	Bowling Alleys	$3.5
7941	Professional Sports Clubs and Promoters.	$3.5
7993	Coin-operated Amusement Devices.	$3.5
7996	Amusement Parks	$3.5
7999	Amusement and Recreation Services, N.E.C.	$3.5
	Major Group 80—Health Services	
8011	Offices of Physicians	$3.5
8021	Offices of Dentists	$3.5
8031	Offices of Osteopathic Physicians.	$3.5
8041	Offices of Chiropractors	$3.5
8042	Offices of Optometrists	$3.5
8049	Offices of Health Practioners, N.E.C.	$3.5
8051	Skilled Nursing Care Facilities	$3.5
8059	Nursing and Personal Care Facilities N.E.C.	$3.5
8062	General Medical and Surgical Hospitals.	$3.5
8063	Psychiatric Hospitals	$3.5
8069	Specialty Hospitals, Except Psychiatric.	$3.5
8071	Medical Laboratories	$3.5
8072	Dental Laboratories	$3.5
8081	Oupatient Care Facilities	$3.5
8091	Health and Allied Services, N.E.C.	$3.5
	Major Group 81—Legal Services	
8111	Legal Services	$3.5
	Major Group 82—Educational Services	
8299	Schools and Educational Services, N.E.C. Except Flight Training.	$3.5
8299	Flight Training Services	$12.5
	Major Group 89—Miscellaneous Services	
8911	Engineering Services, Except for Military and Aerospace Equipment and Except for Military Weapons.	$7.5
8911	Engineering Services for Military and Aerospace Equipment and for Military Weapons (Except Marine Engineering).	$13.5
8911	Marine Engineering and Naval Architecture.	$9.0
8911	Architectural Services (Except Naval) and Surveying Services.	$3.5
8931	Accounting, Auditing, and Bookkeeping Services.	$4.0
8999	Services, N.E.C.	$3.5

[1] Size standards preceded by a dollar sign ($) are in millions of dollars. All others are in number of employees unless specified otherwise.

[2] SIC Division D, Manufacturing: "Rebuilding on a factory basis or equivalent." For rebuilding machinery or equipment on a factory basis, use SIC code applicable for new manufactured product. The appropriate size standard is not limited to manufacturers. Ordinary repair services or preservation operations, however, are not considered rebuilding activities.

[3] SIC–2033: For purposes of Government procurement for food canning and preserving under SIC–2033, the standard of 500 employees shall be exclusive of agricultural labor as defined in section (k) of the Federal Unemployment Tax Act, 68A Stat. 454, 26 U.S.C. (I.R.C. 1954) 3306.

[4] SIC–2911: For purposes of Government procurement, the firm may not have more than 1500 employees nor may it have more than 50,000 barrels per day capacity. This capacity may be measured in terms of either crude oil or bona fide feedstocks or both, but the sum total of the various petroleum-based inputs into the process may not exceed 50,000 barrels. In addition to the direct owned capacity of the concern in question, counted capacity will include any leased facilities or any facilities made available to the concern under an arrangement such as (but not limited to) an exchange agreement or a throughput or other form or processing agreement (whereby another party processes the concern's own crude or feedstocks). Such an arrangement would have the same effect as though such facilities had been leased, and this would have to be included in the concern's own capacity. The total product to be delivered in the performance of the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

[5] SIC–3011: For purposes of Government procurement, a firm is small for bidding on a contract for pneumatic tires within Census Classification Codes 30111 and 30112, provided that (1) the value of tres within Census Classification Codes 30111 ald 30112 which it manufactured in the Ulited States during the previous calendar year is more than 50 percent of the value of its total worldwide manufacture, (2) the value of pneumatic tires within Census Classification Codes 30111 and 30112 which it manufactured worldwide during the preceding caleldar year was less than 5 percent of the value of all such tires manufactured in the United States during said period, and (3) the value of the principal products which it manufactured or otherwise produced or sold worldwide during the preceding calendar year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during said period.

[6] SIC–4212: The component "Garbage and Refuse, Collecting and Transporting: Without Disposal" shall have a size standard of $6.0 million. This is the same size standard as SIC–4953, *Refuse Systems.*

[7] Offshore Marine Services: The applicable size standard shall be $14 million for firms furnishing specific transportation services to concerns engaged in offshore oil and/or natural gas exploration, drilling production or marine research; such services encompass passenger and freight transportation, anchor handling, and related logistical services to and from the work site or at sea.

