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Tuesday
April 8, 1986

Briefings on How To Use the Federal Register—
For information on briefings in Dallas, TX, see announcement on the inside cover of this issue.

Selected Subjects

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Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

DALLAS, TX

WHEN: April 23; at 1:30 pm.

WHERE: Room 7A23, Earl Cabell Federal Building, 1100 Commerce Street, Dallas, TX

RESERVATIONS: local number
Dallas 214-767-8585
Ft. Worth 817-334-3624
Austin 512-472-5494
Houston 713-229-2552
San Antonio 512-224-4471,
for reservations

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Reader Aids

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 449

[Docket No. 0078A]

Fresh Market Sweet Corn Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Fresh Market Sweet Corn Crop Insurance Regulations (7 CFR 449), effective for the 1987 and succeeding crop years. The intended effect of this rule is to: (1) Change the method of calculating the insured's share of an indemnity on crops transferred before harvest; (2) clarify that acreage will not be insured when planted with another crop; (3) change the method of crediting the replanting payment; (4) change the method of computing indemnities when acreage, share, or practice is underreported; (5) establish the minimum value for harvested and appraised production; (6) provide that a replant payment is no longer considered an indemnity; (7) increase the length of time an insured has to give notice of loss when claiming an indemnity; (8) increase the amount of acreage which must be replanted to obtain replanting payments; (9) provide for paying interest on late paid indemnities; (10) change the cancellation and termination dates; and (11) add definitions of "Freeze", "Frost", "Loss ratio", "Potential production", and "Tropical depression". This rule is promulgated under the authority contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: April 30, 1986.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is December 1, 1990.

Merritt W. Sprague, Manager, FCIC: (1) Has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

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

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

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

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

On Thursday, February 13, 1986, FCIC published a Notice of Proposed Rulemaking in the **Federal Register** at 51 FR 5356, to revise and reissue the Fresh Market Sweet Corn Crop Insurance Regulations (7 CFR Part 449), effective for the 1987 and succeeding crop years. The public was given 30 days in which to submit written comments on the proposed rule but none were received. The Notice of Proposed Rulemaking defined "ASCS". This was in error and has been removed from the definition section in this final rule. Because the crop is not under the Actual Production History (APH) program requiring the involvement of ASCS, there is no need for this definition. Also, the definition of "County" has been changed. The proposed rule identified "County" to include a definition of land identified by an ASCS farm serial number for the county but physically located in another county. Since this crop is not under APH, this reference has been removed in the final rule.

Therefore, with the exception of minor changes in language and format, the proposed rule, as discussed above, is adopted as a final rule. The principal changes in the fresh market sweet corn policy are:

1. *Section 2.*—Add a clause to change the method of calculating the insured's share of an indemnity on crops transferred before harvest. This limits indemnities to the insurable interest at the time of loss.

Specify that acreage will not be insured when planted with another crop. This change is made to be consistent with other crop policies.

2. *Section 6.*—Specify that the replanting payment will only be applied to payment of the premium if the billing date has passed. In cases when the billing date for a crop has passed on the date replanting payment is made, the replanting payment will be applied to payment of the billed premium. In other cases it will be paid to the insured. This changes the current practice of applying the replanting payment to the outstanding premium in all cases.

3. *Section 8.*—Increase from 48 to 72 hours the length of time an insured has to give notice of loss when claiming an indemnity. This change allows the insured to give timely notice when damage occurs over weekends and during periods of intense activity.

4. *Section 9.*—When acres are underreported, the production from all acres will count against the reported acres in calculating indemnities. This change will reduce the amount of indemnities when acres are underreported and will reduce the complexity of calculations.

Change the method of computing the total value of harvested and appraised production to be counted for a unit when claiming an indemnity.

Add a provision to establish that the value of any appraised production will not be less than the dollar amount obtained by multiplying the number of crates appraised by $2.00. Indemnities have been paid after an insurable cause of loss occurred, when production was normal, but the prices were low. Also, marketing of production, part of which may be rotten and is therefore destroyed, has resulted in a minus value after deduction of allowable costs from the price received. The result has been a devaluation of the production actually marketed and an inflated indemnity. Establishing a minimum price for marketed and appraised production returns the coverage to a production guarantee program and reduces the possibility that FCIC may pay indemnity when production is normal. It also removes the tendency to insure market prices. Since the price on a normal crop when harvested ordinarily exceeds the insurance amount, the $2.00 amount represents the point at which the dollar amount of insurance on appraised production of a given number of units will zero out. This change also simplifies the method of determining value and informs the insured of the minimal value of appraised production.

Increase from 10 acres or 10 percent to 20 acres or 20 percent the acreage required to be replanted to qualify for a replant payment. Clarify that the percentage to be replanted is computed on the acreage initially planted on the unit as of the final planting date. Delete the requirement that the payment be considered an indemnity except for minor coverage requirements. This reduces the number of inspections by eliminating small replant payments and paperwork.

Add a provision to pay interest whenever indemnities are not paid timely.

5. *Section 15.d.*—Change the cancellation and termination dates from July 1 to July 31 to be consistent with farming practices in the area.

6. *Section 17*—Add definitions of "Freeze", "Frost", "Loss ratio", "Potential production", and "Tropical depression".

Since policy changes must be on file by April 30, 1986, good cause is shown for making this rule effective in less than 30 days.

List of Subjects in 7 CFR Part 449

Crop insurance, Fresh market sweet corn

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Fresh Market Sweet Corn Corp Insurance Regulations (7 CFR Part 449), effective for the 1987 and succeeding crop years, to read as follows:

PART 449—FRESH MARKET SWEET CORN CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1987 and Succeeding Crop Years

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

§ 449.1 Availability of fresh market sweet corn insurance.

Insurance shall be offered under the provisions of this subpart on fresh market sweet corn in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 449.2 Premium rates, coverage levels, and amounts of insurance.

(a) The Manager shall establish premium rates, coverage levels, and amounts of insurance for fresh market sweet corn which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect an amount of insurance per acre and a coverage level from among those levels and amounts set by the actuarial table for the crop year.

§ 449.3 OMB control numbers.

OMB control numbers are contained in Subpart H of Part 400, Title 7 CFR.

§ 449.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer, or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 449.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the fresh market sweet corn crop insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00 finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§ 449.6 The contract.

(a) The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the fresh market sweet corn crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 449.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation must be made by any person to cover such person's share in the fresh market sweet corn crop as landlord, owner-operator, or tenant if the person wishes to participate in the program. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1987 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a fresh market sweet corn contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1987 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37; 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Fresh Market Sweet Corn Crop Insurance Policy for the 1987 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Fresh Market Sweet Corn—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

Agreement to insure: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Frost;

(2) Freeze;

(3) Hail;

(4) Fire;

(5) Tornado;

(6) Tropical depression; or

(7) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are excepted, excluded, or limited by the actuarial table or section 9.e.(6).

b. We will not insure against any loss of production due to:

(1) Disease or insect infestation;

(2) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(3) The failure to follow recognized good sweet corn farming practices;

(4) The impoundment of water by any governmental, public, or private dam or reservoir project;

(5) The failure or breakdown of irrigation equipment or facilities;

(6) The failure to follow recognized good sweet corn irrigation practices; or

(7) Any cause not specified in section 1.a. as an insured loss.

2. Crop, acreage, and share insured

a. The crop insured will be sweet corn planted for harvest as fresh market sweet corn, grown on insured acreage, and for which an amount of insurance and premium rate are set by the actuarial table.

b. The acreage insured for each crop year will be sweet corn planted on irrigated acreage as designated insurable by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured sweet corn at the time of each planting period. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or

(2) The beginning of harvest.

d. We do not insure any acreage of sweet corn grown by any person if the person had not previously:

(1) Grown sweet corn for commercial sales; or

(2) Participated in the management of the sweet corn farming operation.

e. We do not insure any acreage:

(1) Of sweet corn grown for direct consumer marketing;

(2) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(3) Which is not irrigated;

(4) Which is destroyed, it is practical to replant to sweet corn, and such acreage is not replanted;

(5) Initially planted after the final planting date set by the actuarial table;

(6) Of volunteer sweet corn;

(7) Planted to a type or variety of sweet corn not established as adapted to the area or excluded by the actuarial table;

(8) Planted for experimental purposes; or

(9) Planted with another crop.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of Acreage, Share, and Practice

You must report at the time of each planting period on our form:

a. All the acreage of fall, winter and spring-planted sweet corn in the county in which you have a share;

b. The practice; and

c. Your share.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any sweet corn plantings in the county. This report must be submitted for each planting period on or before the reporting date established by the actuarial table for each planting period. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, for each planting period, the insured acreage, share, and practice or we may deny liability on any unit for any planting. Any report submitted by you may be revised only upon our approval.

4. Coverage Levels and Amounts of Insurance

a. The coverage levels and amounts of insurance are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and amount of insurance on or before the sales closing date set by the actuarial table for submitting applications for the crop year.

5. Annual Premium

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the amount of insurance, times the premium rate, times the insured acreage, times your share at the time of each planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

6. Deductions for Debt

Any unpaid amount due us may be deducted from any indemnity payable to you, or from a replanting payment if the billing date has passed on the date you are paid the replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance Period

Insurance attaches when the sweet corn is planted in each planting period and ends at the earliest of:

a. Total destruction of the sweet corn on the unit;

b. Discontinuance of harvest of sweet corn on the unit;

c. The date harvest should have started on the unit on any acreage which will not be harvested;

d. Final harvest; or

e. Final adjustment of a loss.

8. Notice of damage or loss

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant sweet corn damaged due to any insured cause (See subsection 9f);

(b) During the period before harvest, the sweet corn on any unit is damaged and you decide not to further care for or harvest any part of the sweet corn;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the sweet corn and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is determined within 15 days prior to or during harvest and you are going to claim an indemnity on any unit, you must give us notice not later than 72 hours after the earliest of:

(a) Total destruction of the sweet corn on the unit;

(b) Discontinuance of harvest of any acreage on the unit; or

(c) The date harvest would normally start if any acreage on the unit is not to be harvested.

b. You may not destroy or replant any of the sweet corn on which a replanting payment will be claimed until we give written consent.

c. You must obtain written consent from us before you destroy any of the sweet corn which is not to be harvested.

d. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for indemnity

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the sweet corn on the unit;

(2) Discontinuance of harvesting on the unit; or

(3) The date harvest should have started on the unit on any acreage which will not be harvested.

b. We will not pay indemnity unless you:

(1) Establish the total production and the value received for all sweet corn on the unit and that any loss of production or value has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance times the percentage for the stage of production defined by the Actuarial table;

(2) Subtracting therefrom the total value of production to be counted (see section 9e); and

(3) Multiplying this result by your share.

d. If the information reported by you under section 3 of this policy results in a lower premium than the actual premium determined to be due, the amount of insurance on the unit will be computed on the information reported, but the value of all production from insurable acreage, whether or not reported as insurable, will count against the amount of insurance.

e. The total value of production to be counted for a unit will include all harvested and appraised production.

(1) The total value of harvested production will be the greater of:

(a) The dollar amount obtained by multiplying the number of crates of sweet corn harvested on the unit by $2.00; or

(b) The dollar amount obtained by multiplying the number of crates of sweet corn sold by the price per crate received minus allowable cost set by the actuarial table; however, such price must not be less than zero for any crate.

(2) The value of appraised production to be counted will include:

(a) The value of any potential production and unharvested mature sweet corn; and

(b) The value of unharvested production on harvested acreage and the value of the potential production lost due to uninsured causes; and

(c) Not less than the dollar amount of insurance per acre for any acreage abandoned or put to another use without prior written consent or which is damaged solely by an uninsured cause.

The value of any appraised production will not be less than the dollar amount obtained by multiplying the number of crates of sweet corn appraised by $2.00.

(3) Unharvested sweet corn damaged or defective due to insurable causes and which cannot be marketed will not be counted as production.

(4) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of sweet corn becomes general in the county for the planting period and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(5) The amount and value of production of any unharvested sweet corn may be determined on the basis of field appraisals conducted after the end of the insurance period.

(6) If you elect to exclude hail and fire as insured causes of loss and the sweet corn is damaged by hail or fire, appraisals will be made in accordance with Form FCI-78-A, "Request to Exclude Hail and Fire".

f. A replanting payment may be made on any insured sweet corn replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured acreage as determined on the final planting date for the planting period. The acreage to be replanted must have sustained a loss in excess of 25 percent of the plant stand for the unit.

(1) No replanting payment will be made on acreage on which a replanting payment has been made during the current planting period for the crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting, but will not exceed the product obtained by multiplying $40.00 per acre by your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

g. You must abandon any acreage to us.

h. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

i. An indemnity will not be paid unless you comply with all policy provisions.

j. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity.

The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

k. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the sweet corn is planted for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

l. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation

(Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all sweet corn produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: cancellation and termination

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) an indemnity, will be the date you sign the claim; or

(2) payment under another program administered by the United States Department of Agriculture, will be the date both such other payment and setoff are approved.

d. The cancellation and termination dates are July 31.

e. If you die or are judicially declared imcompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes

We may change any terms and provisions of the contract from year to year. If your amount of insurance at which indemnities are computed is no longer offered, the actuarial table will provide the amount of insurance which you are deemed to have elected. All contract changes will be available at your service office by April 30 preceding the cancellation date. Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms

For the purposes of sweet corn crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the amount of insurance, coverage levels, premium rates, practices, insurable and uninsurable acreage, and related information regarding sweet corn insurance in the county.

b. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

c. "Crop year" means the period within which the sweet corn is normally grown beginning July 15 and continuing through the harvesting of the spring-planted sweet corn and is designated by the calendar year in which the spring-planted sweet corn is normally harvested.

d. "Freeze" means the condition of air temperatures over a widespread area remaining sufficiently at or below 32 degrees Fahrenheit to cause crop damage.

e. "Frost" means the condition of air temperature around the plant falling to 32 degrees Fahrenheit or below.

f. "Harvest" means the final picking of marketable sweet corn on the unit.

g. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

h. "Insured" means the person who submitted the application accepted by us.

i. "Loss ratio" means the ratio of indemnity to premium.

j. "Marketable sweet corn" means the sweet corn has reached the stage of development that will withstand normal handling and shipping.

k. "Person" means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State.

l. "Planting period" means the sweet corn planted within the dates set by the actuarial table, as fall-planted, winter-planted or spring-planted.

m. "Plant stand" means the number of live plants per acre before the plants were damaged due to insurable causes.

n. "Potential production" means the number of crates of sweet corn the sweet corn plants would produce or would have produced, per acre, by the end of the insurance period.

o. "Replanting" means performing the cultural practices necessary to replant insured acreage to sweet corn.

p. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

q. "Sweet corn" means a type of corn with kernels containing a high percentage of sugar and adapted for table use.

r. "Sweet corn grown for direct consumer marketing" means sweet corn grown for the purpose of selling directly to the consumer and which is grown on acreage not subject to an agreement between producer and packer to pack the production (the producer-packer agreement must be executed before you report your acreage).

s. "Tenant" means a person who rents land from another person for a share of the sweet corn or a share of the proceeds therefrom.

t. "Tropical depression" means only a large-scale, atmospheric wind-and-pressure system characterized by low pressure at its center and counterclockwise circular wind motion which has been identified by the United States Weather Service in which the minimum sustained surface wind (1-minute mean) is 33 knots (38 miles per hour) or more at the U.S. Weather Service reporting station nearest to the crop damage at the time of loss.

u. "Unit" means all insurable acreage of sweet corn for each planting period in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the sweet corn on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with the Appeal Regulations, (7 CFR Part 400—Subpart J).

20. Notices

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, DC, on March 18, 1986.

Michael Bronson,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-7725 Filed 4-7-86; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Nectarine Reg. 14, Amdt. 8; Peach Reg. 14, Amdt. 8]

Nectarines, Pears, Plums, and Peaches Grown in California; Amendment of Size Requirements.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends size requirements for shipments of fresh nectarines and peaches grown in California. It also changes the weight count standards for certain varieties of peaches and nectarines. These amendments are designed to promote the marketing of suitable quality and uniform sizes of such fresh fruit in the interest of producers and consumers during the 1986 season.

EFFECTIVE DATE: April 1, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, Washington, DC 20250. Telephone 202-447-5053.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules proposed thereunder, are unique in that they are brought about through the group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 275 handlers are regulated under the marketing order for California nectarines (7 CFR Part 916) and approximately 608 handlers are regulated under the marketing order for California pears, plums, and peaches (7 CFR Part 917). The great majority of these groups may be classified as small entities. While the final rule may impose some costs on affected handlers and the number of such firms may be substantial, the added burden on small entities, if present at all, is not significant.

This final rule is issued under the marketing agreements, as amended, and Marketing Orders 916 and 917, as amended (7 CFR Parts 916 and 917), regulating the handling of nectarines, pears, plums and peaches grown in California. The agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). Shipments of these California fruits are regulated by grade and size under Nectarine Regulation 14 (7 CFR Part 916) and Peach Regulation 14 (7 CFR Part 917). Because these regulations do not change substantially from season to season, they are issued on a continuing basis subject to amendment, modification or suspension as may be recommended by the applicable committees and approved by the Secretary.

Notice of the proposed amendment of the size requirements and weight count standards was published in the **Federal Register** (51 FR 6239) on February 21, 1986. It invited interested persons to file comments on the proposal through March 24, 1986. No comments were received.

The Nectarine Administrative Committee and the Peach Commodity Committee recommended amendment of the size requirements for nectarines and peaches for the 1986 season, which is expected to begin in mid-April. This final rule is based upon those recommendations, information submitted by the committees, and other available information. The changes reflect crop and market conditions experienced last season and expected in 1986. The changes are designed to provide ample supplies of good quality fruit in the interest of producers and consumers pursuant to the declared policy of the act.

This final rule changes the size requirements for nectarines and peaches by adding several new varieties now produced in commercially significant quantities, and by deleting from size regulation certain varieties no longer produced in significant quantities. The final rule also changes the weight count standards (i.e. the maximum number of fruit permitted in a 16-pound sample) for certain varieties and sizes of peaches and nectarines packed in volume-fill containers. Additionally, weight count standards are issued for nectarines packed in tray packs (molded forms).

With respect to nectarines, §§ 916.356(a)(2), (a)(3), and (a)(4) are amended to add varieties to the minimum size requirements. Specifically, the May Glo variety is added to § 916.356(a)(2), the Ama Lyn, Mike Grand, Star Brite, and Tina Red varieties are added to § 916.356(a)(3), and the Super Star variety is added to § 916.356(a)(4). Finally, the Ambrosia and Desert Dawn nectarine varieties are deleted from minimum size requirements.

For peaches, §§ 917.459(a)(4), and (a)(5) are amended to add new varieties to the minimum size requirements. Specifically, the Ray Crest variety is added to § 917.459(a)(4). The Autumn Crest, Berenda Sun, and Ryan's Sun varieties are added to § 917.459(a)(5). In addition, size requirements are deleted for the Early Royal May, Early Fairtime, Fiesta, and July Elberta peach varieties. The July Elberta is also known as Early Elberta, Kim Elberta, and Socala.

Shipments of the above-named nectarine and peach varieties that are to be regulated exceeded 10,000 packages during the 1985 season, and shipments of the above-named varieties that are eliminated from variety-specific size regulation fell below 5,000 packages during that season. The industry practice is to implement variety-specific size regulations for varieties of nectarines and peaches which are produced in commercially significant quantities. When varieties are no longer produced in significant quantities they are deleted from variety-specific size regulations.

Also, this final rule requires all types of containers of nectarines to be checked on the basis of weight count standards (§§916.356(a)(2)(ii), (a)(3)(ii) and (a)(4)(ii)). Previously, the weight count standards applied to all containers other than tray packs. This final rule extends these standards to nectarine tray packs to lessen the chances of fruit size variability.

Further, minor adjustments are made in the weight count standards for nectarines to improve maturity. The maximum number of nectarines in a 16-pound sample for the 108 size is reduced from 98 to 95, and the maximum number of nectarines in a 16-pound sample for the 96 size would be reduced from 90 to 87. Because the sample size of 16-pounds is relatively large, the overall effect on fruit size and the quantity available for marketing will be minimal and should not have the effect of reducing supplies of a particular size or variety of nectarines. In fact, the changes may have the reverse effect if growers leave the fruit on the tree for longer periods to gain size and maturity, which would be desirable to consumers.

In a similar weight count action, the final rule also would increase the maximum number of size 80 peaches which are permitted in a 16-pound sample from 71 to 73 pieces of fruit when they are packed in volume-fill containers (§ 917.459(a)(4)(iii)). Slightly larger fruit has been packed in volume-fill containers than in tray packs. Therefore, the result of this relaxation should be more uniformly sized peaches, regardless of type of pack.

After considering the recommendations submitted by the nectarine and peach committees, the information contained in the notice, and other available information, the Department has determined that the action hereinafter set forth tends to effectuate the declared policy of the act and should be issued.

In addition, it is found that it is impracticable, unnecessary, and contrary to the public interest to postpone the effective date of this final rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553). The harvest and shipment of these fruits is expected to begin soon. Hence, this action must be effective promptly to minimize any inequity among producers or handlers due to different requirements for different parts of the 1986 shipping season. Moreover, the provisions in the final rule are the same as those contained in the proposal which was published in the **Federal Register** on February 21, 1986. Growers and handlers have been preparing to conduct their operations in light of the proposed changes and do not require any additional time for preparation. No useful purpose would be served by delaying the effective date of these actions.

List of Subjects

7 CFR Part 916

Marketing agreements and orders, Nectarines, California.

7 CFR Part 917

Marketing agreements and orders, Pears, Plums, Peaches, California.

The final rule is as follows:

1. The authority citation for 7 CFR Parts 916 and 917 continues to read as follows:

Authority: Secs. 1–9, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

2. The text of paragraphs (a)(2), (a)(3), and (a)(4) of § 916.356 (50 FR 27813) is revised to read:

§ 916.356 Nectarine Regulation 14.

(a) * * *

(2) Any package or container of Aurelio Grand, Mayfair, Maybelle, May Glo, or Royal Delight variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 108 nectarines in the lug box; and

(ii) Such nectarines, when packed in any container, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 95 nectarines.

(3) Any package or container of Ama Lyn, Apache, Armking, Early May, Early May Grand, Mike Grand, Early Star, Gee Red, June Belle, June Glo, June Grand, May Grand, Red June, Spring Grand, Star Brite, Sunfre, Tina Red, or Zee Gold variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 96 nectarines in the lug box; and

(ii) Such nectarines, when packed in any container, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 87 nectarines.

(4) Any package or container of Autumn Delight, Autumn Grand, Bob Grand, Clinton-Strawberry, Early Sun Grand, Fairlane, Fantasia, Firebrite, Flamekist, Flavortop, Flavortop I, Gold King, Granderli, Hi-Red, Independence, Kent Grand, Late Le Grand, Le Grand, Moon Grand, Niagara Grand, P-R Red, Red Diamond, Red Free, Red Grand, Regal Grand, Richards Grand, Royal Giant, Ruby Grand, September Grand, Tasty Free, Tom Grand, Larry's Grand, Son Red, Spring Red, Late Tina Red, Red Jim, Summer Beaut, Sparkling Red, Star Grand, Summer Grand, Sun Grand, Sherri Red, Super Star or 20 G 836 variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 84 nectarines in the lug box; and

(ii) Such nectarines, when packed in any container, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 75 nectarines.

* * * * *

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

3. The text of paragraphs (a)(4) introductory text, (a)(4)(iii), and (a)(5) of § 917.459 (50 FR 27813) is revised to read:

§ 917.459 Peach Regulation 14.

(a) * * *

(4) Any package or container of Babcock, Coronet, Early Coronet, Firecrest, First Lady, Flavorcrest, Flavor Red, Golden Lady, Honey Red, JJK–1, June Crest, June Lady, May Crest, May Lady, Merrill Gem, Merrill Gemfree, Ray Crest, Redhaven, Redtop, Regina, Royal May, Springcrest, Spring Lady, Willie Red, or 50–178 variety of peaches unless:

* * * * *

(iii) Such peaches in any container when packed other than as specified in paragraph (a)(4)(i) and (ii) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 73 peaches.

(5) Any package or container of Angelus, August Sun, Autumn Crest, Autumn Gem, Autumn Lady, Belmont, Berenda Sun, Blum's Beauty, Cassie, Cal Red, Carnival, Early O'Henry, Elberta, Elegant Lady, Fairtime, Fay Elberta, Fayette, Fire Red, Flamecrest, Fortyniner, Franciscan, Halloween, July Lady, July Sun, Kings Lady, Lacey, Mardigras, O'Henry, Pacifica, Parade, Preuss Suncrest, Red Cal, Redglobe, Red Lady, Rio Oso Gem, Royal Flame, Ryan's Sun, Scarlet Lady, Sparkle, Summerset, Suncrest, Sun Lady,

Toreador, or Windsor variety of peaches unless:

* * * * *

Dated: April 1, 1986.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86-7639 Filed 4-7-86; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 86-038]

Change in Disease Status of the Netherlands Because of African Swine Fever

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations concerning the importation into the United States of pork and pork products by adding The Netherlands to the list of countries where African swine fever (ASF) exists or when there is reason to believe that ASF exists. The effect of this action is to add certain restrictions on the importation of pork and pork products from The Netherlands. This is necessary in order to help prevent the introduction of ASF into the United States.

DATES: Effective date is April 3, 1986. Written comments must be received on or before June 9, 1986.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 86-038. Written comments may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Mark P. Dulin, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 843, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8499.