[8] SIC–4521: Includes passenger or cargo transportation requiring the use of one or more helicopters or fixed-wing aircraft. For other services requiring the use of one or more helicopters or fixed-wing aircraft, a size standard of $6.5 million shall apply. This does not include offshore marine transportation services as defined in footnote 7.

[9] SIC–4953: "Garbage and Refuse, Collecting and Transportation: Without Disposal," a component of SIC–4212, has the same size standard as SIC–4953.

[10] SIC–5599: For retail firms whose principal line of business is the retail sale of aircraft, a $5 million size standard shall apply.

[11] Most industries in Division H—Finance, Insurance, and Real Estate—are excluded from SBA assistance.

[12] Leasing of building space to the Federal Government by owners—For the purpose of Government procurement, a size standard of $10 million in gross receipts is established for owners of building space that is leased to the Federal Government. The standard for these procurements shall apply to the owner of the property and not to those acting as an agent for the owner. There is no size standard concerning the agent.

[13] If one of the activities in base maintenance, as defined in SIC–7369, can be identified with a separate industry, and that activity (or industry) accounts for 50 percent or more of the value of an entire contract, then the proper size standard shall be that for the particular industry, and not the base maintenance size standard.

"Base maintenance" constitutes three or more separate activities. These activities may be either service or special

(The next page is 19-7.)

trade construction related activities. As services, these activities must each be in a separate industry. These activities may include but are not limited to such separate maintenance activities as *Janitorial and Custodial Service, Protective Guard Service, Commissary Service, Fire Prevention Service,* the *Safety Engineering Service, Messenger Service,* and *Grounds Maintenance and Landscaping Service.* If the contract involves the use of special trade contractors (plumbing, painting, plastering, carpeting, etc.), all such specialized special trade construction activities will be considered a single activity, which is *Based Housing Maintenance.* This is only one activity of base maintenance and two additional activities must be present for the contract to be considered base maintenance. The size standard for Base Housing Maintenance is $7 million, the same size standard as for Special Trade Contractors.

[14] SIC–7391. For research and development contracts requiring the delivery of a manufactured product, the size standard to use is that of the manufacturing industry in which the specific product is classified.

Research and Development, as defined in the *SIC Manual,* means laboratory or other physical research and development on a contract or fee basis. Research and development for purposes of size determinations does not include the following: economic, educational, engineering, operations, systems or other nonphysical research; or computer programming, data processing, commercial and/or medical laboratory testing.

For purposes of the SBIR program only, "research" or "research and development" is defined as any activity which is (1) a systematic, intensive study directed toward greater knowledge or understanding of the subject studies; (2) a systematic study directed specifically toward applying new knowledge to meet a recognized need; or (3) a systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement or prototypes and new processes to meet specific requirements. A small business concern for purposes of award of any funding agreement under a solicitation pursuant to the Small Business Innovation Development Act of 1982 (P.L. 97-291, 15 U.S.C. 638(e)—(k)) is one which, including its affiliates, has a number of employees not exceeding 500.

[15] Contracts for the rebuilding or overhaul of aircraft ground support equipment on a contract basis will be classified under SIC–3728.

[16] To be considered small, a firm must perform the dredging of at least 40 percent of the yardage with its own dredging equipment or equipment owned by another small dredging concern.

[17] *Facilities Management,* a component of SIC–7369, has the following definition: Establishments, not elsewhere classified, which provide overall management and the personnel to perform a variety of related support services in operating a complete facility, in or around a specific building, or within another business or government establishment. Facilities management means furnishing three or more personnel supply services which may include but are not limited to secretarial services, typists, telephone answering, reproduction or mimeograph services, mailing services, financial or business management, public relations, conference planning, travel arrangements, word processing, maintaining files and/or libraries, switchboard operation, writers, bookkeeping, minor office equipment maintenance and repair, use of information systems (not programming), etc.

[18] Contracts for the rebuilding or overhaul of aircraft ground support equipment on a contract basis will be classified under SIC 3728.

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19.102-1 thru 19.102-7 [Removed]

30. Sections 19.102–1 thru 19.102–7 are removed.

31. Section 19.302 is amended by removing in the second sentence of the introductory text of paragraph (d) the reference "13 CFR 121.3–5" and inserting in its place the reference "13 CFR 121.9"; by adding paragraph (d)(3); by revising paragraph (d)(1)(ii), the introductory text of paragraph (e), and paragraph (i)(3) to read as follows:

19.302 Protesting a small business representation.

* * * * *

(d) * * *

(1) * * *

(ii) A protest may be made in writing if it is delivered to the contracting officer by hand, telegram, or letter within the 5-day period.

* * * * *

(d)(3) A protest under a Multiple Award Schedule will be timely if received by SBA at any time prior to the expiration of the contract period, including renewals.

(e) Upon receipt of a protest from or forwarded by the Contracting Office, the SBA will—

* * * * *

(i) * * * (3) the SBA Associate Administrator for the SBA program involved. The appeal must be filed with the Office of Hearings and Appeals, Small Business Administration, Washington, D.C. 20416, within the time limits and in strict accordance with the procedures contained in 13 CFR 121.11. The SBA will inform the contracting officer of its ruling on the appeal. The SBA decision, if received before award, will apply to the pending acquisition. SBA rulings received after award shall not apply to that acquisition.

* * * * *

32. Section 19.303 is amended by revising paragraphs (c)(2), (c)(2)(i), (c)(2)(ii) and (c)(2)(v); by adding paragraph (c)(2)(vi); and by removing the first and second sentences in paragraph (c)(3) and inserting in their place three sentences to read as follows:

19.303 Determining product or service classifications.

* * * * *

(c) * * *

(2) The appeal shall be in writing and shall be addressed to the Office of Hearings and Appeals, Small Business Administration, Washington, D.C. 20416.

No particular form is prescribed for the appeal. However, time limits and procedures set forth in SBA's regulations at 13 CFR 121.11 are strictly enforced. The appellant shall submit an original and one legible copy of the appeal. In the case of telegraphic appeals, the telegraphic notice shall be confirmed by the next day mailing of a written appeal, in duplicate. The written appeal must contain the following certification: "I have read this document and, under penalty of perjury and the sanctions imposed under 18 U.S.C. 1001, of which I am aware, I certify that, to the best of my knowledge, the statements made therein are true and correct, and that this document is not being filed for the purpose of delay or harassment." The appeal shall include—

(i) The substance and date of the determination being appealed;

(ii) The number and date of the solicitation, and the name, address, and telephone number of the contracting officer;

* * * * *

(v) The name, address, and telephone number of the appellant; and

(vi) A statement certifying that copies of the appeal have been provided the contracting officer.

(3) The Office of Hearings and Appeals will notify the contracting officer of the date it received the appeal and the docket number assigned. The contracting officer's response, if any, to the appeal must include appropriate argument and evidence, must include the certification in paragraph (c)(2) above, and must be filed with the Office of Hearings and Appeals no later than 5 business days after receipt of the appeal. The Office of Hearings and Appeals, if possible, will inform the contracting officer of its ruling on the appeal before the end of the solicitation period.* * *

33. Section 19.501 is amended by revising paragraph (a) and by removing in paragraph (g)(2) the words "at least two responsible" and inserting in their place the words "awards will be made at", to read as follows:

19.501 General.

(a) The purpose of small business set-asides is to award certain acquisitions exclusively to small business concerns. A "set-aside for small business" is the reserving of an acquisition exclusively for participation by small business concerns. A set-aside may be open to all small businesses or, except for the Department of Defense, restricted to small businesses located in labor surplus areas. A set-aside of a single acquisition or a class of acquisitions may be total or partial.

* * * * *

34. Section 19.601 is amended by redesignating paragraph (a) as paragraph (b) and removing the first sentence; by redesignating paragraph (b) as paragraph (c) and removing the first sentence; and by adding new paragraph (a) to read as follows:

19.601 General.

(a) A Certificate of Competency is the certificate issued by the Small Business Administration (SBA) stating that the holder is responsible (with respect to all elements of responsibility, including but not limited to capability, competency, capacity, credit, integrity, perseverance, and tenacity) for the purpose of receiving and performing a specific Government contract.

* * * * *

35. Section 19.701 is amended by revising the section title and by alphabetically adding the definition of "Small business subcontractor" to read as follows:

19.701 Definitions.

"Small business subcontractor" means any concern that—

(a) In connection with subcontracts of $10,000 or less if, including its affiliates, its number of employees does not exceed 500 persons; and

(b) In connection with subcontracts exceeding $10,000, if its number of employees or average annual receipts, including its affiliates, does not exceed the size standard under section 19.102 for the product or service it is providing on the subcontract.

* * * * *

19.703 [Amended]

36. Section 19.703 is amended by removing in paragraph (a)(1) and in the first sentence of paragraph (a)(2), the reference "19.101" and inserting in both places the reference "19.001".

19.704 [Amended]

37. Section 19.704 is amended by removing in paragraph (a) the reference "19.702(a) (2) and (3)" and inserting in its place the reference "19.702(a) (1) and (2)".