SUPPLEMENTARY INFORMATION:

Background

African swine fever (ASF) is potentially the most dangerous and destructive of all communicable swine diseases. The causative virus is highly virulent and may be present in swine, pork, and pork products originating in countries where the disease exists.

On April 1, 1986, the Department was notified by the International Office of Epizootics that an outbreak of ASF has been diagnosed in swine in The Netherlands. The outbreak was confirmed by the Government of The Netherlands. The diagnosis of ASF was based on clinical signs and laboratory confirmation.

The importation of swine, pork, and pork products is regulated under the regulations set forth in 9 CFR Parts 92 and 94 (referred to below as the regulations). In order to help prevent the introduction of ASF into the United States, this document amends § 94.8 of the regulations to add The Netherlands to the list of countries where ASF exists or where there is reason to believe that ASF exists. With this amendment, the provisions of § 94.8 now prohibit the entry into the United States of pork and pork products from The Netherlands unless, among other things:

(1) Such pork or pork products have been fully cooked by a commercial method in a container hermetically sealed promptly after filling but before such cooking, so that such cooking and sealing produced a fully-sterilized product which is shelf-stable without refrigeration; or

(2) Such pork or pork products are not otherwise prohibited importation and are consigned directly from the port of entry in the United States to a meat processing establishment operating under Federal meat inspection, approved by the Deputy Administrator, Veterinary Services, for further processing of such pork or pork product by heat; or

(3) Such pork or pork products meet specified conditions designed to ensure that the pork or pork products originated from swine raised and slaughtered in a country not listed in § 94.8 of the regulations as a country where ASF exists or is reasonably believed to exist, are free of bones, and were heated (after the bones had been removed) at an establishment in The Netherlands by other than a flash-heating method to an internal temperature of at least 69° C. (156° F.) throughout.

Pork an pork products offered for importation into the United States from The Netherlands are also subject to other restrictions in the regulations because of foot-and-mouth disease, hog cholera, and swine vesicular disease.

Also, it should be noted that under the regulations, swine from The Netherlands (with certain exceptions for wild swine in accordance with § 92.4(c)) have been prohibited from being imported into the United States because of the existence of foot-and-mouth disease, hog cholera, and swine vesicular disease. Further, under the regulations, the existence of ASF in The Netherlands provides an independent basis for prohibiting the importation into the United States of swine (with certain exceptions for wild swine in accordance with § 92.4(c)) from that country.

Emergency Action

Dr. John K. Atwell, Deputy Administrator for Veterinary Services, has determined that an emergency situation exists that warrants publication of this interim rule without prior opportunity for public comment. Under the circumstances explained above, it is necessary that the rule be made effective immediately in order to help prevent the introduction of ASF into the United States.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 533, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are unnecessary, and good cause is found for making this interim rule effective upon publication. Comments are being solicited for 60 days after publication of this document. A final document discussing comments received and any amendments required will be published in the **Federal Register**.

Executive Order 12291 and Regulatory Flexibility Act

The emergency nature of this action makes it impracticable for the Agency to follow the procedures for Executive Order 12291 with respect to this interim rule. Immediate action is warranted in order to help prevent the introduction of ASF into the United States.

This emergency situation also makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act impracticable. Since this action may have a significant economic impact on a substantial number of small entities, the Final Regulatory Impact Analysis, if required, will address the issues required in section 604 of the Regulatory Flexibility Act.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and 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.)

List of Subjects in 9 CFR Part 94

African swine fever, Animal diseases, Exotic Newcastle disease, Foot-and-mouth disease, Fowl pest, Garbage, Hog cholera, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, Rinderpest, Swine vesicular disease.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, 9 CFR Part 94 is amended as follows:

1. The authority citation for Part 94 continues to read as set forth below:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.8 [Amended]

2. "The Netherlands" is added after "Malta" to the list of countries in the introductory material in § 94.8.

Done at Washington, DC, this 3rd day of April 1986.

Gerald J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 86-7742 Filed 4-7-86; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL RESERVE SYSTEM

12 CFR Part 201

Regulation A Extensions of Credit by Federal Reserve Banks, Changes in Discount Rates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A, "Extensions of Credit by Federal Reserve Banks," for the purpose of reducing discount rates. The discount rate action was taken in the context of similar action by other important industrial countries and sizable declines in most market interest rates in recent weeks. More broadly, growth in the various monetary aggregates has been more limited this year, prospects for sustaining improved price performance and continuing restraint on costs have been further enhanced by the recent sharp declines in oil prices, and the economic expansion appears to be proceeding within the nation's growth potential.

EFFECTIVE DATES: The changes were effective on the dates specified below.

FOR FURTHER INFORMATION CONTACT: William W. Wiles, Secretary of the Board (202/452-3257), or Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD) (202/452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of sections 10(b), 13, 14, 19, et al., of the Federal Reserve Act, the Board has amended its Regulation A to incorporate changes in discount rates on Reserve Bank extensions of credit. Further, under the authority of 5 U.S.C. 553 (b)(3)(B) and (d)(3), these amendments are being published without prior general notice of proposed rulemaking, public participation, or deferred effective date. The Board has for good cause found that current economic and financial considerations require that these amendments be adopted immediately.

List of Subjects in 12 CFR Part 201

Banks, Banking, Credit, Federal Reserve System.

For the reasons outlined above, the Board of Governors amends Part 201 as set forth below:

PART 201—[AMENDED]

1. The authority citation for 12 CFR Part 201 is revised to read as follows:

Authority: Secs. 10(a), 10(b), 13, 13a, 14(d) and 19 of the Federal Reserve Act (12 U.S.C. 347a, 347b, 343 et seq., 347c, 348 et seq., 357, 374, 374a, and 461); and sec. 7(b) of the International Banking Act of 1978 (12 U.S.C. 347d), unless otherwise noted.

2. Section 201.51 is revised to read as follows:

§ 201.51 Short-term adjustment credit for depository institutions.

The rates for short-term adjustment credit provided to depository institutions under § 201.3(a) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	7	Mar. 7, 1986.
New York	7	Mar. 7, 1986.
Philadelphia	7	Mar. 7, 1986.
Cleveland	7	Mar. 10, 1986.
Richmond	7	Mar. 7, 1986.
Atlanta	7	Mar. 7, 1986.
Chicago	7	Mar. 7, 1986.
St. Louis	7	Mar. 7, 1986.
Minneapolis	7	Mar. 7, 1986.
Kansas City	7	Mar. 7, 1986.
Dallas	7	Mar. 7, 1986.
San Francisco	7	Mar. 7, 1986.

3. Section 201.52 is revised to read as follows:

§ 201.52 Extended credit for depository institutions.

(a) *Seasonal credit.* The rates for regular seasonal credit extended to depository institutions under § 201.3(b)(1) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	7	Mar. 7, 1986.
New York	7	Mar. 7, 1986.
Philadelphia	7	Mar. 7, 1986.
Cleveland	7	Mar. 10, 1986.
Richmond	7	Mar. 7, 1986.
Atlanta	7	Mar. 7, 1986.
Chicago	7	Mar. 7, 1986.
St. Louis	7	Mar. 7, 1986.
Minneapolis	7	Mar. 7, 1986.
Kansas City	7	Mar. 7, 1986.
Dallas	7	Mar. 7, 1986.
San Francisco	7	Mar. 7, 1986.

(b) *Temporary seasonal credit program.* At the option of the borrower, interest on credit advanced under the temporary simplified seasonal credit program as revised on February 18, 1986, can be either at the basic discount rate (see § 201.51) or at a rate that is one-half percentage point above the basic rate and that will remain fixed during the time the credit is outstanding. The fixed rate for new loans may be changed as the basic discount rate and extended credit rates are changed. In no case should such borrowing, including renewals, be outstanding beyond February 1987.

(c) *Other extended credit.* The rates for other extended credit provided to depository institutions under sustained liquidity pressures or where there are exceptional circumstances or practices involving a particular institution under § 201.3(b)(2) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	7	Mar. 7, 1986.
New York	7	Mar. 7, 1986.
Philadelphia	7	Mar. 7, 1986.
Cleveland	7	Mar. 10, 1986.
Richmond	7	Mar. 7, 1986.
Atlanta	7	Mar. 7, 1986.
Chicago	7	Mar. 7, 1986.
St. Louis	7	Mar. 7, 1986.
Minneapolis	7	Mar. 7, 1986.
Kansas City	7	Mar. 7, 1986
Dallas	7	Mar. 7, 1986.
San Francisco	7	Mar. 7, 1986.

These rates apply for the first 60 days of borrowing. A one percentage point surcharge applies for borrowing during the next 90 days, and a two percentage point surcharge applies for borrowing thereafter. Where credit provided to a particular depository institution is anticipated to be outstanding for an unusually prolonged period and in relatively large amounts, the time period in which each rate under the structure is applied may be shortened, and the rate may be established on a more flexible basis, taking into account rates on market sources of funds.

§ 201.53 [Removed]

4. Because § 201.53 was repealed in 1981, it is removed.

By order of the Board of Governors of the Federal Reserve System, March 31, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-7571 Filed 4-7-86; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 9178]

Bass Brothers Enterprises, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, that Ashland Oil Co., the nation's third-largest producer of carbon black, cancel the proposed sale of its carbon black assets to Bass Brothers Enterprises, Inc. Ashland is also required to obtain Commission approval before selling any of its domestic carbon black plants to a major competitor.

DATE: Complaint issued May 8, 1984. Decision issued March 12, 1986.[1]

FOR FURTHER INFORMATION CONTACT: FTC/L-502, Steven B. Feirman, Washington, DC 20580. (202) 634-6609.

SUPPLEMENTARY INFORMATION: On Tuesday, Dec. 17, 1985, there was published in the **Federal Register**, 50 FR 51398, a proposed consent agreement with analysis In the Matter of Bass Brothers Enterprises, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

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

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock or Assets: § 13.5 Acquiring corporate stock or assets; § 13.5-20 Federal Trade Commission Act.

List of Subjects in 16 CFR Part 13

Carbon black, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Emily H. Rock,

Secretary.

[FR Doc. 86-7746 Filed 4-7-86; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[Docket No. 9158]

American Medical International, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: The Federal Trade Commission has modified, for the second time, a 1984 divestiture order with American Medical International, Inc. (49 FR 29568) After first modifying the original order specifying the divestiture required (49 FR 48180), the Commission has further modified the order to allow respondent to divest French Hospital in San Luis Obispo, Calif., to Summit Health Ltd. The current modified order allows respondent to retain a security interest in French Hospital until Summit finishes payment, and retain the stock of French Hospital Corp.

DATES: Final Order issued July 2, 1984. Modified Order issued Nov. 9, 1984. Order Modifying Modified Order issued March 21, 1986.

FOR FURTHER INFORMATION CONTACT: Elliot Feinberg, FTC/L-301, Washington, DC 20580. (202) 634-4604.

SUPPLEMENTARY INFORMATION: In the Matter of American Medical International, Inc., a corporation, and AMISUB (French Hospital), a corporation. The prohibited trade practices and/or corrective actions, as set forth at 49 FR 29568, remain unchanged.

List of Subjects in 16 CFR Part 13

Hospital, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Before Federal Trade Commission

[Docket No. 9158]

Commissioners: Terry Calvani, Acting Chairman, Patricia P. Bailey, Mary L. Azcuenaga, Andrew J. Strenio, Jr.

Order Modifying Modified Order to Cease and Desist

In the Matter of American Medical International, Inc. a corporation, and AMISUB (French Hospital), a corporation.

On November 9, 1984, the Commission issued its Modified Order in this matter requiring, *inter alia*, that respondent American Medical International, Inc. ("AMI") "divest, absolutely and in good faith, all stock, assets, properties, licenses, leases, and other rights and privileges, tangible and intangible, that AMI acquired from Central Coast Hospital Company, French Hospital Corporation and French Medical Clinic, Inc., together with any subsequent improvements." Pursuant to the terms of Paragraph II of the order, AMI submitted an application requesting prior Commission approval of AMI's divestiture of French Hospital Corporation to Summit Health Ltd. ("Summit"). The application was placed on the public record for thirty days in accordance with § 2.41 of the Commission's Rules of Practice, and no public comments were received.

Although the proposed divestiture appeared consistent with the order's express objective of "establish[ing] French Hospital as a viable competitor in San Luis Obispo County", the agreement entered into between AMI and Summit varied from the provisions of Paragraph II of the order in certain respects. Specifically, the agreement granted AMI a security interest in the assets to be divested and an accompanying right to repossess the assets. In addition, the agreement did not provide for the transfer of the stock of French Hospital Corporation or of the data processing equipment installed by AMI at the hospital. Because it appeared that the public interest would be served by modifying the order to allow the proposed divestiture to go forward, on March 6, 1986, the Commission issued its Order To Show Cause Why Order Requiring Divestiture Should Not Be Modified ("order to show cause") pursuant to § 3.72 of the Commission's Rules of Practice. The order to show cause proposed modification of Paragraph II of the order to allow AMI to retain a security interest in the assets to be divested, to require redivestiture of any assets AMI reacquires by operation of such a security interest, to delete the requirement that AMI divest the stock of French Hospital Corporation and to exclude from the assets to be divested the data processing equipment installed by AMI at French Hospital. On March 11, 1986, the order to show cause was served on AMI, and AMI answered on March 12, 1986, stating that it consents to the modifications.

After reviewing AMI's answer and the materials submitted in connection with AMI's divestiture application, the Commission has concluded that the public interest warrants modifying the order as proposed in the order to show cause. As the Commission observed in the order to show cause, the proposed divestiture appears likely to advance the remedial objectives of the order.

Accordingly,

It is hereby ordered that pursuant to 15 U.S.C. 45(b), and § 3.72 of the Commission's Rules of Practice, 16 CFR 3.72, Paragraph II of the order in this matter be modified to read as follows:

It is ordered that within twelve (12) months from the date this Order becomes final, AMI shall divest, absolutely and in good faith, all assets, properties, licenses, leases, and other rights and privileges, tangible and intangible, that AMI acquired from Central Coast Hospital Company, French Hospital Corporation and French Medical Clinic, Inc., together with any subsequent improvements except for the stock of French Hospital Corporation and the data processing equipment installed by AMI at French Hospital. The purpose of the divestiture is to reestablish French Hospital as a viable competitor in San Luis Obispo County. The divestiture shall be subject to the prior approval of the Federal Trade Commission.

Pending divestiture, AMI shall take all measures necessary to maintain French Hospital in its present condition and to prevent any deterioration, except for normal wear and tear, of any of the assets to be divested so as not to impair French Hospital's present operating abilities or market value.

Nothing in this Order shall be deemed to prohibit an eligible person from giving and AMI from accepting and enforcing a bona fide lien, mortgage, deed of trust or other form of security interest on all or any portion of the assets to be divested under the provisions of this Order. If AMI accepts a security interest, in no event should such security interest be interpreted to mean that AMI has a right to participate in the operation or management of such assets. In the event that AMI, as a result of the enforcement or settlement of any bona fide lien, mortgage, deed of trust or other form of security interest, reacquires any of the aforementioned assets, then AMI shall promptly notify the Commission in writing and shall divest the reacquired assets in accordance with the terms of this Order within twelve (12) months of the reacquisition.

By the Commission. Commissioner Strenio did not participate.

Issued: March 21, 1986.

Emily H. Rock,

Secretary.

[FR Doc. 86-7747 Filed 4-7-86; 8:45 am]

BILLING CODE 6750-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 33

Domestic Exchange Traded Commodity Options; Expansion of the Pilot Program for Options on Agricultural Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rulemaking.

SUMMARY: On January 17, 1984, the Commission adopted rules establishing a three-year pilot program for the trading of options on futures contracts in domestic agricultural commodities. 49 FR 2752 (January 23, 1984). This pilot program provides that a board of trade may be designated as an option contract market on not more than two domestic agricultural futures contracts. In the spring of 1985 the Commission received two petitions to amend Commission Rule § 33.4(a)(6)(i) in order to expand the pilot program for options on futures contracts on domestic agricultural commodities from the current level of two per exchange to five per exchange. The Commission published for comment the substance of the rule suggested by the petitioners as a proposed rule amendment on April 15, 1985. 50 FR 14718. After carefully considering the comments received, and after analyzing the operation of this pilot program, the Commission has determined to adopt the proposed rules as final.

EFFECTIVE DATE: This amendment will become effective upon the expiration of thirty calendar days of continuous session of the Congress after the transmittal of this rule and related materials to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry pursuant to section 4c(c) of the Commodity Exchange Act, but not before further notice of the effective date is published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Division of Economic Analysis, 2033 K St., NW., Washington, DC 20581, (202) 254-6990.

SUPPLEMENTARY INFORMATION: On January 17, 1984, the Commission adopted rules establishing a three-year pilot program for the trading of options on futures contracts on domestic agricultural commodities.[1] 49 FR 2752 (January 23, 1984). Previously, the Commission had adopted regulations establishing a three-year pilot program to permit the trading on domestic boards of trade of options on commodities other than domestic agricultural commodities.[2] 46 FR 54500 (November 3, 1981). At that time, Section 4c of the Commodity Exchange Act, 7 U.S.C. 6c (1976), ("Act") prohibited the trading of options on domestic agricultural commodities.

The statutory bar on trading options on domestic agricultural commodities was repealed by section 206 of the Futures Trading Act of 1982, Pub. L. 97-444, 96 Stat. 2294, 2301 (1983). That amendment to the Act permitted the Commission to establish a pilot program for a period not to exceed three years for the trading of options on domestic agricultural commodities.

In establishing the rules for the pilot program on domestic agricultural commodities, the Commission initially limited the number of options on such futures contracts to two per exchange. In determining to so limit the program, the Commission noted that several commenters expressed the view that the Commission should evaluate expanding this limitation after gaining sufficient experience with the trading of these options. 49 FR 2754, 2755. On October 29, 1984, and on January 29, 1985, the Commission designated a total of nine options on futures contracts on domestic agricultural commodities. These included options on the grain, livestock, and cotton contracts.[3] Shortly thereafter

[1] These commodities are enumerated in section 2(a)(1)(A) of the Commodity Exchange Act and include: Wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, Irish potatoes, wool, wool tops, fats and oils (including lard, other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice.

[2] In late 1981, the Commission published final rules establishing a strictly controlled, three-year pilot program to permit exchange-traded commodity options on futures contracts on other than domestic agricultural commodities. 46 FR 54500 (November 3, 1981). Option trading began on October 1, 1982, following the designation of the first option contract markets. Although the three-year test period for that pilot program is now complete, the Commission is evaluating its overall experience with the program, the option rules, and the comments received by the Commission in response to its request for comment on whether to terminate the pilot status of the program. 50 FR 35247 (August 30, 1985). Although the Commission is still evaluating whether the pilot program should be terminated, on November 4, 1985, it approved an immediate expansion of the pilot program from five non-agricultural option contracts per exchange to eight. 50 FR 45811.

[3] In December 1985, the Commission designated a tenth option on agricultural futures—an option on the frozen concentrated orange juice futures contract.

the National Association of Wheat Growers and the Chicago Board of Trade petitioned the Commission to expand the pilot program from two options on domestic agricultural futures contracts to five. The Commission published the substance of those petitions as a proposed rule in the **Federal Register** for comment. 50 FR 14718 (April 15, 1985).

The Commission received ten written comments in response to this request. Among those commenting were three commodity exchanges. The rest of the commenters were either producers, other commercial or agricultural firms, or associations representing various agricultural producers.

The majority of the commenters strongly support expansion of the program. Several commenters, including various agricultural producers, supported the concept of expanding the pilot program in order to broaden the number and variety of options available for hedging purposes. However, those commenters objecting to expansion of the program generally did so on the grounds that at the time of the proposal not enough experience had been gained with trading in these options to ascertain whether or not the pilot program would be successful. These commenters objected to expansion of the program on the basis that the Commission should proceed with caution in expanding such a relatively new area. Included among this group of commenters was one commodity exchange which noted:

> As in the case with any new market, some time must elapse before sufficient liquidity and depth may be established to provide more risk adverse participants with the assurance that such marketing vehicle may be of use in their own situation. The Exchange believes that such time has not yet elapsed * * *.

Of those commenting, only two completely opposed the expansion of the pilot program.

The Commission believes that sufficient time has now passed to analyze the operation of the pilot program. None of the abuses which were prevalent in the trading of options prior to the inception of the pilot programs for exchange-traded options has appeared in connection with the trading of such options under either of the pilot programs. Moreover, it appears that the customer protections provided under the rules are sufficient to prevent such abusive practices from occurring. In light of the significant positive response to the proposal to expand the option program on domestic agricultural futures contracts from two to five options per exchange, and the additional passage of time which addresses the concerns of almost all of the commenters who expressed reservations about the expansion, the Commission believes that it is appropriate to expand the pilot program at this time.

Related Matters

A. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., requires that agencies, in adopting rules, consider the impact of these rules on small businesses. The Commission has previously determined that contract markets are not "small entities" for purposes of the RFA. 47 FR 18618 (April 30, 1982). These proposed rules would permit and govern the trading of options on domestic agricultural futures contracts on various contract markets and therefore, if promulgated, would not have a significant economic impact on a substantial number of small entities. Moreover, the Commission invited comments from any firms or other persons which believed that the promulgation of these rule amendments might have a significant impact upon their activities. No such comments were received. Accordingly, for the above reason and pursuant to section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

B. The Paperwork Reduction Act

Commission Rule 33.4 itself imposes no paperwork burden on the affected entities pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511, 94 Stat. 2812 (44 U.S.C. 3501 et seq.). Exchanges electing to avail themselves of this opportunity to file for additional designations must meet various record-keeping and application requirements associated with initial and continued contract market designation. Nevertheless, this amendment to Commission Rule 33.4 makes no substantive modification in the Commission's existing paperwork requirements. The Office of Management and Budget has been notified of these facts, and a copy of this **Federal Register** notice has been provided to that agency.

List of Subjects in 17 CFR Part 33

Commodity exchange, Commodity exchange designation procedures, Commodity exchange rules, Commodity futures, Commodity options, Consumer protection, Fraud, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and in particular, section 2(a)(1)(A), 4c(b), 4c(c), and 8a thereof, 7 U.S.C. 2, 6c(b), 6c(c), and 12a, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 33—REGULATION OF DOMESTIC EXCHANGE-TRADED COMMODITY OPTION TRANSACTIONS

1. The authority citation for Part 33 continues to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 11, 12a, 12c, 13a, 13a–1, 13b, 19, 20 and 21 unless otherwise noted.

2. Section 33.4 is amended by revising paragraph (a)(6)(i) to read as follows (the introductory text has not been changed but is included for the convenience of the reader):

§ 33.4 Designation as a contract market for the trading of commodity options.

The Commission may designate any board of trade located in the United States as a contract market for the trading of options on contracts of sale for future delivery on any commodity regulated under the Act, or for options on physicals in any commodity regulated under the Act other than those commodities which are specifically enumerated in section 2(a)(1)(A) of the Act, when the applicant complies with and carries out the requirements of the Act (as provided in § 33.2), these regulations, and the following conditions and requirements with respect to the commodity option for which the designation is sought:

(a) Such board of trade—

* * * * *

(6)(i) For commodities specifically enumerated in section 2(a)(1)(A) of the Act, is not designated as a contract market for more than four other commodity options; and

* * * * *

Issued in Washington, DC, on April 3, 1986, by the Commission.

Jean Webb,

Secretary of the Commission.

[FR Doc. 86–7767 Filed 4–7–86; 8:45 am]

BILLING CODE 6351-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 240, 249, 259, 269, and 274

[Release Nos. 33-6634; 34-23096; 35-24060; 39-1094; IC-15025; File No. S7-10-86]

Amendments to Temporary Form for the Pilot Electronic Disclosure System

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of amendments to temporary form.

SUMMARY: The Commission announces the adoption of amendments governing the format and use of Form SE to facilitate the making of Williams Act filings in the Commission's Pilot electronic disclosure system, Edgar, and to relate the Form SE to a specific electronic filing.

DATES: *Effective date:* April 8, 1986.

Comment date: Interested persons will have until May 16, 1986, to comment on the amendments to the temporary form. The Commission will review the comments and make any changes to the form which it considers necessary or appropriate.

ADDRESSES: Comments should be submitted in triplicate to John Wheeler, Secretary, Securities and exchange Commission, 450 5th street, NW., Washington, DC 20549. All comment letters should refer to File No. S7-10-86. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Chris K. Kitasaki, (202) 272-3770, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") currently is operating a pilot project ("Pilot") for the receipt, processing and dissemination of filings made in an electronic format, known as "Edgar." To accommodate the filing of documents in an electronic format, the Commission previously adopted temporary rules and forms.[1] The Commission is amending Form SE to facilitate the filinig of certain Williams Act documents in Edgar and to relate the exhibits filed under cover of Form SE to a specific electronic filing.

I. Discussion

Form SE was adopted to permit registrants to file certain exhibits in a paper format, where it was impracticable to file them in an electronic format, and incorporate them by reference into electronic filings. Many commentators had expressed concern about the difficulty of submitting certain exhibits electronically since some of them have not been created in an electronic format.[2]

The Commission now is amending its rules governing the form and use of the Form SE in view of the expansion of the capabilities of the Edgar Pilot to include certain filings made pursuant to the Williams Act amendments to the Securities Exchange Act of 1934.[3] These filings, as well as those relating to contested proxy solicitations, were not included in the Pilot initially. For transactions or solicitations beginning on or after April 14, 1986, Williams Act filings and contested proxy solicitations may be submitted electronically if either of the parties involved in the transaction is an Edgar participant.

The Form SE is being amended to permit paper exhibits for Williams Act filings to be filed no later than one business day after the related filing and to include a signature block for persons other than an Edgar participant. The first change to Form SE affects only the timing of its filing.[4] It is necessary due to the time constraints involved with Williams Act filings and the fact that the Form SE becomes public upon filing. In practice, it will work as follows. If a Williams Act filing is made on Day 1 (e.g. Friday) at any time from 9:00 A.M. to 5:30 P.M., the exhibits eligible to be filed under cover of Form SE are required to be filed by 5:30 of Day 2 (e.g. Monday).

The Form SE continues to be available only for those documents not prepared for use in the transaction and for which electronic transmission is impractical. In this connection, most exhibits to Williams Act filings are prepared for use in the transaction. Thus, the tender materials prepared in conjunction with a tender offer, which is an exhibit to filing, must be submitted electronically.[5]

The amendments also require registrants to indicate the specific filing to which the exhibits filed under cover of Form SE relate. This additional information will permit the matching of the exhibits filed under cover of the Form SE with their specific filings thereby increasing the efficiency of the electronic filing system. As is currently the practice, exhibits filed under cover of Form SE may be incorporated by reference into subsequently filed documents.

II. Request for Comments

The amendments to the Form SE will become effective immediately. Because these amendments are procedural in nature, their adoption is not subject to the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 533(b)). Nevertheless, the Commission is soliciting comments to assist it in developing Edgar. Although the formal comment period will close on May 16, 1986, further suggestions are encouraged and may be submitted throughout the Pilot.

List of Subjects in 17 CFR Parts 239, 240, 249, 259, 269 and 274

Reporting and recordkeeping requirements, Securities.

Text of Amendment

Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

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

1. The authority citation for Part 240 continues to read as follows:

Authority: Sec. 23, 48 Stat. 901 as amended; 15 U.S.C. 78w, unless otherwise noted.

2. Section 240.12b-37(c)(2) is revised to read as follows:

§ 240.12b-37 Edgar temporary rule.

* * * * *

(c) * * *

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[1] Release No. 33-6539 (June 27, 1984), 49 FR 28044 (July 10, 1984); Release No. 35-23704 (May 23, 1985), 50 FR 23287 (June 3, 1985); Release No. 33-6604 (September 23, 1985), 50 FR 40479 (October 4, 1985).

[2] See Release No. 33-6519 (March 22, 1984), 49 FR 12707 (March 30, 1984).

[3] 15 U.S.C. 78m (d), (e) and (g); 78n(d)-(f) (1976 & Supp. II 1978)). The eligible Williams Act filings consists of the following schedules and statements: Schedule 13D; Schedule 13G; Schedule 13E-3; Schedule 13E-4; Schedule 14D-1; Schedule 14D-9; 13E-1 and 14F Statements.

[4] In the case of a Williams Act filing combined with a filing involving the registration of securities pursuant to the Securities Act of 1933, the rule with respect to Williams Act filings will apply, i.e. exhibits eligible to be filed under cover of Form SE must be filed no later than one business day after the related filing.

[5] See Item 11 of Schedule 14D-1 under the Securities Exchange Act of 1934, (17 CFR 240.14d-100).

(2) *Filing of documents incorporated by reference.* Wherever a document, or part thereof, which is incorporated by reference into a directly transmitted electronic filing is required to be filed with, provided with, or to accompany the filing to the Commission and such document is not in an electronic format, such requirement shall be suspended, provided that the exhibit has been filed with or provided to the Commission previously. However, in the case of filings in an electronic format made pursuant to the Sections 13 (d), (e) and (g) and 14 (d), (e) and (f) of the Securities Exchange Act of 1934 (15 U.S.C. 78m (d), (e) and (g); 78n (d)–(f) (1976 & Supp. II 1978)), related documents not in an electronic format which are required to be filed with, provided with, or to accompany the filing to the Commission and which are incorporated by reference, may be filed with the Commission no later than one business day after the related filing. Any requirement as to delivery or provision to persons other than the Commission shall not be affected by this rule.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

3. The general rulemaking authority for Part 239 is revised to read as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, et seq., unless otherwise noted.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

4. The general rulemaking authority for Part 249 is revised to read as follows:

Authority: The Securities Exchange Act of 1934, 15 U.S.C. 78a, et seq., unless otherwise noted.

PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

5. The authority citation for Part 259 continues to read as follows:

Authority: Secs. 5, 6, 7, 10, 12, 13, 14, 17(a), 20, 49 Stat. 812, 814, 815, 818, 823, 825, 827, 830, 833; 15 U.S.C. 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t.

PART 269—FORMS PRESCRIBED UNDER THE TRUST INDENTURE ACT OF 1939

6. The authority citation for Part 269 continues to read as follows:

Authority: Secs. 304(c), 305, 307, 308, 309, 310, 319, 53 Stat. 1153, 1154, 1156, 1157, 1173; 15 U.S.C. 77ddd(c), 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77sss.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

7. The authority citation for Part 274 continues to read as follows:

Authority: The Investment Company Act of 1940, 15 U.S.C. 80a-1, et seq., unless otherwise noted.

8. The section headings and the introductory paragraphs of §§ 239.64, 249.444, 259.603, 269.7 and 274.403 are all revised to read as follows:

§ ____ Form SE, transmittal form for paper format documents under the Edgar pilot.

This form shall be used for the filing of any exhibit(s) to be incorporated by reference into a registration statement or report pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Public Utility Holding Company Act of 1935 and the Investment Company Act of 1940 provided such registrant:

* * * * *

9. Form SE and General Instructions I, II and III described in §§ 239.64, 249.444, 259.603, 269.7 and 274.403 are revised to read as follows:

Note.—The text of Form SE does not appear in the Code of Federal Regulations.

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

OMB APPROVAL
OMB No.3235-0327
Expires October 31, 1986

FORM SE DATED ____________________
(FORM FOR EXHIBITS UNDER THE EDGAR PILOT)

Report, Schedule or Statement of Which the Documents Are a Part	Period of Report (If Appropriate)	SEC File No. of Form, Schedule or Statement

(Exact Name Of Registrant As Specified In Charter)	Registrant CIK Number

Name of Person Other than the Registrant Filing the Form, Schedule or Statement

The undersigned hereby files the following documents:

Attach an exhibit index and the exhibits not filed electronically as required by Item 601 of Regulation S-K, the applicable Form, Schedule or Statement.

SIGNATURES: Complete A or B, as Appropriate
See General Instructions to Form SE

A. Filings Made on Behalf of the Registrant: The Registrant has duly caused this form to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of ________________, State of ________________, on the __________ day of ________________, 19__.

(Name of Registrant)

By: ____________________
(Signature)

(Print Name)

(Title)

B. Filings Made by Persons Other Than the Registrant: After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Date) (Signature)

(Print the Name and Title of Each Person Who Signs the Form)

BILLING CODE 8010-01-C

General Instructions to Form SE

I. Use of Form SE

A. This form shall be used for the filing of any exhibit(s) by persons filing reports, schedules or registration statements pursuant to the requirements of the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Public Utility Holding Company Act of 1935 or the Investment Company Act of 1940, provided such persons:

1. Are filing in an electronic format under the Edgar Pilot Project; and
2. Determine that it is impracticable, in their judgment, to file the exhibits in an electronic format.

B. Attention is directed to the General Rules and Regulations under the Securities Act, the Exchange Act, the Trust Indenture Act, the Holding Company Act and the Investment Company Act as modified by temporary Rules 499, 12b-37, 0-12, 111 and 0-11, respectively. These general rules should be read carefully and observed in the preparation and filing of this form.

II. Preparation and Filing of the Form

A. Form SE shall serve as a covering sheet for all exhibits to be filed in paper format. An exhibit index shall be included and, where applicable, shall list exhibits according to the number assigned to such exhibit in the table contained in Item 601 of Regulation S-K. Three copies of the form including exhibits shall be filed.

B. The Form SE must be submitted prior to or on the day the related filing is submitted. However, a Form SE which includes exhibits which are a part of the following statements or schedules may be filed not later than one day after the related filing:

Schedule 13D; Schedule 13G; Schedule 13E-3; Schedule 13D-4; Schedule 14D-1; Schedule 14D-9; Transaction Statements 13E-1 and 14F.

C. Exhibits to different reports, schedules or statements may not be filed under cover of the same Form SE. If more than one Form SE with the same date is submitted for filing, the date should include a numeric suffix (e.g., 11/18/85-1, 11/18/85-2) to differentiate the filings.

III. Signatures

The Form SE should be signed in accordance with paragraph A or B below.

A. If the form is filed on behalf of the Registrant, at least one copy shall be manually signed and copies not manually signed shall bear typed or printed signatures.

B. If the form is filed by or on behalf of a person other than the Registrant, one copy of the form shall be manually signed by each person on whose behalf the form is filed or by its authorized representative. If the form is signed by the authorized representative of a person (other than an executive officer or general partner of this filing person), evidence of the representative's authority to sign on behalf of such person shall be filed with the form, provided, however, that a power of attorney for this purpose which is already on file with the Commission may be incorporated by reference.

Dated: March 28, 1986.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 86-7788 Filed 4-7-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Social Security Benefits; Payments to Divorced Spouses

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: In these final regulations, we are issuing rules for paying wife's or husband's benefits to the divorced spouse of an eligible worker who has not yet become entitled to his or her old-age benefits. The spouse must have been divorced for at least 2 years and meet all other requirements for entitlement to wife's or husband's benefits. We also provide that after benefits become payable to the insured person, the wife's or husband's benefits payable to the divorced spouse are exempt from any deductions which would otherwise result from the insured person's earnings. These rules are based on sections 132 and 301 of Pub. L. 98-21 (the Social Security Amendments of 1983) and sections 2662 and 2664 of Pub. L. 98-369 (the Deficit Reduction Act of 1984).

DATES: These rules are effective April 8, 1986. The statutory provisions they reflect became effective in January 1985. Because we revised the rule on remarriage of a divorced spouse (§ 404.332) since the Notice of Proposed Rulemaking was published, comments on this revised final rule may be submitted June 9, 1986.

ADDRESSES: Comments on the remarriage rule should be submitted in writing to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3-A-3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below. If necessary, we will respond in a future publication to any comments we receive on the revised remarriage rule.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Room 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-6785.

SUPPLEMENTARY INFORMATION: Before the Social Security Amendments of 1983 (the 1983 Amendments), section 202(b) of the Social Security Act (the Act) provided for monthly benefits to a divorced wife of an insured worker beginning no earlier than the first month of the worker's entitlement to old-age benefits. This meant that a divorced wife who was at least age 62 and otherwise eligible for benefits as a divorced wife could not receive benefits until her insured former husband became entitled to his benefits at age 62 or older. In many cases, the divorced wife was not eligible for old-age or disability benefits based on her own earnings and therefore had to wait until her former husband stopped working and became entitled to his old-age benefits. Now such a divorced wife does not have to wait for her benefits until her former husband becomes entitled if he is at least age 62 and fully insured for old-age benefits and if they have been divorced for at least 2 continuous years.

The 1983 Amendments also amended section 202(c) of the Act to include the requirement of the June 1977 court decision in *Oliver* v. *Califano* that divorced husbands are entitled to benefits on the same basis as divorced wives, as now provided in 20 CFR 404.331 and 404.332. The 1983 Amendments also extend to a divorced husband the opportunity to become entitled to husband's benefits before his former wife becomes entitled to old-age benefits.

In addition to enabling a divorced spouse to become entitled to benefits before the insured worker, the 1983 Amendments also provide that the earnings of the worker, both before and after the worker becomes entitled to old-age benefits, will not cause reduction of the benefits payable to a divorced spouse who has been divorced from the worker for at least 2 years. This is an exception to the rule that if a worker's benefits are subject to deductions because of his or her work (as explained in Subpart E of this Part), the benefits of other beneficiaries are also subject to deductions.

We are amending § 404.332 in paragraph (a) to provide that benefits cannot begin before January 1985 for a divorced spouse who becomes entitled before the insured becomes entitled. We are also revising this section to provide in paragraph (b)(3) that benefits to a divorced spouse will not end if he or she remarries the insured who is entitled to old-age benefits. This amends the existing rule for a divorced wife in accordance with section 202(b)(1)(H) of the Act and includes the companion provision added by section 301(a)(2) of the 1983 Amendments for a divorced husband. Also, we are reinserting wife and husband as categories of beneficiaries whom the divorced spouse may marry and continue to receive benefits; these categories were inadvertently deleted by the Notice of Proposed Rulemaking which was published on February 7, 1985.

Additionally, we are revising § 404.332 in paragraph (b)(3) to provide that benefits to a divorced spouse will end if he/she remarries the insured before the insured becomes entitled to old-age benefits. This is more explicit than the proposed rule. There is nothing in the language of the law or in the legislative background which clearly mandates either position. We believe, however, that there is no useful purpose or justification for paying benefits to a spouse who remarries an unentitled insured person because the spouse would never have been entitled if he or she had not divorced the insured person.

The provision for paying wife's benefits to a divorced wife before the worker becomes entitled to old-age benefits (section 132 of Pub. L. 98–21) is effective for monthly benefits beginning with Janaury 1985 (i.e., payable in February 1985) based on an application filed no earlier than January 1985. The similar provision for divorced husbands (section 301) is also effective for monthly benefits beginning with January 1985 (payable in February 1985).

Section 310 of Pub. L. 98–21 originally provided that section 301 was effective for monthly benefits beginning with May 1983. However, sections 2662 and 2664 of Pub. L. 98–369 (the Deficit Reduction Act of 1984) enacted July 18, 1984, change the effective date of section 301(a)(5) to January 1985 based on an application filed no earlier than that month.

The provision excluding divorced spouses' benefits from deductions based on the entitled insured person's work is effective beginning with January 1985, and is being added to §§ 404.415–404.417.

These rules were published as a Notice of Proposed Rulemaking at 50 FR 5264 on February 7, 1985. We received no comments. In addition to the previously explained changes in § 404.332, we are making a minor change to the proposed rules. We are revising the title of § 404.417 to include the 45-hour work test so that this section agrees with the final rules published at 49 FR 24113 on June 12, 1984.

Regulatory Procedures

Executive Order 12291

These final regulations have been reviewed under E.O. 12291 and do not meet any of the criteria for a major regulation. We estimate that program and administrative costs are negligible. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These final regulations impose no reporting/recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only the entitlement of individuals to monthly benefits. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs No. 13.803, Social Security-Retirement Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disability benefits, Old-Age, Survivors, and Disability Insurance.

Dated: November 14, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: February 10, 1986.

Otis R. Bowen, M.D.,

Secretary of Health and Human Services.

Subparts D and E of Part 404 of Chapter III of Title 20 of the Code of Federal Regulations are amended as follows:

PART 404—[AMENDED]

1. The authority citation for Subpart D continues to read as follows:

Authority: Secs. 202, 205, 216, 223, 225, 228, 1102 of the Social Security Act, as amended, 49 Stat. 623, 53 Stat. 1362, as amended, 53 Stat. 1368, 64 Stat. 492, 64 Stat. 510, as amended, 70 Stat. 815, 94 Stat. 449, 80 Stat. 67, 49 Stat. 647, 95 Stat. 834; Sec. 5, Reorganizaiton Plan No. 1 of 1953, 67 Stat. 631; 42 U.S.C. 402, 405, 416, 423, 425, 428, and 1302; and 5 U.S.C. Appendix.

2. The authority citation for Subpart E is revised to read as follows:

Authority: Secs. 202, 203, 205, 207, and 1102 of the Social Security Act, 49 Stat. 623, 53 Stat. 1368, as amended, 79 Stat. 379, as amended, 49 Stat. 647, as amended; Sec. 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 18; 42 U.S.C. 402, 403, 405, 407, and 1302.

3. Section 404.331 is amended by revising the introductory paragraph and by adding paragraph (f), and by deleting the authority citation at the end of the section, to read as follows:

§ 404.331 Who is entitled to wife's or husband's benefits as a divorced spouse.

You are entitled to wife's or husband's benefits as the divorced wife or divorced husband of an insured person who is entitled to old-age or disability benefits if you meet the requirements of paragraphs (a) through (e). You are entitled to these benefits even though the insured person is not yet entitled to benefits, if the insured person is at least age 62 and if you meet the requirements of paragraphs (a) through (f). The requirements are that—

* * * * *

(f) You have been divorced from the insured person for at least 2 years.

4. Section 404.332 is amended by revising paragraphs (a) and (b)(3), by adding paragraph (b)(8), and by deleting the authority citation at the end of the section, to read as follows:

§ 404.332 When wife's and husband's benefits begin and end.

(a) You are entitled to wife's or husband's benefits beginning with the first month covered by your application in which you meet all the other requirements for entitlement under § 404.330 or § 404.331. However, if you are entitled as a divorced spouse before the insured person becomes entitled, your benefits cannot begin before January 1985 based on an application filed no earlier than that month.

(b) * * *

(3) You are the divorced wife or divorced husband and you marry someone, other than the insured who is entitled to old-age benefits, unless that other person is someone entitled to benefits as a wife, husband, widow, widower, father, mother, parent or disabled child. Your benefits will end if you remarry the insured who is not yet entitled to old-age benefits.

* * * * *

(8) You became entitled as the divorced wife or the divorced husband before the insured person became entitled, but he or she is no longer insured.

* * * * *

5. Section 404.333 is revised to read as follows:

§ 404.333 Wife's and husband's benefit amounts.

Your wife's or husband's monthly benefit is equal to one-half the insured person's primary insurance amount. If you are entitled as a divorced wife or as a divorced husband before the insured person becomes entitled, we will compute the primary insurance amount as if he or she became entitled to old-age benefits in the first month you are entitled as a divorced wife or as a divorced husband. The amount of your monthly benefit may change as explained in § 404.304.

6. Section 404.415 is amended by adding the following sentence at the end of paragraph (b) and by deleting the authority citation at the end of the section, to read as follows:

§ 404.415 Deductions because of excess earnings; annual earnings test.

* * * * *

(b) * * * However, beginning with January 1985, deductions will not be made from the benefits payable to a divorced wife or a divorced husband who has been divorced from the insured individual for at least 2 years.

7. Section 404.416 is amended by adding the following sentence at the end of paragraph (a), to read as follows:

§ 404.416 Amount of deduction because of excess earnings.

(a) * * * However, beginning with January 1985, deductions will not be made from the benefits payable to a divorced wife or a divorced husband who has been divorced from the insured individual for at least 2 years, and the divorced spouse will be considered as not entitled for purposes of computing the amount of deductions from other beneficiaries.

* * * * *

8. Section 404.417 is amended by adding the following sentence at the end of paragraph (b), and by deleting the authority citation at the end of the section, to read as follows:

§ 404.417 Deductions because of noncovered remunerative activity outside the United States; 45-hour and 7-day work test.

* * * * *

(b) * * * However, beginning with January 1985, no deductions will be made from the benefits payable to a divorced wife or a divorced husband who has been divorced from the insured individual for at least 2 years.

[FR Doc. 86-7759 Filed 4-7-86; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-226; Re: Notice No. 579]

Kanawha River Valley Viticultural Area; Designation

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in West Virginia, known as the Kanawha River Valley. In response to a petition submitted by Dr. Wilson E. Ward, owner of Fisher Ridge Vineyard, a winery located in Liberty, WV, ATF published a notice of proposed rulemaking, Notice No. 579, in the **Federal Register** of January 21, 1986 (51 FR 2728), proposing this area. The Kanawha River Valley viticultural area is entirely within the approved Ohio River Valley viticultural area. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify wines they purchase. The use of this viticultural area as an appellation of origin will also help winemakers distinguish their products from wines made in other areas.

EFFECTIVE DATE: May 8, 1986.

FOR FURTHER INFORMATION CONTACT: John A. Linthicum, FAA, Wine and Beer Branch, (202) 566-7626.

SUPPLEMENTARY INFORMATION: On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR, Part 4. These regulations allow the establishment of definitive viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9. Section 4.25a(e)(2), outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. Dr. Wilson E. Ward, owner of Fisher Ridge Vineyard, a winery located in Liberty, WV, petitioned ATF to establish the Kanawha River Valley viticultural area.

General description. The approved area consists of approximately 1,000 square miles, containing 14 acres of grapevines and one bonded winery. It is entirely within the approved Ohio River Valley viticultural area. There is historical evidence that winemaking began in the area as early as 1826. Several hundred acres of grapevines grew in the area in the 1850s. The Civil War brought an end to commercial winemaking in the area until a new winery was built in 1967.

Name. The petitioner claims that the name Kanawha is derived from an obscure tribe of Indians which camped near the river. The name Kanawha was used for the river on the earliest survey maps. The Greater Kanawha Valley Foundation, a philanthropic organization which awards scholarships and grants, defines the Kanawha Valley as a ten-county area including all of the counties having watershed in the Kanawha River. The approved area is almost entirely within this Kanawha River Valley boundary which is currently in use. Numerous business enterprises in the area use the name Kanawha Valley or Kanawha River Valley as part of their trade names or as a description of the territory which they serve. In view of the fact that the entire area is within approximately 20 miles of the river, and appears to be almost entirely within the watershed of the river, ATF is satisfied that the area qualifies, in its entirety, for the use of the name Kanawha River Valley.

Geographic characteristics. The following rainfall data for the Kanawha River Valley illustrates the main geographical feature which distinguishes the approved area from the surrounding area.

WEATHER STATION LOCATIONS

Name	Annual precipitation	Summer[1] precipitation
Inside Petitioned Area		
Hogsett Gallipolis Dam	40.42	14.95
Winfield Locks	40.85	14.88
Averages	40.64	14.92
Outside Petitioned Area on the Ohio River		
Huntington	40.72	14.83
Parkersburg Weather Service Office	37.77	14.32
Ravenswood Lock Park	38.70	14.25
Averages	39.06	14.47

WEATHER STATION LOCATIONS—Continued

Name	Annual precipitation	Summer[1] precipitation
Outside Petitioned Area Inland From the Ohio River		
Branchland	43.79	15.94
Charleston	42.43	15.84
Clendenin	45.67	17.08
Hamlin	43.13	15.96
Ripley	45.94	16.35
Spencer	41.93	16.22
Averages	43.82	16.23

[1] Total precipitation during the months of June, July, August, and September, when grapes are most susceptible to mildew damage caused by excessive rainfall.

The river valleys average approximately 3 to 4 inches less rainfall annually than the inland terrain. During the critical period when grapes are growing on the vines, the river valleys average approximately 1.5 inches less rainfall than the inland terrain. Based on this data, the Ohio River Valley and the Kanawha River Valley share rainfall patterns which are more conducive to grape cultivation than areas which are farther inland from the rivers. The 6 weather stations named in the third list, above, are each located within approximately 16 miles of the approved boundary, supporting the location of the boundary.

In addition, the location of the inland boundary is also supported by the approximate boundary between the Central Allegheny Plateau Land Resource Area, in which the petitioned area is located, the the Cumberland Plateau and Mountains Land Resource Area. According to the U.S.D.A. Soil Conservation Service Soil Map of West Virginia, the Cumberland Plateau and Mountains Land Resource Area is characterized by extensive deep mining and surface mining activities, as opposed to grape growing or other agricultural land uses.

Boundary. The northern and western boundaries of the Kanawha River Valley are the Ohio River. The inland boundary is approximately the approved Ohio River Valley boundary. The inland boundary is connected to the Ohio River with a series of straight lines running approximately along the perimeter of the Kanawha River watershed.

Rulemaking Proceeding

In response to Notice No. 579, ATF received comments from the petitioner and from Gus R. Douglass, Agriculture Commissioner of the State of West Virginia. Both comments were in favor of establishing the area as proposed. Accordingly, the proposed area is adopted unchanged.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs of prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or

(c) Significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural area, Wine.

Authority and Issuance

PART 9—[AMENDED]

27 CFR Part 9—American Viticultural Areas is amended as follows:

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of sections for 27 CFR Part 9 is amended by adding the heading of § 9.111 to read as follows:

Sec.

* * * * *

9.111 Kanawha River Valley.

Par. 3. Subpart C of 27 CFR Part 9 is amended by adding § 9.111 to read as follows:

§ 9.111 Kanawha River Valley.

(a) *Name.* The name of the viticultural area described in this section is "Kanawha River Valley".