19.705-2 [Amended]

38. Section 19.705–2 is amended by removing in the first sentence of paragraph (a) the reference "19.702(a) (2) or (3)" and inserting in its place the reference "19.702(a) (1) or (2)".

19.707 [Amended]

39. Section 19.707 is amended by removing in paragraph (a)(2) the reference "19.702(a) (2) or (3)" and inserting in its place the reference "19.702(a) (1) or (2)".

19.708 [Amended]

40. Section 19.708 is amended by removing in the first sentence of

paragraph (c)(1) the reference "19.702(a)(2)" and inserting in its place the reference "19.702(a)(1)".

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.609 [Amended]

41. Section 22.609 is amended by alphabetically inserting in paragraph (i), before "California" the word "Arizona".

22.1101 [Amended]

42. Section 22.1101 is amended by removing in the fifth sentence the reference "(see 22.1001)".

PART 25—FOREIGN ACQUISITION

25.109 [Amended]

43. Section 25.109 is amended by removing in paragraph (d) the reference "subparagraph (a)(3) of".

25.406 [Amended]

44. Section 25.406 is amended by removing in the alphabetical listing the agency name "United States International Communication Agency" and inserting in its place the agency name "United States Information Agency".

25.501 [Amended]

45. Section 25.501 is amended by removing in the first sentence of paragraph (b) the reference "(31 U.S.C. 665)" and inserting in its place the reference "(31 U.S.C. 1341(a)(1)".

PART 27—PATENTS, DATA, AND COPYRIGHTS

46. Section 27.203–3 is amended by revising the second sentence to read as follows:

27.203–3 Negotiated contracts (excluding construction).

* * * A decision to omit a patent indemnity clause in a negotiated fixed-price contract described in this subsection should be based on a price consideration to the Government for forgoing the indemnification rights normally received by commercial purchasers of the same supplies or services.

27.302 [Amended]

47. Section 27.302 is amended by removing in the first sentence of paragraph (a)(2) the reference "31 U.S.C. 666" and inserting in its place the reference "30 U.S.C. 666".

PART 28—BONDS AND INSURANCE

28.101–1 [Amended]

48. Section 28.101–1 is amended by removing in the second sentence of paragraph (b) the word "individual" and inserting in its place the word "single".

PART 30—COST ACCOUNTING STANDARDS

49. Section 30.103 is revised to read as follows:

30.103 Cost Accounting Standards Board (CASB) publication.

Copies of the CASB standards and regulations are printed in Title 4 of the Code of Federal Regulations, and may be obtained by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by calling the Washington, DC ordering desk at area code (202) 783–3238.

30.201–1 [Amended]

50. Section 30.201–1 is amended by removing in paragraph (d) the reference "Part VII" and inserting in its place the reference "Part VIII".

30.203 [Amended]

51. Section 30.203 is amended by removing in paragraph (f) the reference "30.201–3" and inserting in its place the reference "30.201–2".

30.302 [Amended]

52. Section 30.302 is amended by removing in paragraph (e) the reference "31.301(b)(2)" and inserting in its place the reference "30.301(b)(12)".

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.205–36 [Amended]

53. Section 31.205–36 is amended by removing in paragraph (a) the reference "31.205–11(1)" and inserting in its place the reference "31.205–11(m)".

54. Section 31.205–38 is amended by revising the third sentence in paragraph (b) to read as follows:

31.205–38 Selling costs.

* * * * *

(b) * * * Selling costs incurred in connection with potential and actual Foreign Military Sales as defined by the Arms Export Control Act, or foreign sales of military products are unallowable on U.S. Government contracts for U.S. Government requirements.

* * * * *

31.205–46 [Amended]

55. Section 31.205–46 is amended by removing in the first sentence of paragraph (a) the reference "(f)" and inserting in its place the reference "(e)"

31.205–47 [Amended]

56. Section 31.205–47 is amended by removing in paragraph (b)(3) the words "as defined below" and inserting in their place the words "as defined above".

PART 52—CONTRACT FINANCING

57. Section 32.111 is amended by adding in paragraph (b) a third sentence to read as follows:

32.111 Contract clauses.

* * * * *

(b) * * * If a labor-hour contract is contemplated, and if no specific reimbursment for materials furnished is intended, the contracting officer may use the clause with its Alternate II.

32.503–14 [Amended]

58. Section 32.503–14 is amended by removing in the second sentence of paragraph (c) the reference "31 U.S.C. 231" and inserting in its place the reference "31 U.S.C. 3729".

32.612 [Amended]

59. Section 32.612 is amended by removing in the third sentence the reference "31 U.S.C. 203" and inserting in its place the reference "31 U.S.C. 3727".