(b) *Approved maps.* The approved maps for determining the boundary of the Kanawha River Valley viticultural area are 20 U.S.G.S. topographic maps in the 7.5-Minute series as follows:

(1) Addison, Ohio—W. Va., dated 1960;

(2) Gallipolis, Ohio—W. Va., dated 1958;

(3) Apple Grove, Ohio—W. Va., dated 1968, photorevised 1975;

(4) Glenwood, W. Va.—Ohio, dated 1968;

(5) Milton, W. Va., dated 1972;

(6) West Hamlin, W. Va., dated 1957;

(7) Hamlin, W. Va., dated 1958;

(8) Garrets Bend, W. Va., dated 1958;

(9) Scott Depot, W. Va., dated 1958;

(10) Saint Albans, W. Va., dated 1958;

(11) Pocatalico, W. Va., dated 1958;

(12) Sissonville, W. Va., dated 1958;

(13) Romance, W. Va.—Ky., dated 1957;

(14) Kentuck, W. Va., dated 1957;

(15) Kenna, W. Va., dated 1957;

(16) Ripley, W. Va., dated 1960;

(17) Cottageville, W. Va., dated 1960;

(18) Mount Alto, W. Va.—Ohio, dated 1958, photorevised 1972;

(19) Beech Hill, W. Va.—Ohio, dated 1957, photorevised 1975;

(20) Cheshire, W. Va.—Ohio, dated 1968;

(c) *Boundary description.* The boundary description of the Kanawha River Valley viticultural area includes (in parentheses) the name of the map on which each described point is found. The boundary description is as follows:

(1) The beginning point is the West Virginia-Ohio State Line at the confluence of Champaign Creek and the Ohio River. (Addison quadrangle)

(2) The boundary follows the West Virginia-Ohio State Line, in the Ohio River (across the Gallipolis and Apple

Grove quadrangles) southwesterly to the point at which the Mason County-Cabell County Line intersects the State Line. (Glenwood quadrangle)

(3) The boundary proceeds in a straight line southerly to the benchmark at 583 ft. elevation in the town of Yates Crossing in Cabell County, WV. (Milton quadrangle)

(4) The boundary proceeds in a straight line southeasterly to the benchmark at 640 ft. elevation in the town of Balls Gap, in Lincoln County, WV. (West Hamlin quadrangle)

(5) The boundary proceeds in a straight line easterly (across the Hamlin, Garrett Bend, and Scott Depot quadrangles) to the benchmark at 590 ft. elevation in the town of Institute in Kanawha County, WV. (Saint Albans quadrangle)

(6) The boundary proceeds in a straight line northeasterly to the benchmark at 654 ft. elevation in the town of Pocatalico, in Kanawha County, WV. (Pocatalico quadrangle)

(7) The boundary proceeds in a straight line northeasterly (across the Sissonville quadrangle) to the confluence of Johns Branch and Sugar Creek in the town of Romance, in Jackson County, WV. (Romance quadrangle)

(8) The boundary proceeds in a straight line northwesterly (across the Kentuck quadrangle) to the confluence of Plum Orchard Run and Stonelick Creek in the town of Plum Orchard, in Jackson County, WV. (Kenna quadrangle)

(9) The boundary proceeds in a straight line northwesterly (across the Ripley quadrangle) to the Baltimore and Ohio Railroad crossing of State Highway 87 in the town of Evans, in Jackson County, WV. (Cottageville quadrangle)

(10) The boundary proceeds in a straight line northwesterly (across the Mount Alto quadrangle) to the benchmark at 674 ft. elevation in the town of Flatrock, in Mason County, WV. (Beech Hill quadrangle)

(11) The boundary proceeds northwesterly in a straight line (across the Cheshire quadrangle) to the beginning point.

Signed: March 7, 1986.

Stephen E. Higgins,

Director.

Approved: March 24, 1986.

Edward T. Stevenson,

Deputy Assistant Secretary (Operations).

[FR Doc. 86-7731 Filed 4-7-86; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 3

[CGD 86-004]

Establishment of Long Island Sound Captain of the Port Zone

Correction

In FR Doc. 86-6761 beginning on page 10540 in the issue of Thursday, March 27, 1986, make the following correction: On page 10541, in the second column, in § 3.15-55(b), in the third line "southeasterly" should read "south-southeasterly".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 83-842; FCC 86-111]

Radio Broadcasting; Elimination of Unnecessary Broadcast Regulation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: As part of its broadcast "underbrush" proceeding to eliminate unnecessary regulation, the Commission here eliminates its policies with respect to Fraudulent Billing and Network Clipping (§§ 73.4115 and 73.1205) and Combination Advertising Rates and Joint Sales Practices (§ 73.4065).

ADDRESS: Federal Communications Commission, Washington, DC 20554.

EFFECTIVE DATE: May 7, 1986.

FOR FURTHER INFORMATION CONTACT: James A. Hudgens, Office of Plans and Policy, (202) 653-5940.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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.

Elimination of Unnecessary Broadcast Regulation

[MM Docket 83-842]

This is a summary of the Commission's Second Report and Order, MM Docket 83-842, adopted March 13, 1986, and released March 31, 1986.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of Second Report and Order

1. By this Second Report and Order, the Commission eliminated its rules and policies with respect to Fraudulent Billing and Network Clipping (§§ 73.1205 and 73.4155) and Combination Advertising Rates and Joint Sales (§73.4065). With respect to the Fraudulent Billing and Network Clipping rule, the Commission concluded that there are adequate sources of remedy already in place which are more appropriate for resolving such private actions. The Commission analysed possible harm to listeners/viewers but concluded that it is *de minimis*. The Commission also discussed the availability of sufficient monitoring mechanisms, for both radio and television, to interested parties to alert them to violations. The Report and Order rejected arguments that the rule should be retained for its deterrent effect and that its cost of enforcement are minimal—determining that the rule entails the potential for substantial administrative expense. The Commission also rejected the argument that elimination of the rule would result in the loss of cooperative advertising monies for radio and television, asserting that the marketplace would be expected to prevent such losses.

2. With respect to its policy concerning Combination Advertising Rates and Joint Sales Practices, the Commission concluded that it is not appropriate for it to continue to forbid conduct which is not prohibited by the antitrust laws, and that the rationale for the subject policies was ill-conceived. That is, while the Commission's policies essentially forbid all joint advertising rates and sales except by commonly-owned AM-FM stations, basic antitrust laws do not flatly prohibit all such combination activities. The Commission rejected several arguments made by commenting parties for the retention of the policy. It denied that the policies must be retained because of their integral relationship to the multiple ownership policies, concluding that given the multiple ownership policies in place and operating, there is no

independent basis for limiting the contractual relationships between separately owned stations. The Commission also rejected the argument that elimination of the policies would lead to programming collaboration among the participants, determining instead that the uniqueness of programming formats would likely become even more important. Finally, it rejected the assertion that the elimination of the rule would lead broadcasters into a dangerous "trap" where they could be prosecuted for innocently engaging in price fixing and illegal tying arrangements, noting that action in this area would be voluntary and that with careful antitrust counsel (a cost of doing such business), in certain circumstances stations could join forces without violating the law. The Commission cautioned, however, that it will not issue advisory rulings in the antitrust area.

3. The Commission also discussed the treatment of future licensee misconduct in these three policy areas. Briefly, it will be treated as non-FCC misconduct and the Commission will concern itself only with final adjudications, civil or criminal, by other courts or agencies.

4. Authority for the action taken herein is contained in sections 1, 2, 4(i) and (j), and 303(r) of the Communications Act of 1934, as amended.

Ordering Clause

§§ 73.1205, 73.4065, and 73.4155 [Removed]

5. Accordingly, it is ordered that §§ 73.1205, 73.4065, and 73.4155 are removed from the Commission's Rules, effective May 7, 1986.

William J. Tricarico,
Secretary.

[FR Doc. 86-7713 Filed 4-7-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-512; RM-4684; RM-4841]

FM Broadcast Station in Prescott, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein substitutes Class C FM Channel 256 for Channel 252A and Channel 271 for Channel 280A at Prescott, Arizona, and modifies the Class A licenses of Stations KNOT-FM and KAHM(FM), respectively, in response to requests filed by Payne-Prescott Broadcasting Company and Southwest FM Broadcasting Co., Inc. The substitutions will provide the opportunity for first and second wide coverage services to the Prescott area.

EFFECTIVE DATE: May 7, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of subjects in 47 CFR Part 73

Radio broadcasting.

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.

Report and Order; Proceeding Terminated

In the matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Prescott, Arizona); MM Docket No. 84-512; RM-4684; RM-4841.

Adopted: March 13, 1986.
Released: March 31, 1986.

By the Chief, Policy and Rules Division:

1. The Commission herein considers the *Notice of Proposed Rule Making*, 49 FR 24388, published June 13, 1984, issued in response to a petition filed by Southwest FM Broadcasting Co., Inc. ("petitioner"), licensee of Station KAHM (FM), Prescott, Arizona, requesting the substitution of Class C Channel 271 for Channel 280A and modification of its license accordingly. In response to the *Notice*, petitioner filed comments reiterating its interest in Channel 271. Comments and an expression of interest were filed by Payne-Prescott Broadcasting Company ("PPBC"), licensee of Station KNOT-FM (Channel 252A), Prescott. Also, comments and a counterproposal were filed by Double Eagle Broadcasting, Inc. on behalf of Station KKJJ(FM), Payson, Arizona. Petitioner filed reply comments.

2. In its comments, PPBC endorsed the proposed allocation of Channel 271 to Prescott, and indicated its intention to apply for the channel in order to upgrade its facilities on the Class C channel. It states that in view of its expression of interest, the modification proposal of petitioner cannot be implemented, but rather, that the channel must be open for competing applications, citing in support *Ashbacker Radio Corp.*, 326 U.S. 327 (1946); and *Tulsa, Oklahoma*, 53 R.R. 2d 1366 (1983).

3. By its own admission, the comments of Double Eagle were filed to protect its position as permittee of Station KKJJ(FM), Payson, Arizona. However, in view of our recent action in that proceeding (MM Docket No. 84-300, 50 FR 48089, published November 21, 1985), in which the permit of Station KKJJ(FM) was modified, as requested, its comments in this proceeding are moot and thus no further discussion thereon is required.

4. Although the Commission formerly would not allow the permit or license of a station to be modified to a higher class in the rule making context if another expression of interest was received, that policy was later modified. In the *Report and Order* in *Modification of FM and TV Station Licenses*, 98 F.C.C. 2d 916 (1984), § 1.420(g) was added to the Commission's Rules to permit modification to a higher class of channel provided an additional equivalent channel is made available for other parties expressing an interest.

5. In light of PPBC's expressed interest in applying for a Class C channel at Prescott, and in accord with our present modification policy, we have determined that Channel 256 is also available to that community. Therefore, and in the absence of any other expressions of interest in the Prescott proposal, we shall modify the license of Station KNOT-FM to specify operation on Channel 256.

6. In view of the above, we believe the public interest would benefit from the substitution of Class C Channel 256 for 252A and 271 for 282A at Prescott, since they could provide wide-coverage services to the area. As indicated in the *Notice*, Channel 271 may be allotted to Prescott consistent with the minimum spacing requirements of § 73.207(b) of the Commission's Rules. However, Channel 256 requires a site restriction 2.2 kilometers (1.4 miles) east to avoid a short spacing to Station KMDX(FM) (Channel 257A), Parker, Arizona.

7. Since Prescott is within 320 kilometers (199 miles) of the common U.S.-Mexico border, concurrence in the proposals, by the Mexican government was obtained.

PART 73—[AMENDED]

8. Accordingly, pursuant to the authority contained in §§ 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, It Is Ordered, that effective May 7, 1986, the FM Table

of Allotments, § 73.202(b) of the Commission's Rules, is amended with respect to the community listed below, as follows:

City	Channel No.
Prescott, Arizona	256, 271

9. It Is Further Ordered, that pursuant to section 316(a) of the Communications Act of 1934, as amended, the license held by Payne-Prescott Broadcasting Co., Inc. for Station KNOT-FM, Prescott, Arizona, is modified effective May 7, 1986, to specify operation on Class C Channel 256 in lieu of Channel 252A, and the license held by Southwest FM Broadcasting Co., Inc. for Station KAHM(FM), Prescott, Arizona, is modified effective May 7, 1986, to specify operation on Class C Channel 271 in lieu of Channel 280A.

10. It Is Further Ordered, that the modification of each of the said licenses is subject to the following conditions:

(a) The licensees shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facilities.

(b) Upon grant of the construction permits, program tests may be conducted in accordance with § 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter locations or to avoid the necessity of filing an environmental impact statement pursuant to § 1.1101 of the Commission's Rules.

11. It Is Further Ordered, that the Secretary of the Commission SHALL SEND a copy of this Order by certified mail, return receipt requested to Payne-Prescott Broadcasting Company and to Southwest FM Broadcasting Co., Inc. and their counsel, as follows:

Payne-Prescott Broadcasting Company, Station KNOT-FM, P.O. Box 151, 116 South Alto, Prescott, Arizona 86302

and

Alfred C. Cordon, Esq., Dennis J. Kelly, Esq., Cordon and Kelly, 1920 N Street, NW., 2nd Floor, Washington, DC 10036

Southwest FM Broadcasting Co., Inc., Station KAHM(FM), P.O. Box 1631, Prescott, Arizona 86302

and

Lawrence N. Cohn, Esq., Cohn and Marks, 1333 New Hampshire Ave., NW., Suite 600, Washington, DC 20036

12. It Is Further Ordered, that this proceeding is terminated.

13. For further information concerning the above, contact Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-7719 Filed 4-7-86; 8:45 am]

BILLING CODE 6212-01-M

47 CFR Part 73

[MM Docket No. 85-213; RM-4907; RM-5142]

FM Broadcast Station in Hanover, NH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein substitutes Channel 222A for Channel 221A at Hanover, New Hampshire, at the request of Sound Citizen Communications Company, Inc. The substitution could permit the activation of a second local FM service at Hanover.

EFFECTIVE DATE: May 7, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

In the matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Hanover, New Hampshire); MM Docket No. 85-213; Rm-4907; RM-5142.

Adopted: March 13, 1986.

Released: March 31, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the Petition for Reconsideration[1] filed by W.T.I.J. Broadcasting, Inc. ("WTIJ") of the *Report and Order*, 50 FR 50916, published December 13, 1985, which substituted Channel 277A for Channel 221A at Hanover, New Hampshire, and dismissed the counterproposal of Brian Dodge, President of WTIJ, requesting the allocation of Channel 282A instead.[2] Supporting comments were filed by WTIJ and oppositions were filed by Sound Citizen Communications Corp., Inc. ("Sound").

Background

2. Following the allocation of Channel 221A to Hanover, New Hampshire, in 1981, three applications for its use were accepted and granted cut-off status; Sound (BPH-810603AH), Valley Radio Corporation (BPH-811027AN), and North Star Communications, Inc. (BPH-811028AJ). In order to comply with the Commission's mileage separation requirements, the use of the Hanover channel was restricted to an area at least 7.2 kilometers (4.5 miles) north of Hanover. However, local environmental groups objected to every one of the five transmitter sites ultimately proposed by the applicants. Therefore, in an effort to avoid the necessity of a full-scale environmental inquiry by the Commission, and to permit earlier activation of a second local FM service to Hanover, Sound requested the substitution of Channel 277A for Channel 221A at Hanover.[3]

3. The Commission issued the *Notice of Proposed Rule Making*, 50 FR 29446, published July 19, 1985, seeking comments on the proposed substitution of Channel 277A for Channel 221A at Hanover. Supporting comments were filed by Sound as well as by a group of area citizens which stated that allocation of the new channel would permit the selection of a transmitter site which would not raise environmental impact issues. However, WTIJ filed a counterproposal requesting that Channel 282A be allocated to Hanover since Channel 277A would conflict with its proposal to upgrade Station WTIJ at Waterbury from its present Channel 276A to either Class C or C2 Channel 277 (RM-4744). Hanover and Waterbury are located approximately 80 kilometers

[1] Public Notice was given on February 6, 1986, Report No. 1565.

[2] In addition, WTIJ seeks reconsideration of the denial of its request to substitute Class C or C2 Channel 277 for Channel 276A at Waterbury, Vermont, and the modification of its license for Station WTIJ to specify the higher powered channel (RM-4744), released December 9, 1985, and reconsideration of the Commission's *Memorandum Opinion and Order* in MM Docket No. 84-231, 50 FR 47391, published November 18, 1985.

[3] Sound had earlier filed a petition for rule making requesting the substitution of Channel 263A for Channel 221A at Hanover. While Channel 263A could be allocated to Hanover without the imposition of a site restriction, thus providing more flexibility in site selection, it did require that Channel 263A be deleted from Lebanon, New Hampshire, and replaced with Channel 230A. Sound later amended its petition to specify the substitution of Channel 277A rather than 263A at Hanover since the allocation required neither a site restriction nor a substitution of channels elsewhere.

apart but the Commission's rules specify separation of 222 kilometers for co-channel Class A and Class C stations and 163 kilometers for co-channel Class A and Class C2 stations.

4. On November 25, 1985, the Commission denied the Waterbury proposals, Mimeo No. 1330, released December 9, 1985. Class C Channel 277 at Waterbury would be short-spaced to five Canadian channels and thus the Commission was unable to obtain the required approval from the Canadian government. The allocation of Channel 277C2 at Waterbury required, *inter alia*, the substitution of a channel allocated in MM Docket No. 84–231 in contravention of the Commission's decision stating that these channels would not be subject to change absent a showing of compelling need or Commission error. *Memorandum Opinion and Order*, 50 FR 47391, published November 18, 1985. Based on the denial of the Waterbury proposal, the Commission adopted the *Report and Order* herein substituting Channel 277A for Channel 221A at Hanover and dismissing WTIJ's counterproposal.

5. Normally, the Commission would withhold action on WTIJ's reconsideration request until it could be handled in its entirety, that is, until the Commission resolved the pending reconsideration requests concerning the substitution of MM Docket 84–231 channels. Here, however, we believe that the public interest would best be served by considering an alternative channel suggested for Hanover. To this end, we have reexamined WTIJ's claim that Channel 222A or Channel 282A could be allocated to Hanover. Our engineering review confirms that both channels can be allocated in compliance with the Commission's mileage separation requirements and utilized at the site specified in Sound's amended application (BPH–851224MB). Sound has submitted comments in which it agrees to amend its current application to specify Channel 222A. We believe that there is no need to further entangle the competing requests since there are channels available which will permit an earlier activation of a second local FM service at Hanover. In lieu of Channel 277A at Hanover, we shall allocate Channel 222A. As stated in the *Report and Order* herein, sound Citizen Communication Corp., Inc. will be permitted to amend its application to specify the new channel while retaining its cut-off protection since no upgrade in facilities will result from the substitution of Channel 222A for Channel 221A. The Waterbury request will be considered as part of the reconsideration now pending in MM Docket 84–231.

6. Channel 222A can be allocated to Hanover in compliance with the Commission's minimum distance separation requirements, without the imposition of a site restriction. Additionally, Canadian concurrence in the channel allotment has been received since Hanover is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

PART 73—[AMENDED]

7. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, It Is Ordered, that effective May 7, 1986, the FM Table of Allotments, § 73.202(b) of the Commission's Rules, is amended with respect to the community listed below, to read as follows:

City	Channel No.
Hanover, New Hampshire	222A, 257A

8. It Is Further ordered, that the petition for reconsideration filed by WTIJ Broadcasting, Inc. is granted only to the extent indicated herein. The portion of the petition for reconsideration pertaining to reconsideration of the *Memorandum Opinions and Orders* in RM–4744 and MM Docket No. 84–231 will be dealt with at a later time.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Burea, (202) 634–6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–7721 Filed 4–7–86; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 85–157; RM–4915; et al.]

FM Broadcast Station in Dayton, Kettering et al; OH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allocates Channel 221A to West Carrollton, Ohio, as the community's first local FM service, at the request of JOC Broadcasting, Inc. Competing requests for the allocation of Channel 221A to Dayton, Kettering, Moraine and Oakwood, Ohio, are denied.

EFFECTIVE DATE: May 7, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530).

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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.

Report and Order; Proceeding Terminated

In the matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations, (Dayton, Kettering [1], Moraine [1], Oakwood [1], and West Carrollton [1], Ohio; MM Docket No. 85–157; RM–4915, RM–5103, RM–5104, RM–5105.

Adopted: March 13, 1986.

Released: April 1, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 50 FR 23734, published June 5, 1985, proposing the allocation of Channel 221A to Dayton, Ohio, at the request of the Voice of the Black Community, Inc. ("VBCI"). The allotment could provide Dayton with its fourth local FM service. Comments were filed by VBCI, Station WCWT, RoSaun Communications Co. ("Rosaun"), JOC Broadcasting, Inc. ("JOC"), and Stoner Broadcasting System, Inc. ("Stoner"). Reply comments were filed by VBCI, JOC and Stoner.

2. The *Notice* stated that Channel 221A could be allocated to Dayton in compliance with the Commission's minimum distance separation requirements with a site restriction of at least 5.2 kilometers (3.2 miles) south to avoid short-spacing to stations in Wapakoneta and Columbus, Ohio. However, we questioned whether even absent the site restriction, a Class A facility could provide the required 70 dBu city-grade service to the entire community.

3. In response to this issue, VBCI stated that Channel 221A could not

[1] These communities have been added to the caption.

provide the required 70 dBu signal level over the entire community of Dayton, but based on its belief that it could provide such service to 95 percent of the city, requested a waiver of this requirement. However, should the Commisison be unwilling to do so, it requested that the channel be assigned to nearby Moraine or Kettering.[2] RoSaun supports the allocation of Channel 221A to Dayton, stating that a 70 dBu signal could be provided to 97 percent of the community. The area which could not receive the required signal, according to RoSaun, represents approximately 1.6 square miles and it contends that the Commission has waived the requirement of 10% coverage in situations where less than two square miles fall outside the contour, citing *Peoples Broadcasting Co.*, 43 R.R. 2d 1265 (1978), and *Irwin County Broadcasting Corp.*, 50 R.R. 2d 131 (1981). However, should the Commisison believe that the allocation should not be made to Dayton, it requests the allocation be made to Oakwood, Ohio, as its first local aural service [3]

4. JOC opposes the allocation at Dayton as its use could not provide the entire community with the required 70 dBu signal level. Rather, it states that Channel 221A should be allocated to West Carrollton, as the community's first local FM service. [4]

5. Stoner, licensee of Station WWSN(FM), Dayton, also believes that the proposal for Dayton should be denied based on its inability to comply with § 73.315 of the Commission's Rules. In fact, it claims that the contour map submitted by VBCI in its petition does not include large areas of land to the north of Dayton which were annexed since 1980. According to its engineering showing, using the revised map of Dayton, it contends that a Channel 221A operation would not serve approximately 7 square miles of the community, which represents approximately 13% of the total area within Dayton's city limits.[5] It argues that the decision to allocate a channel should be based solely on its compliance or noncompliance with the Commission's technical requirements, not on the proposed programming format of VBCI. To do otherwise would constitute "an abdication of the Commission's validly enacted technical rules," according to Stoner.

[2] Public Notice of this counterproposal was given on July 30, 1985, Report No. 1528.

[3] Public Notice of this counterproposal was given on July 30, 1985, Report No. 1528.

[4] Public Notice of this counterproposal was given on July 30, 1985, Report No. 1528.

[5] This contention is disputed by VBCI in its "Supplement" to its reply comment. However, as this unauthorized pleading does not provide the Commission with any information of decisional significance, it will not be considered herein.

6. Station WCWT, licensed to the Centerville City Schools Board of Education, operates as a Class D (secondary) station at Centerville, Ohio. It supports the allocation of Channel 221A to the Dayton area stating that it desires to continue providing the area with noncommercial educational service, but as a full Class A station, and therefore asks that the Channel 221A allocation be reserved for such service.

7. In an effort to resolve the conflicting requests for use of the channel, the staff conducted an engineering study to find out if any other channels were available for use at Dayton, Kettering, Moraine, Oakwood or West Carrollton. However, Channel 221A is the only channel available for allocation to any of these locations. Therefore, we shall base our decision on the allotment priorities enunciated in *Revision of FM Assignment Policies and Procedures*, 90 F.C.C. 2d 88 (1982). These priorities are:

(1) First full-time aural service;
(2) Second full-time aural service;
(3) First local service;
(4) Other public interest matters.

Co-equal weight given to priorities (2) and (3).

Dayton with a population of 203,371 persons,[6] receives local service from four AM and three FM stations. Kettering, population 61,186 persons, receives local service from Class B Station WVUD-FM. Moraine (population 5,325), Oakwood (population 9,372) and West Carrollton (population 13,148) have no local service. All five of these communities are located in Montgomery County (population 571,697) and each of the counterproposed cities are in close proximity to Dayton.

8. Using these priorities as our guidelines, we find that none of the proposals would provide either a first or second aural service. The allocation of Channel 221A at Moraine, Oakwood or West Carrollton would provide a first local service (priority three) while the allocation of the channel at Dayton or Kettering would not, thus falling within only the fourth priority, other public interest matters. As for Kettering and Dayton, we do not believe that these communities should receive their second and fourth such services, respectively, at the expense of providing a first local service to one of the three other competing communities. Therefore, the issue of whether Channel 221A at Dayton could provide the requisite city grade service need not be considered further. None of the remaining petitioners have provided us with distinguishing features as to their proposed community. Therefore, in accordance with past Commission rulings, we believe the public interest would best be served by allocating the channel to the largest of the remaining communities, that is West Carrollton. See, *e.g. Boonville, New York, et al.*, 50 FR 40395, published October 3, 1985, and *Guadalupe, California, et al.*, 49 FR 5757, published February 15, 1984.

[6] All population figures are taken from the 1980 U.S. Census.

9. We will not reserve Channel 221A for noncommercial educational use as requested by WCWT. Noncommercial educational stations are usually located within the reserved portion of the FM spectrum, that is on Channels 201–220. The Commission has only rarely reserved channels within the commercial portion of the band, such as Channel 221A, and only upon a clear and convincing showing that no channel within the reserved portion of the band is available for allocation to the community due to existing Canadian allocations or TV Channel 6 interference problems. This, WCWT has not done. It merely states that it desires to continue to provide educational service to the Centerville area, as a full Class A facility.

10. In view of the above discussion, we believe the public interest would be served by allocating Channel 221A to West Carrollton, Ohio, as it could provide the community with its first local service. Channel 221A can be allocated to West Carrollton in compliance with the Commission's minimum distance separation requirements if the transmitter is restricted to an area at least 4.8 kilometers (3 miles) south to avoid short-spacing to Stations WVXU, Channel 219, and WWEZ, Channel 223, at Cincinnati, Ohio. The use of Channel 221A at West Carrollton is also contingent upon the change of transmitter site for Station WAXC at Wapakoneta, Ohio, for which a construction permit is outstanding. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, It Is Ordered, that effective May 7, 1986, the FM Table of Allotments, § 73.202(b) of the Commission's Rules, is amended with respect to the community listed below, to read as follows:

City	Channel No.
West Carrollton, Ohio	221A

11. Since West Carrollton is located within 320 kilometers (200 miles) of the U.S.-Canada border, the concurrence of the Canadian Government has been obtained.

12. The window period for filing applications will open on May 8, 1986, and close on June 6, 1986.

13. It Is Further Ordered, That this proceeding is terminated.

14. For further information concerning the above, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-7711 Filed 4-7-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. T84-01; Notice 9]

Listing of High Theft Lines; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Technical amendment.

SUMMARY: This agency has completed its selection of the carlines that will be subject to the requirements of the motor vehicle theft prevention standard, beginning with 1987 model year vehicles. These selections were based on actual theft data, in the case of lines initially introduced into commerce before January 1, 1983, and according to the specified selection procedures, in the case of lines introduced into commerce on or after January 1, 1983. This listing is intended to inform the public, particularly law enforcement groups, of the vehicles that are subject to the marking requirements of the motor vehicle theft prevention standard.

EFFECTIVE DATE: This listing becomes effective May 8, 1986. This means that each of the listed lines and their major replacement parts will be subject to the requirements of the motor vehicle theft prevention standard beginning in the 1987 model year.

FOR FURTHER INFORMATION CONTACT: Mr. Brian McLaughlin, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202-426-1740).

SUPPLEMENTARY INFORMATION: On October 24, 1985, NHTSA published a new Part 541, *Federal Motor Vehicle Theft Prevention Standard;* 50 FR 43166. Part 541 sets forth performance requirements for inscribing or affixing identification numbers onto original equipment major parts and the replacement parts for those original equipment parts, on all vehicles in lines selected as high theft lines. Section 603(a)(1) of the Motor Vehicle Information and Cost Savings Act (the Cost Savings Act; 15 U.S.C. 2023(a)(1) specifies that three types of carlines are high theft lines for the purposes of the motor vehicle theft prevention standard. These three types of lines are:

(1) Existing lines that had a theft rate exceeding the median theft rate in 1983 and 1984;

(2) New lines that are likely to have a theft rate exceeding that median theft rate; and

(3) Existing or new lines that have a theft rate below the median theft rate, but which have a majority of major parts interchangeable with lines whose theft rate exceeded or is likely to exceed the 1983 and 1984 median theft rate.

NHTSA followed different procedures to determine which lines met any of these three statutory criteria. Section 603(b) of the Cost Savings Act sets forth the procedures NHTSA followed to determine whether existing lines, that is, lines initially introduced into commerce before January 1, 1983, had a theft rate that exceeded the median theft rate. That section specifies that the agency "shall obtain from the most reliable source or sources accurate and timely theft and recovery data and publish such data for review and comment." In response to this directive, NHTSA published theft data notices on May 2, 1985 and August 15, 1985; 50 FR 18708 and 50 FR 32871, respectively. After considering the comments received in response to these notices, the agency published its final theft data and calculated the median theft rate based on those data; 50 FR 46666, November 12, 1985. Those lines that exceeded the median theft rate were selected as high theft lines, subject to the limitation in section 603(a)(3) of the Cost Savings Act. That section specifies that not more than a total of 14 of a manufacturer's lines introduced before the effective date of the theft prevention standard can be selected for coverage under the standard, based on data establishing the line was a high theft line. The only manufacturer that would have had more than 14 lines selected was General Motors.

With respect to lines introduced into commerce on or after January 1, 1983, section 603(a)(2) of the Cost Savings Act specifies that the new lines which are to be subject to the standard "may be selected by agreement between that manufacturer and [NHTSA]." To implement this provision, NHTSA published a new Part 542, *Procedures for Selecting Lines to be Covered by the Theft Prevention Standard;* 50 FR 34831, August 28, 1985. These procedures were followed by the agency in selecting those new lines that are likely to have theft rates exceeding the median theft rate, those lines that have a majority of major parts interchangeable with the major parts of an actual or likely high theft line, and in deciding which of General Motor's lines should be among the 14 selected for coverage by the theft prevention standard.

After following these procedures, the agency has selected the high theft lines that will be subject to the requirements of the theft prevention standard, unless the lines are exempted pursuant to section 605 of the Cost Savings Act. The individual vehicle manufacturers have already been notified which of their own lines have been selected for coverage under the motor vehicle theft prevention standard. This listing of the covered lines for all affected manufacturers is simply a compendium of the selections which have already been sent to the individual manufacturers. It is published so that the public, especially law enforcement groups, will know which vehicles will be subject to the requirements of the theft prevention standard.

The agency has been told that the 1987 versions of some of these car lines will be introduced into commerce before April 24, 1986, the effective date for Part 541. For the purposes of Title VI of the Cost Savings Act, NHTSA believes that a line's model year begins on the day on which a vehicle in that line is introduced into commerce in the United States. The legislative history of Title VI states, "The [theft prevention] standard cannot apply to a car in the middle of the model year." H.R. Rep. No. 1087, 98th Cong, 2d Sess., at 11 (1984). Accordingly, NHTSA concludes that a 1987 model year version of a car line introduced into commerce before the effective date of Part 541 is not subject to the requirements of Part 541 during the 1987 model year. Such lines will, of course, be subject to those requirements for the 1988 model year. NHTSA will inform the National Crime Information Center (NCIC) of those lines listed in appendix A whose 1987 model year versions were introduced into commerce before April 24, 1986, and are not subject to the requirements of Part 541 in the 1987 model year.

NHTSA would like to note that this listing is *not* a final listing of the lines that will be required to be marked in the 1987 model year. As noted above, some manufacturers plan to introduce 1987 lines on this list into commerce before April 24, 1986. If they do so, the lines would not be subject to the marking requirements for the 1987 model year. Further, the agency has received a number of petitions for exemption from the marking requirements of Part 541, because some of the lines in this listing will be equipped with standard equipment anti-theft devices in the 1987 model year. After the agency verifies whether the 1987 lines were actually introduced into commerce before April 24, 1986 and reaches decisions on the petitions for exemption, it will promptly publish an update to this listing. That update will show all the lines that must be marked in accordance with Part 541 for the 1987 model year.

NHTSA finds for good cause that notice and opportunity for comment on this listing are unnecessary. As explained above, the agency is statutorily required to make the determination of which existing lines are high theft lines based on actual theft data. In the case of newer lines, the agency is statutorily required to determine which lines are likely high theft lines by agreement with the manufacturer if possible. All selections of newer lines as high theft lines were made pursuant to Part 542. Additionally, the agency has made the statutorily-required determinations of which lines with theft rates below the median theft rate have a majority of major parts interchangeable with those of a high theft line. Thus, all of the lines listed herein have already been selected as high theft lines in accordance with the criteria set forth in Title VI of the Cost Savings Act. Public comment on the selections is not contemplated by Title VI, and is unnecessary after the selections have been made in accordance with the statutory criteria.

Regulatory Impacts

NHTSA has determined that this rule listing the high theft carlines subject to the requirements of the vehicle theft prevention standard is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. As noted above, these selections have all been made in accordance with the provisions of section 603 of the Cost Savings Act. This listing does not actually select the lines to be covered by the theft prevention standard; it only informs the general public of those lines that have been selected as high theft lines. NHTSA does not believe that the selections affect the impacts described in the regulatory evaluation prepared for the vehicle theft prevention standard. Accordingly, a separate regulatory evaluation has not been prepared for this listing. Interested persons may wish to examine the regulatory evaluation prepared for the theft prevention standard in connection with this listing. Copies of that evaluation have been placed in Docket No. T84-01, Notice 7, and may be obtained by writing to: National Highway Traffic Safety Administration, Docket Section, Room 5109, 400 Seventh Street SW., Washington, DC 20590.

The agency has also considered the effects of this listing under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. First, this is merely a listing of selections that have already been made. Second, the total costs for marking any vehicle may not exceed $15, as specified in section 604 of the Cost Savings Act. This represents much less than one half of one percent of the suggested retail price of the lowest priced new car available in the United States. Third, few, if any, of the vehicle manufacturers listed herein would qualify as small entities for the purposes of the Regulatory Flexibility Act. Small organizations and small governmental jurisdictions will be minimally affected as purchasers of new vehicles subject to the theft prevention standard. Accordingly a regulatory flexibility analysis has not been prepared. Those persons interested in seeing the agency's analysis of the effects of the vehicle theft prevention standard on small businesses are referred to the regulatory evaluation available in Docket No. T84-01, Notice 7.

Finally, the agency has considered the environmental impacts of this rule, in accordance with the National Environmental Policy Act, and determined that it will not have any significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 541

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

PART 541—[AMENDED]

In consideration of the foregoing, 49 CFR Part 541 is amended as follows:

1. The authority citation for Part 541 continues to read as follows:

Authority: 15 U.S.C. 2021-2024, and 2026; delegation of authority at 49 CFR 1.50.

2. A new Appendix A is added to Part 541, reading as follows:

Appendix A—Lines Subject to the Requirements of This Standard

Manufacturer	Subject lines
Alfa Romeo	Milano 161.
Austin Rover	Sterling.
BMW	3—Carline.
	5—Carline.
	6—Carline.
	7—Carline.
Chrysler	Chrysler Executive Sedan/Limousine.
	Chrysler Fifth Avenue/Newport.
	Chrysler Laser.
	Chrysler LeBaron/Town & Country.
	Chrysler LeBaron GTS.
	Dodge Aries.
	Dodge Conquest.
	Dodge Daytona.
	Dodge Diplomat.
	Dodge Lancer.
	Dodge 600.
	Plymouth Caravelle.
	Plymouth Conquest.
	Plymouth Gran Fury.
	Plymouth Reliant.
	"Q" Car.
Ferrari	Mondial 8.
	308.
	328.
Ford	Ford Mustang.
	Ford Thunderbird.
	Mercury Capri.
	Mercury Cougar.
	Lincoln Continental.
	Lincoln Mark.
	Lincoln Town Car.
	Merkur Scorpio.
	Merkur XR4Ti.
General Motors.	Buick Electra.
	Buick LeSabre.
	Buick Riviera.
	Cadillac Allante.
	Cadillac DeVille.
	Cadillac Eldorado.
	Cadillac Seville.
	Chevrolet Camaro.
	Chevrolet Corvette.
	Chevrolet Nova.
	Oldsmobile Delta 88.
	Oldsmobile 98.
	Oldsmobile Toronado.
	Pontiac Bonneville.
	Pontiac Fiero.
	Pontiac Firebird.
Honda	Acura Legend.
Isuzu	Impulse.
Jaguar	XJ.
	XJ-6.
	XJ-40.
Maserati	Biturbo.
	Quattroporte.
Mazda	GLC.
	RX-7.
	626.
Mercedes-Benz.	190 D/E.
	300 D/E.
	300 SDL.
	380 SEC/500 SEC.
	380 SEL/500 SEL.
	380 SL.
	420 SEL.
	560 SEL.
	560 SEC.
	560 SL.
Mitsubishi	Cordia.
	Galant.
	Starion.
	Tredia.
Nissan	Maxima.
	300 ZX.
Porsche	911.
	924S.
	928.
Reliant	SS1.
Saab	900.
	9000.
Subaru	XT.
Toyota	Camry.
	Celica.
	Celica Supra.
	Corolla/Corolla Sport.
	Cressida.
	MR2.
	Starlet.
Volkswagen	Audi 5000s.
	Audi Quattro.
	Volkswagen Cabriolet.
	Volkswagen Rabbit.
	Volkswagen Scirocco.

Issued on April 2, 1986.
Diane K. Steed,
Administrator.
[FR Doc. 86-7761 Filed 4-7-86; 8:45 am]
BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 619

[Docket No. 51193-5193]

Fishery Conservation and Management; Preemption of State Authority; Hearing Procedures

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NOAA promulgates this final rule to specify the procedures for formal adjudicatory hearings under section 306(b) of the Magnuson Fishery Conservation and Management Act. This rule apprises interested parties of NOAA's interpretations and procedures in the event it becomes necessary to preempt State fishery management authority if State action or inaction adversely affects implementation of Federal fishery management plans.

EFFECTIVE DATE: May 7, 1986.

FOR FURTHER INFORMATION CONTACT: Jay S. Johnson (Assistant General Counsel for Fisheries, NOAA), 202-634-4224.

SUPPLEMENTARY INFORMATION: Section 306(b) of the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1856(b), Magnuson Act), authorizes the Secretary of Commerce (Secretary) to apply Federal regulations to State waters (other than internal waters) upon finding certain facts after opportunity for a formal adjudicatory hearing. NOAA promulgated an interim final rule to govern preemption hearings under section 306(b) on March 22, 1982 (47 FR 12181), with a request for comments on the interim regulations. Those regulations established procedures by which preemption is governed, from commencement of the hearing through reinstatement of State authority.

Comment on the interim final rule was solicited through April 21, 1982; an additional period to comment, through May 21, 1982, was also provided (47 FR 16632, April 19, 1982). A total of 17 entities submitted comments on the interim regulations. These commenters were the Caribbean, Gulf of Mexico and Pacific Regional Fishery Management Councils, the States of Alaska, Florida, Hawaii, Idaho, Maine, Maryland, Massachusetts, New Hampshire, Pennsylvania, Rhode Island, Texas, and Washington, the Government of Guam, and the Environmental Defense Fund.

The substantive comments are summarized below together with NOAA's response. The final rule takes into account such comments, to the extent noted, in light of NOAA's experience on two previous occasions when preemption under section 306(b) was effected (*see* 47 FR 24136, June 3, 1982, and 49 FR 37783, September 26, 1984).

Comments and NOAA's Response

1. General

(a) Need for the Regulations

Comments: Two commenters questioned the need for promulgating the Part 619 regulations in light of the President's policy of deregulation. Those commenters believed that the regulations constitute a "sledge hammer" or "club" with which NOAA will compel States to submit to its will.

Response: NOAA believes that the Part 619 regulations are necessary for the Secretary to exercise authority under section 306(b) of the Magnuson Act. Without such regulations, substantial uncertainties would exist regarding the manner of proceeding in such a case and confusion regarding the course of a preemption proceeding might well negate or nullify the Secretary's authority.

(b) Status of the Rule Under Executive Order (E.O.) 12291

Comment: One commenter stated, without further amplification, that the Part 619 rule was "major" by virtue of "the potentially enormous impact on [that State's] fishery management as a result of Federal preemption."

Response: Section 2(b) of E.O. 12291 defines a "major" rule as one that is likely to result in:

(1) An annual effect on the economy of $100 million or more:

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

There can be no doubt that the procedural regulations in Part 619 do not have results of the sort referred to in E.O. 12291. The commenter has apparently confused the Part 619 regulations with regulations that could be promulgated subsequent to a preemption proceeding. The latter regulations might have economic effects, some of which might be "major;" such effects would normally have been addressed during the original rulemaking implementing the fishery management plan.

(c) Nature of § 306(b) Proceeding

Comment: One commenter took issue with a statement in the preamble to the interim final rule that "[Section 306(b) of the Magnuson Act] supplements, but does not substitute for, the Constitutional doctrine of Federal Supremacy—that State laws which conflict with Federal regulations, or which proscribe activities permitted by Federal regulations, are superseded by those Federal regulations."

Response: The statement was intended to eliminate confusion concerning the legal effect of Federal fishery management regulations which, like other forms of Federal regulation, carry the potential for changing or nullifying State laws on the same subject. It is NOAA's position that formal preemption proceedings are not required to supersede State laws which are directly or indirectly applicable to fishing in the fishery conservation zone (FCZ); the formal proceedings are required only when necessary to supersede State law applicable to State waters (other than internal waters).

2. Definitions of Relevant Terms (§ 619.4(b))

(a) General Comments on Definitions

Comment: Several commenters were concerned generally that the definitions provided in § 619.4(b), and the definitions of "Predominately" and "Substantially (affects)" in particular, were too vague and hence too subjective and thus might prove to be unworkable in actual practice, or were based on such broad-ranging factors as to be useless. One commenter believed that § 619.4 ought to be deleted in its entirety in part because of those problems and in part because "the regulations are directed toward setting forth the procedural steps in a preemption action . . . and should not, therefore, set forth the agency's interpretation of the factors which will be used by the administrative law judge in rendering his decision. . . ."

Response: NOAA does not agree that the definitions set forth in § 619.4(b) should be deleted. The purpose of these definitions is to focus attention on the types of issues and evidence that are relevant in determining whether the factual findings for Federal preemption, as specified in § 619.4(a), exist in a particular case; as such, the definitions serve a useful function. Furthermore, to the extent that the definitions and underlying factors focus attention on the relevant issues, they are not vague or overly broad in relation to the terms being defined, the meanings of which are not self-evident as employed in section 306(b) of the Magnuson Act. Certain of these concerns are addressed in other responses to comments.

(b) Definition of "Predominately"

Comment: One commenter asserted that the definition of "predominately" was flawed insofar as it purported to treat as fishing in the FCZ that fishing which "would occur in the absence of regulation." Another commenter believed that the definition of the term should "incorporate the accepted usage as defined in Webster's Unabridged Dictionary and as modified by law." Two commenters addressed the factors which the rule specified as bearing on the question of "predominately;" one of these commenters stated that the factors were inadequate, while the other stated that catch rather than fishing effort be identified as the most important factor.

Response: NOAA rejects the comments regarding the definition of "predominately". In certain circumstances the management regulations which implement an FMP may reduce the proportion of fishing occurring in the FCZ as opposed to State waters. It would be an illogical construction of the statute that authority to protect a stock of fish through preemption proceedings could be lost because of measures taken to protect the stock in the FCZ. NOAA also declines to incorporate a more specific definition of predominately, specifically with respect to the comparative magnitude of fishing in State waters as opposed to fishing in and beyond the FCZ. The question of whether more fishing occurs in and beyond the FCZ than in State waters is one best left to the administrative law judge (ALJ) in a particular proceeding. Finally, NOAA disagrees that catch should be identified as the most important factor bearing on the question of where fishing "predominately" occurs. In some cases, catch would be the most important consideration; in other cases, fishing effort may be a more significant factor—particularly where a certain portion of the harvest (e.g., undersized fish) is discarded at sea and does not enter formal catch statistics. For this reason, NOAA has decided that the ALJ should determine which factor is more relevant to the predominance issue.

(c) Definition of "State Action or Omission"

Comment: One commenter believed that the definition should indicate the geographical scope of State action, inaction, or omission which affects the carrying out of a fishery management plan (FMP), particularly to indicate whether the definition includes State action or omission in internal waters.

Response: The definition is not limited to State action or omission occurring in State waters seaward of the baseline from which the territorial sea is measured because State action or omission in internal waters may have clear and discernable effects upon the carrying out of an FMP. This is so even though the Secretary is not authorized under § 306(b) to preempt State authority in internal waters.

(d) Definition of "Substantially (Affects)"

Comment: Two commenters indicated that the factors specified for determining the substantiality of the effects of State action or omission needed to be ranked according to their relative weights. Several commenters expressed doubts about the relevance of various factors.

Response: NOAA has revised the definition in the following respects. *First*, it has more clearly defined the term "substantial." *Second*, it has specified the relevant "effects" which are likely to be of concern in a preemption proceeding. These effects are those which were previously specified as the second factor to be considered in determining the substantiality of effects. *Third*, NOAA has specified that the magnitude of such actual or potential effects will determine "substantiality," and that various factors (comprising the remaining factors specified in the interim final rule) bear on that question of magnitude.

NOAA believes that the modifications of this definition accommodate the concerns expressed, but takes this opportunity to elaborate upon the relevance of the previously specified factors to the general question of substantiality of effects.

(1) *Similarity or dissimilarity of State and Federal goals, objectives or policies:* This factor is relevant in determining the magnitude of actual or potential effects upon the carrying out of the FMP. For example, strikingly dissimilar or opposing objectives might indicate potentially significant effects.

(2) *Effects upon achievement of optimum yield (OY) or attainment of the National Standards:* These are types of effects which State action or omission may have upon the carrying out of an FMP. There can be no doubt that State action (for example, permitting the harvest of fish smaller than that permitted in the FCZ), which might preclude the attainment of OY for a fishery, has an effect on the carrying out of the FMP. Likewise, State activities which are based upon other than the best available scientific information may well have a significant effect upon the carrying out of an FMP which is required to be based upon the best available scientific information.

(3) *Proportion of the fishery occurring within the boundary of the State:* This factor bears on the question of the magnitude of the actual or potential effects. For example, the effects of adverse State action may be less significant if only a small portion of the fishery occurs in State waters.

(4) *Characteristics and status of the stocks:* This is another factor which bears on the questions of magnitude of the effects. For example, certain species of fish spend a portion of their lives in a State's waters for spawning; in such cases, the effects of State action or omission, may be more significant than in other cases.

(e) Definition of "Adversely"

Comment: Two commenters objected to the absence of a definition of the term "adversely." One of these commenters believed that adverse effects of State action or inaction constitute "one of the most critical requirements for Federal preemption;" the other commenter believed that the failure to define that term would likely "cause unnecessary misunderstandings and contention in the future."

Response: NOAA agrees that adverse effects of State action or omission will be at the core of any decision to preempt State authority. The Magnuson Act does not authorize preemption in cases where State action, though different, still benefits the Federal regime. However, NOAA believes that whether the effects of State action are "adverse" or antagonistic to the carrying out of an FMP will be readily apparent upon an examination of the effects in any particular case. It is likely that the more disputed issue will be that of whether the State action *substantially* affects (in an adverse manner) the Federal management regime. For this reason, NOAA does not believe it necessary to define the term "adversely" in these regulations. The common understanding of the term will suffice.

3. Procedural Issues

(a) *Commencement of Proceedings (§ 619.5)*

(i) *Authority to initiate proceedings. Comment:* One commenter stated that the authority to initiate preemption proceedings should be delegated to the Regional Directors (RDs) of NMFS; this should be done "to abbreviate the time necessary to implement preemption actions, while at the same time affording the States an adequate opportunity to fully air their views."

Response: The preemption of any State's authority under section 306(b) of the Magnuson Act is an undertaking of substantial proportions, marking as it would a breakdown of cooperative State-Federal fishery management relations. Because of this, NOAA believes that authority to initiate preemption proceedings should remain at a high level within the Department of Commerce. NOAA does not believe that delegating the initiation authority to the RD would facilitate the preemption process; other means of achieving that are available (see *Response* to *Comment* 3(a)(iii), below). To the contrary, NOAA believes that the authority to initiate preemption proceedings should be vested in the Administrator of NOAA, (rather than with the Assistant Administrator for fisheries, as specified in the interim final rule), both to facilitate the course of a preemption proceeding and to maintain accountability for the decision to initiate such a proceeding.

(ii) *Criteria or requirements for initiating a preemption proceeding. Comment:* One commenter believed that the advice of the relevant fishery management council and State fisheries agency should be considered, and the input of the NMFS Regional Office should be required, before any preemption proceeding is initiated. Another commenter thought that a standard to guide NOAA's discretion in initiating such a proceeding was necessary.

This commenter's concern apparently was that NOAA should be authorized to initiate the proceeding upon "reasonable belief" that the factual findings for Federal preemption would exist; the commenter did not believe the regulation, as originally written ("The Assistant Administrator may if deemed necessary, initiate a proccding * * * "), set forth that authority with sufficient specificity.

Response: As was indicated in the *Response* to *Comment* 3(a)(i), preemption of State authority is a serious step and a proceeding to initiate preemption will not be undertaken lightly. If problems develop with respect to cooperative State-Federal fishery management issues, every reasonable effort will be taken to resolve those problems, including the participation of the relevant Councils, State fisheries agencies, and RDs in that problem-solving process. Only if that process fails will the possibility of preemption even be considered. If it becomes necessary to initiate a preemption proceeding, then it would seem unnecessary (if not counterproductive) to require that the Councils and States be consulted for their further advice on the matter. Furthermore, it is unlikely that NOAA would consider initiating a preemption proceeding without consulting the relevant RDs, in part because of the significance of the undertaking, and in part because of the Administrator's need for information before making a decision regarding the appropriateness of preemption.

With respect to clarifying the circumstances in which NOAA may initiate preemption proceedings, NOAA does not perceive any benefit to be had from the suggested change. Surely, NOAA must be authorized to initiate a preemption proceeding "before the jury is in" regarding the factual findings for Federal preemption; indeed, it is the function of the hearing process to establish the requisite factual predicates. At the same time, it is unlikely that the Administrator would contemplate initiating a preemption proceeding in the absence of some reasonable suspicion that the statutory criteria could be established through formal proof. Hence, the suggested change does not appear to "govern the [Administrator's] discretion in initiating preemption hearings" in any significant respect more than does the current standard.

For these reasons, NOAA sees no need to make the suggested changes.

(iii) *Service of notice. Comment:* One commenter stated that notice to initiate a preemption proceeding ought to be served upon the State agency responsible for marine fisheries management, as well as upon the Governor and Attorney General of the State. Another commenter suggested that the notice also be published in the **Federal Register.**

Response: The statutory notice will be served upon the affected State's Attorney General and published in the **Federal Register.** Other informal efforts may be used to inform other state officials, if time permits.

(iv) *Contents of notice of proposed preemption. Comment:* One commenter stated that the notice should clearly indicate the fishery or fisheries subject to the proposed action and any action which the State might take to avoid preemption. Another commenter believed that the notice should "include a specification of the time period during which preemption would be obtained."