32.616 [Amended]

60. Section 32.616 is amended by removing in the second sentence the reference "31 U.S.C. 952" and inserting in its place the reference "31 U.S.C. 3711".

32.702 [Amended]

61. Section 32.702 is amended by removing in the first sentence the reference "31 U.S.C. 665" and inserting in its place the reference "31 U.S.C. 1341".

32.703–3 [Amended]

62. Section 32.703–3 is amended by removing the reference "31 U.S.C. 668, 688a, and 699" and inserting in their place the references "41 U.S.C. 11a, 31 U.S.C. 1308, and 42 U.S.C. 2459a".

32.704 [Amended]

63. Section 32.704 is amended by removing paragraph (c) the reference "31 U.S.C. 665" and inserting in its place the reference "31 U.S.C. 1341".

32.800 [Amended]

64. Section 32.800 is amended by removing the references "31 U.S.C. 203, 41 U.S.C. 15" and inserting in their place the reference "31 U.S.C. 3727".

32.805 [Amended]

65. Section 32.805 is amended by removing in the Notice of Assignment in

paragraph (c) the references "31 U.S.C. 203, 41 U.S.C. 15 " and inserting in their place the reference "31 U.S.C. 3727".

32.806 [Amended]

66. Section 32.806 is amended by removing in paragraph (b) the reference "52.242-24" and inserting in its place the reference "52.232-24".

PART 36—CONSTRUCTION AND ARCHITECT—ENGINEER CONTRACTS

67. Section 67.201 is amended by revising paragraph (a)(1) to read as follows:

36.201 Evaluation of contractor performance.

(a) *Preparation of performance evaluation reports.* (1) The contracting activity shall evaluate contractor performance and prepare a performance report using the SF 1420, Performance Evaulation (Construction), for each construction contract of—

* * * * *

36.521 [Amended]

68. Section 36.521 is amended by inserting in paragraph (b) the word "its" preceding the reference "Alternate II".

PART 42—CONTRACT ADMINISTRATION

42.101 [Amended]

69. Section 42.101 is amended by removing in paragraph (d)(1) the reference "31 U.S.C. 686" and inserting in its place the reference "31 U.S.C. 1535".

42.1401 [Amended]

70. Section 42.1401 is amended by removing in paragraph (b)(11) the reference "Chapter 24, Section XVII , paragraphs 120 through 124" and inserting in its place the reference "Chapter 214, Section XVII, paragraphs 214120 through 214124".

PART 45—GOVERNMENT PROPERTY

45.105 [Amended]

71. Section 45.105 is amended by removing in paragraph (b)(4) the figure "$25,000" and inserting in its place the figure "$50,000".

45.502 [Amended]

72. Section 45.502 is amended by removing in the first sentence of paragraph (a) the word "provisions" and inserting in its place the word "requirements".

PART 46—QUALITY ASSURANCE

46.202-1 [Amended]

73. Section 46.202-1 is amended by inserting in the first sentence of paragraph (b) the word "judgment" following the word "pass".

46.306 [Amended]

74. Section 46.306 is amended by removing the third sentence.

PART 47—TRANSPORTATION

47.3013 [Amended]

75. Section 47.301-3 is amended by removing in paragraph (a) the reference "45.000.32-R" and inserting in its place the reference "4500.32-R"

PART 48—VALUE ENGINEERING

48.102 [Amended]

76. Section 48.102 is amended by removing in paragraph (d) the reference "15.903(e)" and inserting in its place the reference "15.903(d)".

PART 49—TERMINATION OF CONTRACTS

49.001 [Amended]

77. Section 49.001 is amended by removing in the definition of "Claim" the reference "33.001" and inserting in its place the reference 33.201"; and by removing in the definition of "Settlement proposal" the reference "31 U.S.C. 231" and inserting in its place the reference "31 U.S.C. 3729".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.213-2 [Amended]

78. Section 52.213-2 is amended by removing in the introductory text the reference "(see 31 U.S.C. 530)" and inserting in its place the reference "(see 31 U.S.C. 3324(d)(2))".

52.214-11 [Removed]

79. Section 52.214-11 is removed and reserved.

52.214-12 [Amended]

80. Section 52.214-12 is amended by removing in the introductory text the reference "14.201-6(f)(2)" and inserting in its place the reference "14.201-6(f)"; and by inserting in the introductory text a colon following the word "provision" and removing the remainder of the sentence.

81. Section 52.214-29 is added to read as follows:

52.214-29 Order of Precedence—Sealed Bidding.