Response: NOAA does not believe that the regulation requires modification regarding the contents of the notice. First, § 619.5(a)(1)(ii) requires "A concise statement of the § 619.4 factual findings for Federal preemption upon which the notice is based." This requires an identification, among other things, of the fishery involved and the State action or omission which substantially and adversely affects the carrying out of an FMP. Hence, to the extent the notice states the problem, it should be apparent what action could be taken by the State to avoid preemption.

Also, NOAA disagrees with the suggestion that a time period for Federal preemption should be stated in the notice. Indeed, that suggestion runs contrary to the criterion in section 306(b)(2) of the Magnuson Act for terrminating Federal regulations which preempt State authority i.e., that the Secretary find ". . . that the reasons for which he assumed such regulation no longer prevail, ..."

(v) *Other. Comment:* One commenter thought that the regulations (§ 619.5(b)) should specify a time period during which the State could respond to the notice, and suggested 30 days as a reasonable period.

Response: Section 619.5(b) does not specify a time period for the State's answer to the notice because that time period is specified in 15 CFR 904.220(f), one of the regulations in 15 CFR Part 904 that applies to the course of a preemption proceeding subsequent to service of the notice of proposed preemption. The time period provided by this section is 15 days, "unless otherwise provided." NOAA believes that this time period is reasonable.

(b) Rules Pertaining to the Hearing (§ 619.6)

(i) *Parties to the proceeding. Comment:* Five commenters thought that § 619.6 unnecessarily limited participation in a preemption proceeding to the Administrator and the affected State. Some of these commenters believed that certain other persons (such as the relevant council and other States in the region) should be entitled, as a matter of right, to intervene; others indicated that persons (such as individuals, fishermen's organizations, conservation groups, and interstate marine fisheries commissions) should be allowed to participate if such persons had a substantial interest in the outcome which was not otherwise adequately represented. It was thought that such intervention should be allowed to guarantee a full presentation of the facts and a fair and well-reasoned decision.

Response: NOAA recognizes the need for an adequate record upon which the Secretary's decision must be based. However, in deciding to limit participation in a preemption proceeding to only the affected State, NOAA has taken into account the following considerations. *First*, the outcome of a preemption proceeding, if successful, would affect primarily the State involved in the proceeding; that State would be precluded from exercising its management authority recognized by section 306(a) of the Magnuson Act. Furthermore, the State, under the doctrine of *parens patriae*, is the guardian of its citizens (including fishermen from that State who may be precluded from fishing in the territorial sea adjacent to that State's coasts if the preemption proceeding is successful). It is doubtful whether others (such as other States, the councils, interstate marine fisheries commissions, or organizations or persons from the same or other States) have any interest, which could be affected by Federal preemption of a State's authority, which is not represented through the State's participation.

Second, the issues in a preemption proceeding are quite limited. The issue of whether a fishery is engaged in predominately within and beyond the FCZ is one which will be determined in large measure on the basis of catch, landings, or effort data which are a matter of public record; it is not clear that any potential intervenor would be able to contribute meaningfully and materially to the determination of this issue. While potential intervenors might, in some cases, have something material to contribute on the question of whether State action or omission will substantially and adversely affect the carrying out of an FMP, that information can be presented through either party to the preemption proceeding. For example, evidence supplied by another State was used in both preemption proceedings that have occurred thus far.

Third, those who are not allowed to participate in the preemption proceeding have an alternative forum for voicing their concerns and providing input through the proposed rulemaking process which generally will be instituted concurrently with the preemption proceeding (§ 619.5(d)(1)). Note, too, that it is during this rulemaking proceeding that the effects (incremental or otherwise) of Federal preemption may be addressed vis-a-vis compliance with E.O. 12291 and the Regulatory Flexibility Act (if the effects of the proposed regulation differ from the effects analyzed prior to implementing regulations for the FMP at issue).

For these reasons, NOAA has determined that participation in a preemption proceeding should be limited to the Administrator and the affected State.

(ii) *Burden of proof. Comment:* Two commenters seemed concerned about the burden of proof in a preemption proceeding. One stated that Federal preemption should be limited to "a clear case of need, based on facts and hard data." The other thought that the regulations should state that the Administrator has the burden of proof in any preemption proceeding; this commenter also believed that "the concise statement of the § 619.4 factual findings for Federal preemption contained in the notice of commencement of proceedings could [not] serve as a *prima facie* case against the State(s)."

Response: The general rule of 5 U.S.C. 556(d) applies to preemption proceedings: "[T]he proponent of a rule or order has the burden of proof . . ." Hence, the Administrator must prove that the factual findings for Federal preemption exist. Generally, that proof cannot be accomplished in the absence of facts and data in the record, particularly since the ALJ must base the recommended decision on the evidence of record (*see* 15 CFR 904.271(a)(1)). This is not to say, however, that the facts alleged in the Administrator's notice might not be sufficient to support Federal preemption if the State does not offer evidence to rebut those facts. Section 306(b) of the Magnuson Act does not suggest otherwise. So long as the Secretary makes the requisite findings, there should be no doubt but that a "clear case of need" would have been established.

(iii) *Timeliness of preemption proceedings. Comment:* Two commenters were concerned that the procedures established by Part 619 would not permit certain situations to be addressed by the § 306(b) mechanism because of the amount of time necessary to conduct a preemption proceeding. One of these commenters urged that the ALJ's decision "should become effective and binding immediately subject to subsequent modification by administrative appeal."

Response: NOAA, too, is concerned that in some cases the time required to effect Federal preemption of State authority might vitiate the potential benefit of such a proceeding. Hence, the Part 619 regulations have been modified to permit a more expeditious proceeding by having the Administrator of NOAA, rather than the Assistant Administrator for Fisheries, initiate the proceeding, and authorizing the ALJ to modify all relevant time periods. Additionally, a formal appeal from the ALJ's recommended decision has been eliminated in view of the State's ability to petition the Secretary for reinstatement of fishery management authority under § 619.8.

(c) The Secretary's Decision (§ 619.7)

Comment: Three commenters were concerned with various aspects of the decision process. One commenter stated that to prohibit the ALJ from reopening a case to hear new evidence would deny procedural due process where no appeal is taken from the ALJ's recommended decision. Another believed that the Secretary should not have the sole option of requiring a hearing for receipt of new evidence. The third urged that the decision maker must give some weight to the ALJ's findings and decisions in reaching ultimate conclusions; those findings and decisions cannot be disregarded altogether.

Response: NOAA does not accept the first two of these suggestions, but accepts the third. First, the suggestion that the ALJ retains authority to reopen every case misreads the law, and ignores the rights of a State whose authority has been preempted to petition for return of that authority under § 619.8. Second, the suggestion that the Secretary should not have the singular right to request a hearing for receipt of new evidence has been addressed by the revision of former §§ 619.7 and 619.8. If new evidence becomes available the State may present that evidence in an application for reinstatement of State authority (§ 619.8). To provide a State with an absolute right to a hearing before an ALJ for the purpose of producing new evidence would either unnecessarily complicate or stall the proceedings, or ignore basic principles of administrative law, i.e., that hearings need not be held unless there are material factual issues in dispute.

Finally, the suggestion that the Secretary cannot ignore the ALJ's recommended decision points out a drafting defect in former § 617.7(c) which required the decisionmaker to make a decision ". . . on the basis of the hearing record and any materials submitted with respect to the appeal."

The regulation has been revised to make it clear that the Secretary must reach conclusions on the basis of the hearing record (defined as the "record for decision" in 15 CFR 904.270(a) and the ALJ's recommended decision (including the ALJ's findings and conclusions). To the extent, then, that the Secretary's decision is based on those items, the ALJ's findings, conclusions and recommended decision will not have been disregarded or rejected "out of hand."

(d) Reinstatement of State Authority (§ 619.8)

(i) *Secretary's authority to initiate reinstatement (§ 619.8(a)).*

Comment: One commenter objected that the Magnuson Act did not authorize reinstatement of State authority on the Secretary's own initiative; such was believed to "effectively negate the requirement that the State bear the burden of proof in seeking reinstatement."

Response: NOAA does not interpret section 306(b)(2) of the Magnuson Act as limiting the Secretary's authority to initiate the reinstatement process. Although Congress apparently was more concerned about the State's ability to initiate the process of modifying an order of preemption, certainly it would be reasonable that both parties to the preemption proceeding be able to initiate that process. This interpretation does not affect the "burden of proof" with respect to any reinstatement of State authority.

(ii) *Factors supporting State's application (§ 619.8(a)(1)(ii)). Comment:* Two commenters believed that the regulations should clearly indicate that an amendment to the relevant FMP may be one of the "changed circumstances which affect the relationship of the State's action or omission to take action to the carrying out of the fishery management plan."

Response: Comment accepted.

(iii) *Secretary's rejection of a State's application (§ 619.8(b)). Comment:* One commenter stated that outright rejection of the State's application for reinstatement should not be permitted. This commenter believed that the State's application should be accepted or a hearing should be held on the application.

Response: The relevant principles of administrative law suggest that a hearing is not required. To require a hearing in every case would unnecessarily burden the administrative process without corresponding benefit.

4. Other Matters—Sunset Review

Comment: Two commenters thought the Part 619 regulations should include a "sunset" provision, which would require the Secretary periodically to review, re-evaluate, and make the § 619.4 factual findings for Federal preemption. These commenters found it objectionable that Federal preemption might continue indefinitely and believed it would be preferable for the Secretary to justify any continued preemption of State authority (rather than leave it to the State to apply for reinstatement).

Response: The Magnuson Act does not require such a sunset provision with respect to preemption of State authority under section 306(b). Congress saw fit to provide that preemption should continue unless the State successfully applies for reinstatement of (or the Secretary decides to reinstate) State authority. To require the Secretary to rehash the evidence on a periodic basis would constitute an unnecessary burden and expense if the underlying realities had not changed.

Furthermore, Federal regulations in general are reviewed periodically under other authorities (such as E.O. 12291 and the Regulatory Flexibility Act). Hence, Federal preemption might be terminated in some circumstances even though a State had not applied for reinstatement of its authority or had been unable to prove any substantial change in the circumstances which led to Federal preemption. For these reasons NOAA declines to adopt the proposed change.

Classification

NOAA has determined that these rules, which interpret statutory provisions and prescribe procedures, are not "major" rules as defined in E.O. 12291. The General Counsel of the Department of Commerce certified that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities because the rules are only interpretative or procedural in nature. These rules contain no collection of information requirements for purposes of the Paperwork Reduction Act. These regulations prescribe agency procedures and thus constitute a "categorical exclusion" from the requirements of the National Environmental Policy Act.

List of Subjects in 50 CFR Part 619

Administrative practice and procedure, Fisheries, Fishing, Intergovernmental relations.

Dated: April 3, 1986.

James E. Douglas, Jr.,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 619 is revised in its entirety to read as follows:

PART 619—PREEMPTION OF STATE AUTHORITY UNDER SECTION 306(b)

Authority: 5 U.S.C. 552(a); 16 U.S.C. 1801 *et seq.*

§ 619.1 Purpose and scope.

The rules in this part, together with the requirements of 5 U.S.C. 554 through 557, prescribe procedures for the conduct of preemption hearings under section 306(b) of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1856(b). These rules are issued by the Secretary of Commerce under section 305(g) of the Act and the requirement of 5 U.S.C. 552(a)(1)(C).

§ 619.2 General policy.

It is the policy of the Secretary of Commerce that preemption proceedings will be conducted expeditiously. The administrative law judge and counsel or other representative for each party are encouraged to make every effort at each stage of the proceedings to avoid delay.

§ 619.3 Definitions.

As used in this part, unless the context clearly requires otherwise:

Act means the Magnuson Fishery Conservation and Management Act, as amended, (16 U.S.C. 1801 *et seq.).*

Administrator means the Administrator, National Oceanic and Atmospheric Administration (NOAA), or any person to whom the Administrator's authority has been delegated.

Council means any appropriate Regional Fishery Management Council established under Title III of the Act.

Party to the proceeding means the Administrator and each State served with a notice of proposed preemption (as represented by such State's Attorney General or other official representative).

Predominately means, with respect to fishing in a fishery, that more fishing on a stock or stocks of fish covered by the fishery management plan occurs, or would occur in the absence of regulations, within or beyond the FCZ than occurs in the aggregate within the boundaries of all States off the coasts of which the fishery is conducted.

Secretary means the Secretary of Commerce.

State means any State or States, as defined in section 3(21) of the Act, with respect to which action is taken under this part.

State action or omission that affects a fishery covered by a fishery management plan includes a State's statutes, conservation and management regulations, judicial decisions, policies, and enforcement practices, or the lack thereof.

Substantially (affects) means, with respect to whether a State's action or omission will substantially affect the carrying out of a fishery management plan (FMP) for a fishery, that those effects are important or material, or considerable in degree. The effects of a State's action or omission for purposes of this definition include effects upon:

(1) The achievement of the FMP's goals or objectives for the fishery;

(2) The achievement of optimum yield from the fishery on a continuing basis;

(3) The attainment of the national standards for fishery conservation and management (as set forth in section 301(a) of the Act) and compliance with other applicable law; or

(4) The enforcement of regulations implementing the FMP.

§ 619.4 Factual findings for Federal preemption.

(a) The two factual findings for Federal preemption of State management authority over a fishery are:

(1) The fishing in a fishery, which is covered by a fishery management plan implemented under the Act, is engaged in predominately within the fishery conservation zone (FCZ) and beyond such zone; and

(2) A State has taken any action, or omitted to take any action, the results of which will substantially and adversely affect the carrying out of such fishery management plan.

(b) Whether fishing is engaged in "predominately" within or beyond the FCZ will be determined after consideration of relevant factors, including but not limited to, the catch (based on numbers, value, or weight of fish caught, or other relevant factors) or fishing effort during the appropriate period, and in light of historical patterns of the distribution of catch or fishing effort for such stock or stocks of fish.

(c) Whether relevant effects are substantial will be determined after consideration of the magnitude of such actual or potential effects. Relevant to this determination are various factors, including but not limited to, the proportion of the fishery (stock or stocks of fish and fishing for such stocks) that is subject to the effects of a particular State's action or omission, the characteristics and status (including migratory patterns and biological condition) of the stock or stocks of fish in the fishery, and the similarity or dissimilarity between the goals, objectives, or policies of the State's action or omission and the management goals or objectives specified in the FMP for the fishery or between the State and Federal conservation and management measures of the fishery.

§ 619.5 Commencement of proceedings.

(a) *Notice of proposed preemption.* (1) If a proceeding under this part is deemed necessary, the Administrator must issue a notice of proposed preemption to the Attorney General of the State or States concerned. The notice will contain:

(i) A recital of the legal authority and jurisdiction for instituting the proceeding;

(ii) A concise statement of the § 619.4 factual findings for Federal preemption upon which the notice is based; and,

(iii) The time, place, and date of the hearing.

(2) The notice of proposed preemption will also be published in the **Federal Register**. This notice may be combined with any notice of proposed rulemaking published under paragraph (d)(1) of this section.

(b) *Response.* The State will have the opportunity to respond in writing to the notice of proposed preemption.

(c) *Amendment.* The Administrator may, at any time prior to the Secretary's decision, withdraw the notice of proposed preemption. Upon motion of either party before the record is closed, the administrative law judge may amend the notice of proposed preemption.

(d) *Proposed regulations.* (1) *In general.* If additional regulations are required to govern fishing within the boundaries of a State, the Administrator may publish proposed regulations in the **Federal Register** concurrently with issuing the notice indicated in paragraph (a) of this section.

(2) *Emergency actions.* Nothing in this section will prevent the Secretary from taking emergency action under section 305(e) of the Act.

§ 619.6 Rules pertaining to the hearing.

(a) The civil procedure rules of the National Oceanic and Atmospheric Administration currently set forth in 15 CFR Part 904, Subpart C (or as subsequently amended), apply to the proceeding after its commencement by service of notice (pursuant to § 619.5) and prior to the Secretary's decision (§ 619.7), *except* that the following sections will not apply:

(1) 15 CFR 904.201 (Definitions)

(2) 15 CFR 904.206(a)(1) (Duties and powers of Judge); and

(3) 15 CFR 904.272 (Administrative review of decision).

(b) *Additional duties and powers of Judge;*

(1) *Time periods.* The administrative law judge is authorized to modify all time periods pertaining to the course of the hearing (under §§ 619.5 and 619.6) to expedite the proceedings, upon application and appropriate showing of need or emergency circumstances by a party.

(2) *Intervention.* Intervention by persons not parties is not allowed.

§ 619.7 Secretary's decision.

(a) The Secretary will, on the basis of the hearing record the administrative law judge's recommended decision:

(1) Accept or reject any of the findings or conclusions of the administrative law judge and decide whether the factual findings exist for Federal preemption of a State's authority within its boundaries (other than in its internal waters) with respect to the fishery in question;

(2) Reserve decision on the merits or withdraw the notice of proposed preemption; or

(3) Remand the case to the administrative law judge for further proceedings as may be appropriate, along with a statement of reasons for the remand.

(b) *Notification.* (1) If the factual findings for Federal preemption are determined to exist, the Secretary will notify in writing the Attorney General of that State and the appropriate Council(s) of the preemption of that State's authority. The Secretary will also direct the Administrator to promulgate appropriate regulations proposed under § 619.5(d) and otherwise to begin regulating the fishery within the State's boundaries (other than in its internal waters).

(2) If the factual findings for Federal preemption are determined not to exist, the Secretary will notify, in writing, the Attorney General of the State and the appropriate Council(s) of that determination. The Secretary will also direct the Administrator to issue a

notice withdrawing any regulations proposed under § 619.5(d).

§ 619.8 Application for reinstatement of State authority.

(a) *Application or notice.* (1) At any time after the promulgation of regulations under § 619.7(b)(1) to regulate a fishery within a State's boundaries, the affected State may apply to the Secretary for reinstatement of State authority. The Secretary may also serve upon such State a notice of intent to terminate such Federal regulation. A State's application must include a clear and concise statement of (i) the action taken by the State to correct the action or omission found to have substantially and adversely affected the carrying out of the fishery management plan, or (ii) any changed circumstances which affect the relationship of the State's action or omission to take action to the carrying out of the fishery management plan (including any amendment to such plan); and (iii) any laws, regulations, or other materials which the State believes support the application.

(2) Any such application received by the Secretary or notice issued to the State will be published in the **Federal Register.**

(b) *Informal response.* The Secretary has sole discretion to accept or reject the application or response. If the Secretary accepts the application or rejects any responses and finds that the reasons for regulation of the fishery within the boundaries of the State no longer prevail, the Secretary will promptly terminate such regulation and publish in the **Federal Register** any regulatory amendments necessary to accomplish that end.

(c) *Hearing.* The Secretary has sole discretion to direct the Administrator to schedule hearings for the receipt of evidence by an administrative law judge. Hearings before the administrative law judge to receive such evidence will be conducted in accordance with § 619.6. Upon conclusion of such hearings, the administrative law judge will certify the record and a recommended decision to the Secretary. If the Secretary, upon consideration of the State's application or any response to the notice published under § 619.8(a)(2), the hearing record, the recommended decision, and any other relevant materials finds that the reasons for regulation of the fishery within the boundaries of the State no longer prevail, the Secretary will promptly terminate such regulation and publish in the **Federal Register** any regulatory amendments necessary to accomplish that end.

[FR Doc. 86-7810 Filed 4-7-86; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 650

[Docket No. 51222-5222]

Atlantic Sea Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; extension of effective date.

SUMMARY: NOAA reissues an emergency interim rule delaying implementation of Amendment 1 to the Fishery Management Plan for Atlantic Sea Scallops (FMP) and reestablishing the 35-meats-per-pound standard. This action is intended to avert severe immediate economic hardship while processors revise, as necessary, their handling procedures.

EFFECTIVE DATES: April 4, 1986. The effective date of Amendment 1 to 50 CFR Part 650 is delayed until May 5, 1986.

FOR FURTHER INFORMATION CONTACT: Carol J. Kilbride, 617-281-3600.

SUPPLEMENTARY INFORMATION: Under section 305(e)(1) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), NOAA issued an emergency rule, effective January 1, 1986, delaying implementation of Amendment 1 to the FMP (51 FR 208, January 3, 1986). Amendment 1 sets a new weight standard and extends enforcement to all levels of processing while the scallops are in landed form. This rule delays the implementation of Amendment 1 for an additional 30 days, and repromulgates the regulations implementing the FMP which established a minimum size at harvest within a range from 40-25 meats per pound (47 FR 35990, August 18, 1982). This rule also reestablishes the 35-meats-per-pound standard provided in the emergency rule of January 3, 1986. The existing provisions of the FMP will remain in effect until superseded by Amendment 1.

This action is taken under the authority of section 305(e)(3) of the Magnuson Act which provides that an emergency regulation originally promulgated under section 305(e)(1) may be repromulgated for one additional period of not more than 90 days by agreement of the Secretary and the Council. At the request of NOAA, the Chairman of the New England Fishery Management Council has polled the membership to determine if such agreement exists. All but two members of the 17 member-council were contacted. Nine members, a majority of the membership, agreed to promulgation of the emergency regulation for an additional period of 30 days.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided for in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the procedures of that order.

(16 U.S.C. 1801 *et seq.*)

Dated: April 4, 1986.

William G. Gordon,

Assistant Administrator For Fisheries National Marine Fisheries Service.

[FR Doc. 7919 Filed 4-4-86; 5:03 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 51, No. 67

Tuesday, April 8, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Ch. III

Agencies' Use of Alternative Dispute Resolution Techniques

AGENCY: Administrative Conference of the United States; Committee on Administration.

ACTION: Notice; Request for Comments.

SUMMARY: The Committee on Administration of the Administrative Conference is reviewing a draft report and recommendations from research contractor Philip J. Harter concerning potential uses by federal agencies of arbitration, minitrials, mediation, factfinding, and other alternatives to litigation. The draft report, which surveys current agency uses of such techniques, reviews the structures of these processes, and highlights legal issues involved in their use by federal agencies, concludes that these methods can be useful in some cases involving the government. The draft recommendations, which the Committee has not yet approved and will review in detail in early May in deciding whether to submit them to the entire Conference membership, call for agencies to adopt procedures for providing alternative means to resolve a broad range of disputes, and for Congress and courts to give sympathetic consideration to agencies' uses of these methods. The proposed recommendations also address satutory changes that would be desirable to permit the government to make greater use of binding arbitration, settlement techniques of which agencies should take advantage, and establishment of private sector dispute resolution mechanisms as an alternative to other forms of regulation. The text of the proposed recommendations is set forth below. This notice informs interested parties of the availability of the draft report and invites these persons to comment on the proposed recommendations. They are also invited to submit views and information on practical aspects of these techniques as they have been used by agencies, to aid the Committee in its consideration of this subject.

DATES: Comments must be received by Friday, May 2, 1986.

ADDRESSES: Comments should be submitted to Charles Pou, Jr., Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037; a single copy is sufficient.

FOR FURTHER INFORMATION CONTACT: Charles Pou, Jr., Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Telephone: 202-254-7065.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the development of the proposed Administrative Conference recommendations by submitting written data, views or arguments. All communications received on or before the closing date for comments will be considered by the Conference's Committee on Administration before it, takes action on the proposal. Comments received after the deadline will be considered only to the extent feasible. All comments submitted to the Committee will be placed in a file available for public inspection during normal business hours (9:00 AM to 5:30 PM, Monday—Friday, except holidays) at the Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037. Copies of the draft report can be obtained from the Conference at the same address.

Proposed Conference Recommendation:

Agencies' Use of Alternative Dispute Resolution Techniques

Preamble

Federal agencies now decide hundreds of thousands of cases annually—far more than do federal courts. Unfortunately, the formality, costs and delays incurred in administrative proceedings have steadily increased, and in some cases now approach those of courts. These added procedures derive from such sources as judicial decisions establishing detailed due process requirement; lawyers seeking to preserve their clients' every arguable advantage; political compromises in Congress; a desire to control bureaucracy; the public's interest for open government and participation in its decisions; and even agencies endeavors to survive a judicial "hard look." While these procedural requirements can play a major, positive role in assuring that outcomes are principled and fair, too many agencies act pursuant to procedures that waste litigants' time and society's resources and whose formality can reduce the chances for consensual resolution. Congress, courts and agencies should recognize that the recent trend equating fairness with elaborate procedures has in many cases imposed safeguards whose transaction costs, to agencies and the public in general, can substantially outweigh their benefits.

A comprehensive solution to reducing these burdens is to identify instances where simplification is appropriate. This will require a careful review of individual agency programs and the disputes they involve. A more immediate step is for agencies to adopt alternative dispute resolution ("ADR") techniques, or to encourage regulated parties to develop their own mechanisms to resolve disputs that would otherwise be handled by agencies themselves. ADR methods have been employed with success in the private sector for many years, and when used in appropriate circumstances, have yielded decisions that are faster, cheaper, more accurate or otherwise more acceptable, and less contentious. These processes include voluntary arbitration, mandatory arbitration, factfinding, minitrials, mediation, facilitating, convening and negotiation. (A brief lexicon defining these terms is included in the Appendix to this recommendation.) The same forces that make ADR methods attractive to private disputants can render then useful in cases which a federal agency decides, or to which the government is a party. For these methods to be effective, however, some aspects of current administrative procedure may require modification.

It is premature to prescribe detailed procedures for a myriad of government activities since the best procedure for a program, or even an individual dispute, must grow out of its own needs. These recommendations therefore seek to promote increased, and thoughtful, use of ADR methods by Congress and agencies. They are but a first step, and ideally should be supplemented with further empirical research, consultation with experts and interested parties, and more specified Conference prescriptions.

Recommendations

A. General

1. Administrative agencies, where not inconsistent with their statutory authority, should adopt the alternative procedures discussed in this recommendation for resolving a broad range of issues. These include matters that arise as a part of formal or informal adjudication, in rulemaking,[1] in issuing or revoking permits, and in settling disputes, including litigation brought by or against the government. Until more experience has been developed with respect to their use in the administrative process, the procedures should generally be offered as a voluntary, alternative means to resolve the controversy.

2. Congress and the courts give sympathetic consideration to agency uses of the ADR techniques mentioned herein, and should not inhibit their use by requiring formality where it is inappropriate.

B. Voluntary Arbitration

3. Congress should act to reverse a series of Comptroller General opinions holding that no executive branch official may agree to binding arbitration to resolve a claim unless specifically authorized by statute. This legislation should authorize any executive official who has authority to settle such a claim on behalf of the government to agree, either prior to the time a dispute may arise or after a controversy has matured, to arbitration.

4. Congress should authorize agencies to adopt arbitration procedures to resolve matters that would otherwise be decided by the agency pursuant to the Administrative Procedures Act ("APA") or other formal procedures. These procedures should provide that—

(a) All parties to the dispute must knowingly consent to use the arbitration procedures, either before or after a dispute has arisen.

(b) The parties have some role in the selection of arbitrators, whether by actual selection, by ranking those on a list of qualified arbitrators, or by striking individuals from such a list.

(c) Arbitrators need not be government employees, but may be private individuals retained by the parties or the government for the purpose of arbitrating the matter.

(d) The agency may not review the arbitral award except for the grounds stated for vacating awards under the U.S. Arbitration Act, 9 U.S.C. 10, or on its own motion to determine if there is a gross deviation from established law or policy.

(e) The award include a brief, informal discussion of its factual and legal basis, but neither formal findings of fact nor conclusion of law.

(f) Judicial review be pursuant to the limited scope-of-review provisions of the U.S. Arbitration Act, rather than the broader standards of the APA.

(g) The arbitral award be enforced pursuant to the U.S. Arbitration Act, but is without precedential effect for any purpose.

5. Factors bearing on agency use of arbitration are:

(a) Arbitration is likely to be appropriate where—

(1) The probable delay or costs required by a full trial-type hearing outweigh the benefits that are likely to be gained from such a proceeding.

(2) The norms which will be used to resolve the issue raised have already been established by statute, precedent or rule, or the parties explicitly desire the arbitrator to make a decision based on some general standard, such as "justice under the circumstances," without regard to a prevailing norm.

(3) Having a decisionmaking with technical expertise would facilitate the resolution of the matter.

(4) The case involves the government acting in a commercial or proprietary manner.

(5) The parties desire privacy, and circumstances are such that the Freedom of Information Act does not apply.

(b) Arbitration is likely to be inappropriate where—

(1) A definitive or authoritative resolution of the matter is required or desired for its precedential value.

(2) Uniform results in similar cases are desired.

(3) Maintaining established norms or policies is more important than permitting the parties the option of disregarding them or viewing those policies as only one of the considerations to be taken into account.

(4) The case significantly affects persons who are not parties to the proceeding.

(5) A full public record of the proceeding is important.

6. Agency officials, and particularly regional or other officials directly responsible for implementing an arbitration or other ADR procedure, should make persistent efforts to increase potential parties' awareness and receptivity to these procedures.

C. Mandatory Arbitration

7. Congress should recognize that arbitration is not in all instances an adequate substitute for a trial-type hearing pursuant to the APA or for civil litigation. Hence, Congress should mandate arbitration only where the advantage of a trial-type hearing are outweighted by the need to (a) save the time or transaction costs of such a hearing of (b) have a technical expert resolve the issues.

8. Mandatory arbitration is likely to be appropriate only where the matters to be resolved—

(a) Are not intended to have precedential effect other than the resolution of the specific dispute, except that the awards may be published or indexed as informal guidance.

(b) May be resolved through reference to an ascertainable norm such as statute, rule or customs.[2]

(c) Do not require the development of complex factual materials.

(d) Involve disputes between private parties.

(e) Do not involve the establishment or implementation of major new policies or precedents.

9. Judicial review of mandatory arbitration should conform to the standards of the APA.

[Alternative 9. Judicial review should follow the limited scope-of-review provisions of the U.S. Arbitration Act.]

D. Settlement Techniques

10. In many situations, agencies already have the authority to use ADR means to reach a final result agreed to by the parties to dispute. Agencies should use this authority by routinely taking advantage of opportunities to:

(a) Explicitly provide for the use of mediation.

(b) Provide for the use of a settlement judge or other neutral agency official to aid the parties in reaching agreement.[3] These persons might, for instance, assess the likely outcome in the event no settlement is reached.

(c) Implement agreements among the parties in interest, provided that some means have been employed to identify other interested persons and afford them an opportunity to participate.

(d) Provide for the use of minitrials.

[1] See ACUS Recommendations 82-4 and 85-5, "Procedures for Negotiating Proposed Regulations," 1 CFR 305.82-4 and 85-5.

[2] For example, the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 et seq., provides for mandatory arbitration with respect to the amount of compensation one company must pay another and yet provides no guidance with respect to the criteria to be used to make these decisions. The program has engendered considerable controversy and litigation.

[3] See, e.g., the procedure used by the Federal Energy Regulatory Commission.

(e) Develop criteria that will help guide the negotiation of settlements.[4]

11. Agencies should apply the criteria developed in ACUS Recommendations 82–4 and 85–5, pertaining to negotiated rulemaking,[5] in deciding when it may be appropriate to negotiate, mediate or use similar ADR techniques to resolve any contested issue involving an agency. Settlement procedures may not be appropriate for decisions on some matters involving public policy or having an impact on persons who are not parties, unless notice and comment procedures are used.

12. Factors bearing on agency use of minitrials as a settlement technique are:

(a) Minitrials are likely to be appropriate where—

(1) The dispute is at a stage before substantial litigation costs, such as for discovery, are incurred.

(2) The matter is worth an amount sufficient to justify the senior executive time required to complete the process.

(3) The issues involved include highly technical mixed questions of law and fact.

(4) The matter involves materials that the government or other parties believe should not be revealed.

(b) Minitrials are likely to be inappropriate where—

(1) Witness credibility or expert testimony are of critical importance.

(2) The issues may be resolved largely through reference to an ascertainable norm.

(3) Major questions of public policy are involved.

13. Proposed agency settlements are frequently subjected to multiple layers of intra-agency or other review and therefore may subsequently be revised. This uncertainty may discourage other parties from negotiating with federal officials. To encourage settlement negotiations, agencies should provide means by which all appropriate agency decisionmakers are involved in, or regularly apprised of, the course of major negotiations; agencies should also endeavor to streamline intra-agency review of settlements. These efforts should serve to ensure that the concerns of interested segments of the agency are reflected as early as possible in settlement negotiations, and to reduce the likelihood that tentative settlements will be upset.

14. In cases where agencies must balance competing public policy interests, they should adopt techniques to enable officials to assess, in as objective a fashion as possible, the merits of a proposed settlement. These efforts might include establishing a small review panel of senior officials or neutral advisors, using a minitrial, publishing the proposed settlement in the **Federal Register** for comment, securing tentative approval of the settlement by the agency head or other senior official, or employing other means to ensure the integrity of the decision.

15. Some agency lawyers and decisionmakers, including administrative law judges, should be trained in arbitration, negotiation, mediation, and similar ADR skills, so they can be alert to take advantage of alternatives or serve as neutrals in disputes involving their own or another agency.

E. Private Sector Dispute Mechanisms

16. Agencies should review the areas that they regulate to determine the potential for the establishment and use of dispute resolution mechanisms by private organizations as an alternative to direct agency action. Where such use is appropriate, the agency should—

(a) Specify minimal procedures that will be acceptable to qualify as an approved dispute resolution mechanism.

(b) Oversee the general operation of the process; ordinarily, it should not review individual decisions.

(c) Tailor its requirements to provide an organization with incentives to establish such a program, such as forestalling other regulatory action, while ensuring that other interested parties view the forum as fair and effective.

Appendix

Overview of Alternative Means of Dispute Resolution

Arbitration. Arbitration is closely akin to adjudication in that a neutral third party decides the submitted issue after reviewing evidence and hearing arguments from the parties. It may be binding on the parties, either through agreement or operation of law, or it may be non-binding in that the decision is only advisory.

Factfinding. A "factfinding" proceeding entails the appointment of a person or group with technical expertise in the subject matter to evaluate the matter presented and file a report establishing the "facts." The factfinder is not authorized to resolve policy issues. Following the findings, the parties may then negotiate a settlement, hold further proceedings, or conduct more research.

Minitrial. A minitrial is a structured settlement process in which each side presents a highly abbreviated summary of its case before senior officials of each party authorized to settle the case. A neutral adviser sometimes presides over the proceeding and will render an advisory opinion if asked to do so. Following the presentations, the officials seek to negotiate a settlement.

Mediation. Mediation involves a neutral third party to assist the parties in negotiating an agreement. The mediator has no independent authority and does not render a decision; any decision must be reached by the parties themselves.

Facilitating. Facilitating helps parties reach a decision or a satisfactory resolution of the matter to be addressed. While often used interchangeably with "mediator," a facilitator generally conducts meetings and coordinates discussions, but does not become as involved in the substantive issues as does a mediator.

Convening. Convening is a technique that helps identify issues in controversy and affected interests. The convenor is generally called upon to determine whether direct negotiations among the parties would be a suitable means of resolving the issues, and if so, to bring the parties together for that purpose. Convening has proved valuable in negotiated rulemaking.

Negotiation. Negotiation is simply communication among people or parties in an effort to reach an agreement. It is used so routinely that it is frequently overlooked as a specific means of resolving disputes. In the administrative context, it means procedures and processes for settling matters that would otherwise be resolved by more formal means.

Dated: April 2, 1986.

Richard K. Berg,

General Counsel.

[FR Doc. 86–7675 Filed 4–7–86; 8:45 am]

BILLING CODE 6110-01-M

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[4] See ACUS Recommendation 79–3, "Agency Assessment and Mitigation of Civil Money Penalties," 1 CFR 305.79–3.

[5] See also, ACUS Recommendation 84–4, "Negotiated Cleanup of Hazardous Waste Sites Under CERCLA," 1 CFR 305.84–4.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Freedom of Information Act Implementing Regulations

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This notice extends the comment period from April 7, 1986 to

April 21, 1986, on the proposed rule amending the Department of Agriculture's regulations implementing the Freedom of Information Act. The proposed rule also amends the Department's fee schedule pertaining to the Act. The proposed rule was published in the **Federal Register** on March 6, 1986, (51 FR 7799). The extension of the comment period is in response to two requests received from the public to allow additional time for discussion and comment.

DATE: Comments must be received no later than April 21, 1986.

ADDRESS: Comments should be submitted in writing to the U.S. Department of Agriculture, Office of Governmental and Public Affairs, Office of Information, Special Programs Division, Room 536–A, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Milton E. Sloane, U.S. Department of Agriculture, Washington, DC, at (202) 447–8164.

Dated: April 4, 1986.

Frank W. Naylor, Jr.,

Acting Secretary of Agriculture.

[FR Doc. 86–7870 Filed 4–7–86; 8:45 am]

BILLING CODE 3410-13-M

Agricultural Marketing Service

7 CFR Parts 907 and 908

Navel Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Administrative Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the administrative rules and regulations under the marketing orders covering California-Arizona navel and Valencia organges to specify requirements for petitioning the administrative committees to recommend that the Secretary conduct a continuance referendum. This proposed rule revises one of the proposals which was published for public comment in the July 19, 1985, issue of the **Federal Register** (50 FR 29405).

Comments due: May 8, 1986.

FOR FURTHER INFORMATION CONTACT: James B. Wendland, Acting Chief, Marketing Order Administration Branch, F&V AMS, USDA, Washington, D.C. 20250, telephone 202–475–3919.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The proposed rule is issued under Marketing Order No. 907, as amended (7 CFR Part 907, 50 FR 1429), regulating the handling of navel oranges grown in Arizona and designated part of California, and Marketing Order No. 908, as amended (7 CFR Part 908, 50 FR 1429), regulating the handling of Valencia oranges grown in Arizona and designated part of California. These marketing orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as "the act".

This proposed rule revises the requirements proposed for continuance referenda petitions which were initially published in the July 19, 1985, issue of the **Federal Register** (50 FR 29405). The initial proposed rule provided that interested persons could file comments on this and four other proposals through August 19, 1985. A comment was submitted on behalf of Sequoia Orange Company, Inc., in opposition to several aspects of the proposed rule. The other four provisions of the July 19, 1985, proposed rule were published separately in a final rule in the **Federal Register** on April 3, 1986.

The commenter objected to the initial proposal for continuance referenda petitions because, in his view: (1) The 25 percent signature requirement was too high, (2) the six-week signature period was too short, (3) growers should be permitted to petition the Secretary directly at any time, (4) information on the petition should be identical to that required on the ballots used in the 1984 referenda on proposed amendments to the California-Arizona Valencia and navel orange marketing orders, and (5) the growers' volume of production is irrelevant. In addition, the commenter (6) challenged the Department's authority to promulgate the provisions of the July 19, 1985, proposed rules since the Office of Management and Budget (OMB) is precluded from reviewing such rules. Further, the commenter stated his opinion that (7) the initial proposal did not satisfy the requirements of the Paperwork Reduction Act (PRA) (Title 44, U.S.C. Chapter 35) and the regulations issued thereunder (5 CFR Part 1320, 48 FR 13666).

Marketing Orders 907 and 908 were amended effective January 11, 1985, (50 FR 1429). Sections 907.83(d) and 908.83(d) of the orders were revised to read, in part, that the Navel Orange Administrative Committee (NOAC) and the Valencia Orange Administrative Committee (VOAC), "with the approval of the Secretary, shall adopt such rules and regulations as necessary to establish the basis for" growers to petition the committees to recommend that a referendum be held to ascertain whether continuance of the marketing order is favored by the growers in that industry. This provision refers to conducting continuance referenda other than the prescribed periodic continuance referenda. The need for a petitioning procedure was explored in depth at the hearing which preceded the 1984 referenda in which navel and Valencia orange growers approved the amendments to the marketing orders which were implemented on January 11, 1985.

As a result of further review and evaluation of the Secretary's Decision (49 FR 29071), the July 19 proposed rule, the comment received, and similar petitioning requirements contained in the research and promotion acts covering beef, cotton, eggs, potatoes, and wheat, the Department has revised the original proposal as follows.

(1) The prerequisite percentage of producers needed to sign the petition requesting a continuance referendum has been reduced from 25 percent to 10 percent.

(2) The requirement for the petitioning orange producers to represent a specified percentage of the volume of oranges produced under the appropriate marketing order has been eliminated.

(3) The six-week period proposed for inscribing signatures on the petition may be too short, as suggested by the comment received. Therefore, to ensure that producers are provided ample opportunity to sign such a petition, this proposed rule specifies a 12-week or three-month period rather than the six-week period that was originally proposed.

These changes address the commenter's first, second, and fifth objections. The third objection, that growers should have the opportunity to petition the Secretary directly at any time, is without merit. The principal reason for a requirement of a minimum number of producers signatures required on a petition to conduct a referendum is to give the committee an indication that the request is of substance. However, any navel or Valencia orange grower would still be free to directly petition the Secretary to conduct a referendum at any time.

The commenter's objection to the requirement that referenda for the navel and Valencia orange programs be conducted in odd-numbered years is also irrelevant. The new § 907.83(d) of the navel orange marketing order specifies that the Secretary shall conduct a continuance referendum prior to March 15 of an odd-numbered year if a recommendation by the committee is received by January 15 of such odd-numbered year. The new § 908.83(d) of the Valencia orange marketing order states that the Secretary shall conduct a continuance referendum by October 15 of an odd-numbered year if a recommendation by the committee is received by August 15 of such odd-numbered year.

In 1984, producers of navel and Valencia oranges approved these amendments as well as amendments which provide for periodic continuance referenda every six years. Considering these periodic referenda, limiting petitions for continuance referenda to every other year for each marketing order provides ample opportunity for producers to request a referendum and at the same time precludes the Secretary from constantly being engaged in conducting continuance referenda. Further, the level of grower support is not usually subject to dramatic changes over a relatively short period of time. Therefore, the deadlines for submitting petitions specified in the initial proposal have not been changed.

Objection No. 4 dealt with information pertaining to individual growers which should be included on the petitions. Sequoia proposed that the Department require growers to submit the same information as was required to determine eligibility to vote in the 1984 amendatory referenda. Requiring such extensive an information collection is not necessary in the case of these petitions. By signing the petition, growers certify that they are bona fide growers of the commodity. Since there is no volume requirement in order for petitions to be valid, there is no reason to require growers to report their volume of production and supplementary information in order to be an eligible petitioner. Volume of production information would be necessary, however, in order to participate with a valid vote in the requested continuance referendum.

In response to Objection No. 6, which addresses OMB's oversight of government regulations, since OMB does not review marketing order regulatory actions, the Department engages in rulemaking without submitting such actions to OMB for review. The Department does, however, submit proposed information collection requirements and obtains OMB approval for such.

Objection No. 7 states an opinion that the initial proposal did not meet the requirements of the PRA. The proposed petitions were submitted to OMB for approval on October 23, 1985, and have been approved under the provisions of 44 U.S.C. Chapter 35 for use through November 30, 1988, for the navel orange order (OMB No. 0581–0116) and through October 31, 1988, for the Valencia orange order (OBM No. 0581–0121).

The proposed rule provides a 30–day comment period.

List of Subjects in 7 CFR Parts 907 and 908

Marketing agreements and orders, California, Arizona, Oranges (navel and Valencia).

1. The authority citation for 7 CFR Parts 907 and 908 continues to read as follows:

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

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

2. A new § 907.183 is added under a new heading "Referenda" reading as follows:

Referenda

§ 907.183 Petitions.

The committee shall recommend to the Secretary that a referendum be held to ascertain whether continuance of this part is favored by growers whenever the committee is petitioned, in writing, to do so by at least 10 percent of the producers who produced navel oranges for market within the production area in the previous fiscal year. Such petition shall meet the following requirements:

(a) All signatures shall have been inscribed on the petition during the period between September 14 and December 14 of an even-numbered year; and

(b) The petition is presented to the committee on or before December 15 of such even-numbered year; and

(c) The petition is presented on a form provided by the committee.

3. A new § 908.183 is added under a new heading "Referenda", reading as follows:

Referenda

§ 908.183 Petitions.

The committee shall recommend to the Secretary that a referendum be held to ascertain whether continuance of this part is favored by growers whenever the committee is petitioned, in writing, to do so by at least 10 percent of the producers who produced navel oranges for market within the production area in the previous fiscal year. Such petition shall meet the following requirements:

(a) All signatures shall have been inscribed on the petition during the period between April 14 and July 14 of an odd-numbered year; and

(b) The petition is presented to the committee on or before July 15 of such odd-numbered year; and

(c) The petition is presented on a form provided by the committee.

Dated: April 1, 1986.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–7640 Filed 4–7–86; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 982 and 999

Handling of Filberts/Hazelnuts Grown in Oregon and Washington; Extension of Time for Receipt of Written Comments on Proposed Rule To Amend Grade Requirements for Domestic and Imported Filberts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Notice is hereby given that the time period for filing written comments on a proposal to amend the grade requirements for domestic and imported filberts is extended from April 9 to June 9. The comment period extension will give interested persons additional time to analyze the proposal and submit written comments on it.

DATE: Comments due June 9, 1986.

ADDRESS: Interested persons are invited to submit written comments concerning the proposed changes during the extended period. Comments should be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2069, South Building, Washington, DC 20250, and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, (202) 447–5053.

SUPPLEMENTARY INFORMATION: Pursuant to the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601–674) a notice of proposed rulemaking was published in the March 10, 1986, issue of the Federal

Register (51 FR 8201), regarding proposed amendment of the grade requirements for domestic shelled filberts under Marketing Order No. 982 and for imported shelled filberts under § 999.400.

The Department received a request filed on behalf of the Association of Food Industries, Inc. (AFI), to extend the comment period 90 days to allow more time to analyze the proposal and submit written comments on it. AFI members include distributors of domestic filberts and filberts imported from Turkey and Italy. In addition, a letter representing the Associated Oregon Hazelnut Industries, Inc., the Filbert Growers Bargaining Association, the Associated Nut Packers of Oregon, the Oregon Filbert Commission, and the Nut Growers Society of Oregon-Washington and British Columbia was received which opposed any extension in the comment period.

It is our position that extending the comment period is justified to ensure that all parties are provided with an adequate amount of time to review the proposed rule and submit comments. However, extending the comment period by 90 days, as requested, could serve to dealy the effective date of any final rule that might be issued, and such a final rule should be made effective prior to the beginning of the 1986–87 marketing year which begins on July 1, 1986. Therefore, the comment period is being extended by 60 days to June 9, 1986.

Dated: April 1, 1986.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 86–7743 Filed 4–7–86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 012CE, Notice No. 23–ACE–11]

Special Conditions; Beech Model 2000 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Special Conditions.

SUMMARY: This notice proposes special conditions for the Beech Model 2000 series airplanes. The airplane will have novel and unusual design features when compared to the state of technology envisaged in the airworthiness standards of 14 CFR Part 23 of the Federal Aviation Regulations (FAR). These novel and unusual design features include the use of advanced composite materials for primary flight structure, an electronic flight instrument system, the location of the propellers, the aerodynamic configuration, and an outward opening, main entry door in the pressurized cabin, for which the regulations do not contain adequate or appropriate airworthiness standards. This notice contains the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the airworthiness standards of Part 23.

DATE: Comments must be received on or before May 8, 1986.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 012CE, Room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 012CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Bobby W. Sexton, Aerospace Engineer, Regulations and Policy Office (ACE–110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 374–5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action on this proposal. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 012CE." The postcard will be date stamped and returned to the commenter. The proposals contained in this notice may be changed in light of the comments received. All commments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Type Certification Basis

The type certification basis for the Beech Model 2000 airplane is as follows: Part 23, effective February 1, 1965, as amended by amendments 23–1 through 23–28 and §§ 23.2 and 23.785 as amended by amendment 23–32, effective December 12, 1985; Special Federal Aviation Regulations (SFAR) No. 27, effective February 1, 1974, as amended by amendments 27–1 through 27–4; Part 36, effective December 1, 1969, as amended by amendments 36–1 through the amendment effective on the date of type certification; exemptions, if any; and the special conditions that may result from this proposal.

Background

On February 1, 1984, Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201, made application to the FAA for a type certificate for the Beech Model 2000 airplane. The Beech Model 2000 is a small, normal category airplane that has a passenger seating configuration, excluding pilot seats, of nine seats or less. The Beech Model 2000 will have a composite-structure airframe, a forward-wing and main wing (tandem wing configuration) with directional control surfaces in wing-mounted vertical surfaces, and twin turboprop engines aft-mounted on the main wing trailing edge, driving pusher propellers.

Special conditions may be issued and amended, as necessary as part of the type certification basis if the Administrator finds that the airworthiness standards designated in acccordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.17(a)(2).

The proposed type design of the Beech Model 2000 airplane contains a number of novel or unusual design features not envisaged by the applicable Part 23 airworthiness standards. Special conditions are considered necessary because the airworthiness standards for the novel or unusual design features of the Beech Model 2000 airplane.

The main wing of the Beech Model 2000 incorporates aerodynamic control surfaces which function as ailerons for lateral control. Additionally, these same control surfaces are designed to also function as a part of the longitudinal (pitch) control system. Movement of the control wheel in the longitudinal axis causes deflections of the forward wing control surfaces and the main wing control surfaces simultaneously. The transmitting links connected to the main wing control surfaces are directed through a mixer box which allows both lateral and longitudinal control inputs to the same control surface. A failure of a single transmittting link could affect both the longitudinal and lateral primary control systems. A single failure which would affect both longitudinal and lateral control could pose a significant problem to flight path control. Section 23.145(e)(2) does not specifically address systems in which the longitudinal and lateral primary controls are combined; therefore, a special condition is proposed to assure that the airplane is controllable after a single failure of any one transmitting link which would affect both the longitudinal and lateral primary control system.

The Beech Model 2000 will be operated at high altitudes where stall-mach buffet encounters are likely to occur which are not presently addressed in Part 23. A special condition is proposed which will require buffet onset tests and the inclusion of information in the Pilots' Operating Handbook/Airplane Flight Manual (POH/AFM) to provide guidance to the flight crew. This information will enable the flight crew to plan flight operations that will maximize the maneuvering capability during high altitude cruise flight and preclude inadvertent operations exceeding the boundary of perceptable buffet.

The proposed operating envelope for the Beech Model 2000 airplane includes areas in which Mach effects (e.g. buffet, changes in pressure distribution over the main wing and forward wing causing reduction in control authority) may be significant. The anticipated low drag of the airplane, coupled with the unusual design features associated with the forward aerodynamic surface, and the proposed operting envelope are conditions not envisioned by the existing Part 23 regulations. These conditions may degrade the ability of the flight crew to promptly recover from inadvertent excursions beyond maximum operating speeds. The ability to pull at least a 1.5g positive load factor is needed to assure that, during recovery from upset, the airplane speed does not continue to increase to a value where recovery may not be achievable by the average pilot or flight crew. Accordingly, a special condition is proposed to require demonstration of the ability to recover from inadvertent speed excursions beyond V_{MO}/M_{MO} and up to V_D/M_D.