As prescribed in 14.201-7(d), insert the following clause:

Order of Precedence—Sealed Bidding (JAN 1986)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the specifications); (b) representations and other instructions; (c) contract clauses; (d) other documents, exhibits, and attachments; and (e) the specifications.

(End of clause)

52.215-18 [Removed]

82. Section 52.215-18 is removed and reserved.

52.215-19 [Amended]

83. Section 52.215-19 is amended by removing in the introductory text the reference "15.407(g)" and inserting in its place the reference "15.407(f)"; and by inserting a colon following the word "provision" and removing the remainder of the sentence.

52.215-20 [Amended]

84. Section 52.215-20 is amended by removing in the introductory text the reference "15.407(h)" and inserting in its place the reference "15.407(g)"; and by inserting a colon following the word "provision" and removing the remainder of the sentence.

85. Section 52.215-33 is added to read as follows:

52.215-33 Order of Precedence.

As prescribed in 15.406-3(b), insert the following clause:

Order of Precedence (JAN 1986)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the specifications); (b) representations and other instructions; (c) contract clauses; (d) other documents, exhibits, and attachments; and (e) the specifications.

(End of clause)

52.225-3 [Amended]

86. Section 52.225-3 is amended by inserting a colon in the introductory text following the word "clause" and removing the remainder of the sentence.

52.232-5 [Amended]

87. Section 52.232-5 is amended by removing in the title of the clause the date "(JUL 1985)" and inserting in its place the date "(JAN 1986)"; and by removing in paragraph (f)(3) the reference "31 U.S.C. 203" and inserting

in its place the reference "31 U.S.C. 3727".

88. Section 52.232–7 is amended by inserting a colon in the introductory text following the word "clause" and removing the remainder of the sentence, and by adding an *Alternate II* to read as follows:

52.232–7 Payments under Time-and-Materials and Labor-Hour Contracts.

* * * * *

Alternate II (JAN 1986). If a labor-hour contract is contemplated, and if no specific reimbursement for materials furnished is intended, the Contracting Officer may add the following paragraph (h) to the basic clause:

(h) The terms of this clause that govern reimbursement for materials furnished are considered to have been deleted.

52.232–23 [Amended]

89. Section 52.232–23 is amended by inserting a colon in the introductory text following the word "clause" and removing the remainder of the sentence; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(JAN 1986)"; by removing in the first sentence of paragraph (a) the reference "31 U.S.C. 203" and inserting in its place the reference "31 U.S.C. 3727"; and by removing the derivation lines following "(End of clause)".

52.232–24 [Amended]

90. Section 52.232–24 is amended by inserting a colon in the introductory text following the word "clause" and removing the remainder of the sentence; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(JAN 1986)"; by removing in the clause the reference "31 U.S.C. 203" and inserting in its place the reference "31 U.S.C. 3727"; and by removing the derivation lines following "(End of clause)".

52.244–1 [Amended]

91. Section 52.244–1 is amended by removing in the title of the clause the date "(APR 1985)" and inserting in its place the date "(JAN 1986)"; by removing in paragraph (g) of the clause the reference "16.301–4" and inserting in its place the reference "15.903(d)"; and by removing the derivation lines following "(End of clause)".

92. Section 52.245–5 is amended by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(JAN 1986)"; by revising paragraph (e)(1) of the clause; and by removing the derivation lines following "(End of clause)" to read as follows:

52.245–5 Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts).

* * * * *

(e) *Property administration.* (1) The Contractor shall be responsible and accountable for all Government property provided under the contract and shall comply with Federal Acquisition Regulation (FAR) Subpart 45.5, as in effect on the date of this contract.

* * * * *

52.246–6 [Amended]

93. Section 52.246–6 is amended by inserting a colon in the introductory text following the word "clause" and removing the remainder of the sentence; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(JAN 1986)"; by removing in the second sentence of paragraph (f) of the clause the words "Allowable Cost and Payment" and inserting in their place the words "Payments Under Time-and-Materials and Labor-Hour Contracts"; by removing the derivation line following "(End of clause)"; and by removing *Alternate II.*

PART 53—FORMS

53.204–2 [Amended]

94. Section 53.204–2 is amended by removing in paragraph (a) the words "(REV. 10/82)" and inserting in their place the words "(REV. 4/85)".

53.301–279 [Amended]

95. Section 53.301–279 [Standard Form 279] is revised to read as follows:

BILLING CODE 6820–61–M

FAC 84-12 JANUARY 20, 1986

FPDS—INDIVIDUAL CONTRACT ACTION REPORT (OVER $10,000)

INTERAGENCY REPORT CONTROL NO. 0206-GSA-QU

1 REPORTING AGENCY (FPDS Organization Designation Code Manual) (1-4)
2 CONTRACT NUMBER (Left justified) (5-19)
3 MODIFICATION NUMBER (20-23)
1a NAME OF REPORTING AGENCY
4 CONTRACTING OFFICE ORDER NUMBER (24-38)
5 PURCHASING OR CONTRACTING OFFICE (FPDS Purchase Office Code Manual) Code (39-43)
5a NAME
6 DATE OF THIS ACTION CY (44-45) Mo. (46-47)
7 TYPE OF DATA ENTRY (48) 0 = ORIGINAL 1 = REVERSING 2 = CORRECTING
Items Being Changed:
8 REPORT PERIOD FY (49-50) Qtr (51)
9 D-U-N-S CONTRACTOR ESTABLISHMENT CODE (52-60)
9a ESTABLISHMENT AND COMPLETE ADDRESS
Contractor Name:
Division Name:
Street Address:
City & State or Country:
10 PRINCIPAL PLACE OF PERFORMANCE (STATE OR U.S. OUTLYING AREA OR COUNTRY—FIPS 5 or NBS 1A 10624—(CITY OR PLACE IN 50 STATES ONLY—FIPS 55) State (61-62) City (63-67)
10a NAME OF PRINCIPAL PLACE OF PERFORMANCE
11 TOTAL DOLLARS OBLIGATED OR DEOBLIGATED (68-75)
Round to nearest whole dollar; right justified for report to HIGHTRS; Round to thousands for report to FPDS; (use lead zeros)
11a TYPE OF OBLIGATION (76) 1 = OBLIGATED 2 = DEOBLIGATED * = INITIAL LOAD OF BOA TYPE CONTRACT (NO DOLLARS)
12 SUBJECT TO STATUTORY REQUIREMENTS A. Walsh-Healey Act, Manufacturer B. Walsh-Healey Act, Regular Dealer C. Service Contract Act D. Davis-Bacon Act E. Not subject to Walsh-Healey, Service Contract, or Davis-Bacon Act
13 CICA APPLICABILITY (77) 1. Pre-CICA 2. Post-CICA
13a NUMBER OF OFFERS RECEIVED (78) 1. One 2. More than one
14 KIND OF CONTRACT ACTION (79) 1. Initial Letter Contract 2. Definitive Contract 3. New Definitive Contract 4. Order Under Reporting Agency's Contract 5. Modification 6. GSA Schedule 7. Order under another Agency's Contract 8. Termination for Default 9. Termination for Convenience
15 MULTI-YEAR CONTRACT (80) 1 = Yes 2 = No
16 LABOR SURPLUS AREA (LSA) PREFERENCE (81) 2. Partial Labor Surplus Area Set-Aside Preference (DoD only) 3. Labor Surplus Area—Tie Bid Preference 5. Not a Labor Surplus Area Preference Award 6. Combined Small Business/Partial Labor Surplus Area Set-Aside Preference (DoD only) 7. Total Labor Surplus Area/Small Business Set-Aside Preference (P.L. 98-302) 8. Total Labor Surplus Area Set-Aside Preference (P.L. 98-302)
17 CONSULTANT TYPE AWARD (82) 1 = Yes 2 = No
18 PRINCIPAL PRODUCT OR SERVICE (FPDS Product/Service Code Manual) Code (83-86)
18a DESCRIPTION
19 METHOD OF CONTRACTING (87) 1. Two-step Formal Advertising 2. Order Formal Advertising 3. Negotiated Competitive 4. Negotiated Non-competitive 5. Directed Contracts for Foreign Governments 6. Tariff or Regulated Acquisition
20 EXTENT OF COMPETITION IN NEGOTIATION (88-89)
COMPETITIVE: A1. Small Business Total Set-Aside; A2. Small Business Partial Set-Aside; A3. Labor Surplus Area Set-Aside; A4. Labor Surplus Area/Small Business Set-Aside; A9 Other Negotiated Competitive
NON-COMPETITIVE: B1. Buy Indian; B2. 8(a) Program; B3. Follow-on After Competition; B9. Other Negotiated Non-Competitive
21 NEGOTIATION EXCEPTION AUTHORITY (90) A = 10 USC 2304 (a) (applies to DoD, USCG & NASA only) C = 41 USC 262 (c) (applies to Civilian Agencies) (91-92) #1 #7 13 #2 #8 14 #9 15 #4 10 16 #5 11 17 #6 12
22 TYPE OF CONTRACT OR MODIFICATION (93) A. Fixed Price Redetermination J. Firm Fixed Price K. Fixed Price Economic Price Adjustment L. Fixed Price Incentive R. Cost-Plus-Award Fee S. Cost-No Fee T. Cost Sharing U. Cost-Plus-Fixed Fee V. Cost-Plus-Incentive Fee Y. Time and Materials Z. Labor Hour
23 TYPE OF BUSINESS (94-95)
A1. Small Business-Disadvantaged 8(a); A2. Small Business-Owned by Minority Group; A3. Other Small Business or Individuals; B1. Large Minority Business; B2. Other Large Business; C1. Non-Profit-Private Educational Orginization; C2. Non-Profit-Hospital; C3. Non-Profit-Research Institution, Foundation, Laboratory; C4. Other Non-Profit Institutions; D1. State/Local Government-Educational; D2. State/Local Government-Hospital; D3. State/Local Government-Research Organization; D4. Other State/Local; E1. Acquired and Used Outside U.S./Outlying Areas; E2. Acquired Outside U.S./Outlying Areas and Used Inside U.S./Outlying Areas
24 WOMAN OWNED BUSINESS (96) 0 = Exempt 1 = Yes 2 = No 3 = Not Certified
25 COMPETITIVE SOLICITATION PROCEDURES (97)
A. Normal full & open competition; B. Architect-Engineer; C. Basic research proposal; D. Multiple award schedule; E. Alternate source—Reduced cost; F. Alternate source—Mobilization; G. Alternate source—Eng/R&D capability; H. Small business set-aside; J. Labor surplus area set-aside; K. LSA/small business set-aside; L. Other than full & open competition
Not Applicable: M. Small purchase; N. 8(a); P. Other authorized by statute
25a AUTHORITY FOR OTHER THAN FULL & OPEN COMPETITION (98)
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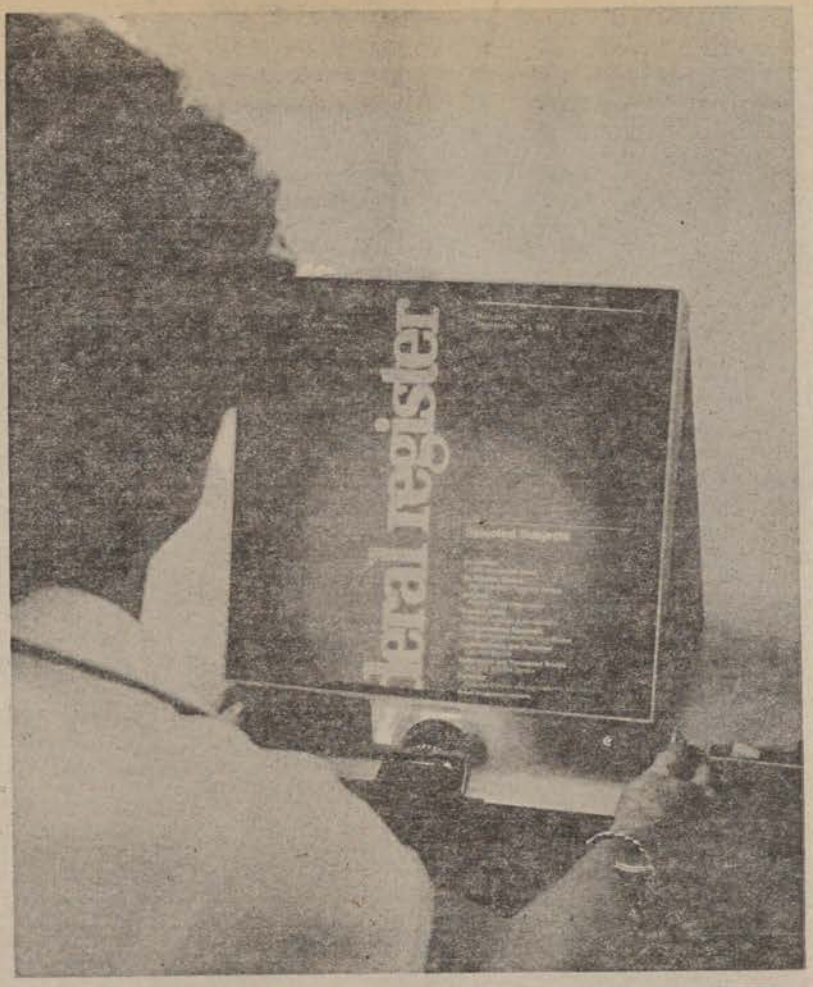

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