Beech has selected airfoil designs for the Beech Model 2000, having airfoil pressure gradient characteristics and smooth aerodynamic surfaces which may be capable of supporting natural laminar flow. Changes in flying qualities and performances may occur due to the loss of natural laminar flow caused by rain, insects, ice, or other contamination adhering to aerodynamic surfaces.

Airfoil sections whose performance and flying qualities are substantially degraded by contamination, which would normally be encountered in service, were not envisaged by the existing Part 23 requirements. A special condition is proposed to require that the airplane comply with the requirements of §§ 23.141 through 23.253 with any contamination on the aerodynamic surfaces normally encontered in service and to require that information relating to any resulting performance degradations be provided to the pilot.

The Beech Model 2000 airframe is made of advanced composite material and is assembled by the extensive use of bonding. This material and its assembly is completely different from the typical semi-monicoque aluminum airframes that have been predominant since the early 1940's. Composite materials of the type used on the Beech Model 2000 are generally not susceptible to initiation of fatigue cracks by the application of receptive loads, but are susceptible to damage in the form of cracks, breaks, and delaminations from intrinsic and discrete sources growing under application of repetitive loads. Because of this and other factors, the FAA has determined that the pressurized cabin and wing fatigue requirements of §§ 23.571 and 23.572, respectively, are inadequate to assure that composite material structure can withstand the repeated loads of variable magnitude expected in service.

The use of advanced composite materials and extensive bonding of these materials in primary flight structure is a novel and unusual design feature with respect to the type of airplane construction envisaged by the existing airworthiness standards of Part 23. Because the requirements of Part 23 do not require the level of substantiation necessary for composite material structure, special conditions are proposed to include the necessary airworthiness standards as a part of the type certificatin basis for the Beech Model 2000 airplane. This special condition is proposed to assure that a level of safety exists for airplanes made from bonded, advanced composite materials equivalent to those existing for aluminum airplanes.

The proposed special condition will require the wings, pressure cabin, and other composite structural components critical to safe flight be evaluated by damage tolerance criteria. The damage tolerance consideration includes principal structural elements such as the forward wing, main wing, wing carrythough, wing attaching structure, and pressurized cabin, since failure of these structures could have catastrophic results. When damage tolerance is shown to be impractical, the proposed special condition is worded to permit approval, based on safe-life testing. Metal details may continue to be evaluated to the fatigue requirements of §§ 23.571 and 23.572.

Damage tolerance criteria for composite structure, in combination with the existing material requirements of Part 23, such as §§ 23.603 and 23.613, will provide a level of safety for the composite material airframe structure used in the Beech Model 2000 airplane equivalent to that required by the airworthiness standards of Part 23.

The Beech Model 2000 has composite material outboard fins acting as vertical stabilizers, mounted via metal fittings, at the tips of the composite material wings. Because of possible interaction with the composite material wing structure, these vertical stabilizers must be included in the fatigue/damage tolerance evaluation.

The design also includes a forward lifting surface (forward wing) in lieu of a horizontal tail. Since this surface shares lifting loads which would be carried only by the wing in a conventional design, demonstration of its ability to withstand the repetitive loads expected in service is required.

In addtion to those components requiring fatigue/damage tolerance evaluations, other components that are critical to flight safety, such as moveable control surfaces and wing flaps, must also be protected against loss of strength of stiffness. Protection conventionally is provided through design and inspection. Since composite material strength is susceptible to manufacturing defects and damage from discrete sources, including lightning strikes, process controls and inspectibility are limited; therefore, structures design must provide for these limits with adequate protection allowances.

The lack of adequate service experience with composite material structures in airplanes type certificated to the airworthiness standards of Part 23, the unusual mechanical properties characteristics, and the experience with composite material structural bonding, to date necessitates proposing special conditions to assure an appropriate level of safety for the Beech Model 2000 airframe structure. These proposed special conditions are intended to require: (1) Accounting for environmental effects; i.e., temperature and humidity on material mechanical properties in all structural substantiation analysis and test, (2) limit load residual strength with impact damage from discrete sources, (3) ability to carry ultimate load with realistic intrinsic and discrete impact damage at the threshold of detectability, and (4) design features to prevent disbonds greater than the disbonds for which limit load capability has been shown. Proof-testing of each production component to limit load and reliance on manufacturing quality control procedures between limit and ultimate load may be used in lieu of "design features," provided each bonded joint is subjected to its critical design limit load during the proof testing. Acceptable non-destructive testing techniques do not yet exist in state-of-the-art composite technology to reliably identify weak bonds. However, proof-testing of each production article may be discontinued if such tests are developed and accepted by the FAA.

Because the composite material and bonding may require preventative maintenance and inspection procedures different from those commonly utilized for aluminum airframes, the proposed special condition requires that instructions for continued airworthiness be established in addition to those required by § 23.1529.

The forward lifting surface on the Beech Model 2000 airplane is subject to a different set of structural load criteria than that applicable to airplanes equipped with aft-mounted empennage. Existing Part 23 requirements specifically address horizontal tail surfaces. A forward-mounted, horizontal lifting surface like the one chosen for the Beech Model 2000 airplane was not envisioned when Part 23 was promulgated. A special condition is proposed to clarify and broaden the existing Part 23 requirements to account for the airplane loads associated with a forward lifting surface.

Additionally, the Beech Model 2000 airplane has vertical extensions on each main wing which act as vertical stabilizers. The unusual aerodynamic configuration resulting from the use of these vetical stabilizers and the toward lifting surface (forward wing), combined with aft-facing pusher propellers, are novel and unusual when compared to the aerodynamic configuration envisioned by Part 23. A special condition is proposed to require validation of the load intensities and distributions by flight test measurement, unless the methods used for determining these loads are shown to be reliable or conservative for the configuration under consideration.

The fuselage design for the Beech Model 2000 incorporates outward-opening doors in the pressure cabin. If this type of door is not properly closed and locked, or if a failure in the door or its locking mechanism occurs, the pressure in the cabin can blow the door open resulting in explosive decompression of the cabin and possible injury to its occupants. The high cabin differential pressure and outward-opening doors are novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards of Part 23 because the current requirements do not contain any airworthiness standards for the door latching and locking mechanism nor for a means to warn the crew when doors are not properly closed and locked. Accordingly, a special condition is proposed to apply appropriate design standards to the door latching and locking mechanism and to require a means to warn the crew when doors are not fully closed and locked.

To maintain desired flying qualities with main wing flaps extended or retracted, Beech has incorporated a design feature in which the forward wing sweeps fore and aft as the main wing flaps are extended or retracted. The airplane pitching moments are balanced by the synchronized motions of these sets of aerodynamic surfaces. If synchronization is not maintained, flight characteristics and control may be degraded. Section 23.701 addresses designs where flaps on opposite sides of the plane of symmetry must be synchronized by a mechanical interconnection, unless the airplane has safe flight characteristics with the flaps retracted on one side and extended on the other. Part 23 does not have appropriate airworthiness standards for a flap system where a variable sweep lifting surface operates as a part of the wing flap system. There are no specific airworthiness standards requiring continued safe flight characteristics when the longitudinal axis control would be affected in the event of a malfunction during flap extension or retraction cycles. The mechanisms operating the main wing flap and the forward wing sweep are not mechanically interconnected. Each is activated independently by electric motors and non-synchronization is detected by electric monitors. These monitors are designed to detect unsynchronized conditions and stop the extension or retraction cycle at whatever position exists when the lack of synchronization is detected. Accordingly, a special condition is proposed to require that the airplane demonstrate continued safe flight characteristics for each combination of synchronized or unsynchronized positions of the main wing flaps and the forward wing sweep. Latent failures must be considered if credit for reliability or redundancy of monitors is utilized when identifying the various combinations. The need for special flight procedures must be established. The annunciation of a system shutdown or other system malfunction may be necessary.

Beech has selected an airplane configuration with rear-mounted pusher propellers which may be susceptible to contact with the runway surface at the maximum pitch attitude attainable during takeoffs and landings. This is an unusual design feature different from the tractor configurations typical of small airplanes. A special condition is proposed to provide adequate ground clearance for the propellers. If a tail bumper or energy-absorbing device is provided to show compliance with the special condition, the FAA proposes to require that appropriate design loads be established for the energy-absorbing device and that the energy-absorbing device and its supporting structure be designed to support those loads.

Since the aft location of the propellers on the Beech Model 2000 airplane is an unconventional design feature, passenger and ground personnel may be less aware of the proximity of the propeller blades. A special condition is proposed to require the necessary visibility of the propeller discs corresponding to similar requirements of Parts 27 and 29 concerning conspicuity of the tail rotor.

Because of the aft propeller location, ice shed from the wing leading edges, engine air inlet duct inertial separator, and other parts of the airplane may impact the propeller blades. Impact of shed ice fragments may have an adverse effect on the strength and fatigue characteristics of the propeller. To ensure propeller integrity and continued availability of power, a special condition is proposed to either prevent ice from accumulating on the airplane forward of the propellers, or to assure that ice shed into the propeller will not create a hazardous condition. Compliance with this special condition must be shown for all icing operating conditions for which certification is requested. If certification to the ice protection requirements of § 23.1419 is not intended, compliance with this special condition must include unanticipated encounters with icing conditions.

Additionally, because the propeller is located aft of the engine, if engine exhaust gases are discharged into the propeller disc, exhaust gases may adversely affect the strength and fatigue characteristics of the propeller material. The propeller and the propeller material must be capable of continuous safe operation; therefore a special condition is proposed to address the effects of exhaust gas impingement on the propeller.

Small airplanes have typically been unpressurized where smoke or toxic fumes could be evacuated by opening windows or, if pressurized, have had maximum operating altitudes such that the airplane could be readily depressurized to evacuate smoke or toxic fumes without creating an unsafe condition. Thus, the small airplane envisioned in the Part 23 airworthiness standards inherently had smoke evacuation provisions. The Beech Model 2000 will not have the inherent smoke evacuation provisions due to the higher differential pressures, longer times needed to depressurize and ventilate the cockpit, and the need for immediate supplemental oxygen at the maximum operating altitudes.

Accordingly, a special condition is proposed to require cockpit ventilation requirements corresponding to the level of safety intended by the airworthiness standards applicable to the Beech Model 2000 airplane.

Beech has selected cathode ray tube (CRT) electronic display units for an integrated engine parameter display, crew alerting function, and for other cockpit instrument displays. Beech is proposing to type certificate two cockpit instrument panel configurations on the Beech Model 2000 airplane. Each configuration will be evaluated for single pilot operation. The Engine Indicating and Crew Alerting System (EICAS) is proposed to be standard on both configurations. The nonsymmetrical cockpit instrument panel configuration would feature one EFIS on the left instrument panel, the standard EICAS in the center, and backup conventional attitude, airspeed, and altimeter instruments on the right side of the instrument panel. The optional symmetrical instrument panel configuration would feature two Electronic Flight instrument Systems (EFIS) (one on each side), the standard EICAS in the center, and backup, two-inch conventional third attitude, airspeed, and altimeter instruments. Included in both the symmetrical and nonsymmetrical configurations would be two Radio Tuning Units (RTU). Proposed for future inclusion in the airplane design is a Flight Management System (FMS). In addition, autopilot and yaw damper systems are proposed for the Beech Model 2000 airplane.

The engine parameter displays and crew alerting functions for small airplanes have previously been generated by independent, isolated indicators and systems which inherently preclude single faults from affecting more than one display parameter or crew alert, as required by § 23.903(c). For the Beech Model 2000, these heretofore independent systems are proposed to be integrated into a single cathode ray tube (CRT) display, termed EICAS (Engine Indicating and Crew Alerting System). Single faults potentially may result in the loss of more than one engine indicating or crew alerting function.

It is proposed by Beech that in the event of a failure of the EICAS display CRT, the crew may display the entire EICAS information on another CRT. The multi-funcition display (MFD) CRT is selected by repositioning the EICAS display control switch from "NORMAL" to "REV" (reversion). The crew would have discretionary control over the MFD, and may choose to display parameters other than the EICAS information. In that case, it is proposed by Beech that either the left or right radio tuning unit (RTU) be used to display the ITT, torque, propeller RPM, and N1 parameters for each engine in a digital format. However, the RTU display of engine parameters is intended primarily for use in case of dual generator failures.

In the EICAS, the interstage Turbine Temperature (ITT) and torque displays for each engine are proposed to be combined into a single circular analog display having two pointers. The ITT, torque, N1, and propeller RPM displays provide both analog scales for trend monitoring, and digital readouts for discrete values. The digital displays for each parameter match the color of the corresponding pointer on the analog display.

In the engine's normal (below red line) operating range, the ITT and torque scales are proposed to be calibrated such that the red line marks coincide. During an engine start, the ITT has a higher red line limit; however, the normal engine torque red line limit still applies. Thus, a modified format is proposed to be used to display ITT during engine start. The ITT analog scale extends past the normal red line limit, where a second red line limit mark is established and labeled with a white "S" for engine starting limits. After the engine start is completed, the extended scale, the red start limit mark, and the "S" are removed from the display and the display returns to its normal operating format. The start format is displayed whenever the engine is not operating. When an engine ITT, N1, propeller RPM, or torque limit is exceeded, the affected pointer will become red and the scale will be extended to the tip of the pointer.

Emissive color on a CRT display will inevitably appear different than reflective colors on conventional electro-mechanical displays. Different intensities and color temperatures of ambient illumination will also affect the preceived colors. Therefore, display legibility must be adequate for all cockpit lighting conditions, including direct sunlight.

Normal operating, takeoff, and precautionary range markings, required by § 23.1549 (b) and (c), are not considered practical on CRT displays. Markings are proposed as follows:

INTERSTAGE TURBINE TEMPERATURE (ITT)

Parameter	Value	Color
Analog scale, tick marks, and limit marks (engine operating).	ITT normal limit to ITT start limit.	Red.
Red line tick marks	All conditions	Red.
Pointers and digital readouts.	All exceedances	Red.

As proposed, the ITT displays are not marked with grean arcs to define the normal operating ranges as required by § 23.1549(b) and the takeoff and precautionary ranges are not marked with yellow as required by § 23.1549(c).

TORQUE

Parameter	Value	Color
Red line tick marks	All conditions	Red.
Pointers and digital readouts.	All exceedances	Red.

As proposed, the torque displays are not marked with green arcs to define the normal operating range as required by § 23.1549(b), and the takeoff and precautionary ranges are not marked with yellow arcs as required by *§ 23.1549(c).*

N1 (POWER TURBINE TACHOMETER)

Parameter	Value	Color
Analog scale and tick marks.	N1 norm min to N1 max.	Green
Analog scale and tick marks.	Above N1 max	Red.
Red line tick marks		Red.
N1 caution scale, tick marks, and limit marks (10,000 ft).	N1 norm min to N1 de-ice min (10k ft).	Yellow.
N1 caution scale, tick marks, and limit marks (41,000 ft).	N1 norm min to N1 de-ice min (41k ft).	Yellow.

As proposed, the N1 display features a variable caution scale that defines the range of gas compressor speeds which is not adequate to maintain the anti-ice capability, of the inlet lip of the engine. The variable scale is displayed as a color change (yellow) of the N1 scale which starts with and grows from the minimum N1 limit mark. This caution scale is displayed on the left or right N1 gauge whenever the respective lip heat valve is open. The minimum N1 limit mark changes to the color of the cautionary arc when the arc is displayed.

One variation of display being considered would have the oil pressure and temperature displays inhibited; i.e., not displayed, at the discretion of the crew. The oil pressure and temperature parameters would be monitored at all times by the EICAS, and if any of either engine's oil parameters varied from the normal range, both the oil pressure and temperature for both engines would automatically be called up for display by the EICAS. Once displayed, these parameters could not be inhibited from the EICAS display unless the parameters were once again within the normal operating range.

If either engine oil pressure is below the low warning limit (red range), the glareshield annunciator panel will display a corresponding red warning fault light. In addition, the fault will cause the master warning lights to flash, until the crew acknowledges the occurrence by depressing the Master Warning Reset button. After the master warning is reset, only the engine oil low pressures will be annunicated on the glareshield annunciator panel. If, however, any engine oil parameter is in the caution (yellow) range, the EICAS will *NOT* display any corresponding yellow caution message and the inhibited caution message will *NOT* cause the master caution light to flash.

Section 23.1305 has been interpreted to require that all powerplant intruments be continuously displayed for all flight and ground engine operations. The loss of all required powerplant instrument displays due to a single failure of the EICAS CRT display is unacceptable. There are several modes of failure in which the EICAS display would be unusable; i.e., blank display, compressed display, random marks obscuring the display, etc. The FAA considers it necessary that required powerplant instrument information be displayed either on the primary EICAS or the MFD CRT at all times, even in the event of a single CRT failure. Although the ITT, torque, propeller RPM, and N1 parameters may be digitally displayed on either radio tuning unit (RTU), the FAA considers it unacceptable to suppress the powerplant instrument displays from both CRTs simultaneously.

The applicable requirement did not envision the inhibition of oil temperature and pressure displays. However, it is not considered necessary for the crew to continuously monitor the oil temperature and pressure of turbine engines. It is, however, considered necessary that the design provide a means of alerting the crew to any fault or condition which would cause either the oil temperature or pressure, on either engine, to deviate from the normal range.

As was previously stated, Beech is proposing to certify two cockpit instrument panel configurations on the airplane, an optional symmetrical CRT configuration featuring two EFIS and a standard non-symmetrical configuration consisting of a mix of CRT's (only one EFIS) and conventional electromechanical instruments. Each configuration is proposed for single pilot operation.

The proposed symmetrical configuration consists of the following cathode ray tube (CRT) displays at pilot and copilot positions:

(a) Altimeter/Vertical Speed indicator, (Two each Air Data Computers, no cross switching).

(b) Airspeed indicator.

(c) Primary Flight Display (Attitude indicator that is part of the EFIS).

(d) Navigation Display (Horizontal Situation indicator that is part of the EFIS).

(e) Sensor Display Unit (Radio Magnetic indicator).

(f) Control Display Unit (Selects modes and control functions related to Primary Flight Display, Navigation Display, Weather Radar System, Flight Management System, Tuning of Radios). Each Control Display Unit can perform the function of the opposite side Control Display Unit.

Pneumatic airspeed and altimeter indicators (1 each) and a batterypowered attitude indicator, viewable from both sides of the cockpit, is proposed as back-up to the electronic displays.

The proposed unsymmetrical configuration will consist of the following:

Pilot's Panel	CoPilot's Panel
Same instrumentation as the proposed symmetrical configuration (only one Air Data Computer).	[1] Pneumatic Airspeed Indicator. [1] Pneumatic Altimeter Indicator. [1] Pneumatic Vertical Speed Indicator. [2] Attitude Indicator. CRT Navigation Display. CRT Sensor Display Unit. DC Turn and Slip Indicator.

[1] Will be back-up to pilot's display.

[2] Will be back-up to pilot's primary flight display (attitude indicator) and will be powered by a dedicated battery if airplane's electrical power is lost.

The symmetrical and unsymmetrical configuration will also include:

(a) A Multifunction Display (MFD), a CRT viewable from pilot/copilot position for displaying a conventional weather radar, navigation data originated by a Flight Management System, Check List, and serves as back-up to the EICAS display.

(b) Two Radio Tuning Units (VHF Comm, VHF NAV-VOR/DME/ILS/MB, ADF, ATC). Each radio tuning unit can perform the function of the opposite side radio tuning unit. As previously stated, Beech proposes the RTU displays as additional back-up for the display of engine parameters. The radio tuning units are not CRTs.

Features of these systems, and other systems likely to be incorporated that would be essential to the safe flight of this unique airplane design, are novel and unusual relative to the applicable airworthiness requirements. Current small airplane airworthiness requirements are based on "single fault" or "fail-safe" concepts and, when promulgated, the FAA did not envision use of complex, safety-critical systems in small airplanes. The current small airplane requirements envisioned engine instruments and systems that were isolated and independent. A single failure of any engine or any of its systems could not affect the operations of any other engine. All envisioned instruments were single function; i.e., a failure would cause loss of only one instrument function, although several instrument functions may have been housed in a common case. Flight instruments for the pilot are required to be grouped in front of the pilot so deviation from looking forward along the airplane flight path is minimized when the pilot shifts from viewing the flight path to viewing the flight instruments.

For instrument flight, the airplane must be equipped with the minimum flight instruments listed in the operating rules. This minimum listing of instruments includes all instruments that have long been accepted as the minimum for continued safe flight after the failure of any *one* of the required instruments; i.e., airspeed, altitude, attitude, or turn and slip (needle and ball). Back-up instruments for these instruments are not required by the small airplane airworthiness requirements because the FAA has long accepted that the small airplanes could be safely flown following a single instrument failure. The basic airman certification program for an IFR rating has long included the required demonstration of ability to fly the airplane safely following failure of any one of the previously cited instruments, and has not required as a basic IFR rating requirement that all IFR rated airmen must demonstrate abilities using other back-up instruments.

A special condition is proposed which would allow installation of electronic displays that feature design characteristics where a single malfunction or failure could affect more than one primary instrument, display of system. The proposed special condition would allow for installation of systems having features that make isolation and independence between powerplant instrument systems unfeasible due to use of electronic displays. Finally, the proposed special condition would provide requirements to assure the reliability of system design functions that are determined to be essential for continued safe flight and landing of the airplane.

In installations where electronic displays take the place of traditional instruments, the reliability must not be less than that of the traditional instruments. This is in regard to the collective reliability of the replaced traditional instruments rather than the reliability of a single traditional instrument. For this reason, the proposed special condition includes requirements for identifying complex, safety critical systems, and defines requirements needed for their certification.

The proposed special condition will also require a detailed examination of each item of equipment/component of the electronic display system, and installation of the system, to determine if the airplane is dependent upon its function for continued safe flight and landing, or if its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with these adverse operating conditions. Each component of the installation identified by such an examination as being critical to the safe operation of the airplane would be required to meet the proposed special condition.

The proposed special condition also requires that components of system(s) whose function is required and that requires a power supply, be considered an "essential load" on the power supply. The power sources and its distribution system must be able to supply power to the electronic display system(s) as stated in the proposed special condition since the operational reliability of the electronic display system(s) is dependent on the airplane electronic power source.

The present § 23.1309, since being incorporated into 14 CFR Part 23 by amendment 23–14, December 20, 1973, has been used as a means of evaluating systems. The "single fault" or "fail safe" concept of § 23.1309, along with experience based on service-proven designs and good engineering judgment have been used to successfully evaluate most airplane systems and equipment. However, the FAA is finding it difficult to apply the "single fault" concept as a means of determining the effect or likelihood of certain failure conditions to complex systems like those proposed on the Beech Model 2000 airplane. Therefore, the FAA considers it necessary to include the proposed additional system analysis requirements in the certification basis. This will allow the use of the latest available "rational method" of safety analysis of the systems to assure a level of safety intended in the applicable requirements.

The development of rational methods for safety assessment of systems is based on the premise that an inverse relationship exists between the probability of a failure condition and its effect on the airplane. That is, the more serious the effect, the lower the probability must be that the related failure condition will occur.

Use of these rational methods for safety assessment of systems do not mandate use of numerical analysis. An applicant may use numerical analysis to assist in showing compliance, but, in many cases, adequate data is not available for preparing a stand-alone numerical analysis for showing compliance. Therefore, in small airplane certification, a rational analysis based on identification of failure modes and their consequences is frequently better substantiation of compliance with the various required levels of system reliability than a numerical analysis alone.

The availability of this "rational method" of safety analysis of systems, along with the difficulty in applying the existing "single fault" or "fail safe" concept, has prompted the FAA to propose this special condition, because the Beech Model 2000 airplane is proposed to have numerous electronic displays and possibly other systems where use of the single-fault criterion is an unnecessary burden. The proposed special condition would require that a safety evaluation of the systems be made and specifies a level of safety in qualitative terms.

If it is determined that the airplane includes systems that perform more critical functions, it will be necessary to show that those systems meet more stringent requirements. Systems that perform a function that is needed for continued safety of flight and landing of the airplane, whose failure would be catastrophic, would be required to meet requirements that establish either that there will be no failures of that system, or that a failure is extremely improbable.

The special condition also requires that the occurrence of systems failures which would significantly reduce the airplane's capability, or the ability of the crew to cope with adverse operating conditions, and thereby be potentially catastrophic, be improbable. It is recognized that any system(s) failure will reduce the airplane's or crew's capability by some degree, but that reduction may not lead to potentially catastrophic results.

The proposed special condition provides reliability requirements which are based on the criticality of the system's function and will provide the standards needed for the certification of complex safety-critical sytems being proposed for installation in the Beech Model 2000 airplane.

The Beech Model 2000 airplane is to have both digital and analog instrumentation cues for the pilot. While a digital indication does show exact numbers, it may not provide adequate sensory cues to the pilot as to whether the numbers are increasing or decreasing, or a sense of how fast they are changing. A digital indication may not show the normal operating range or operational limits. Human factor authorities agree that such digital indications are not equivalent to an analog instrument which inherently provides usable cues. Therefore, the proposed special condition includes requirements for sensory cues.

The FAA has considered the features proposed by Beech for instruments, systems, and installations in the Beech Model 2000 and has concluded that, notwithstanding the existing small airplane requirements which did not envision the use of such complex or critical systems, special conditions can be promulgated for the affected systems, in lieu of applicable requirements, that will provide the intended level of safety. Accordingly, a special condition is proposed.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, and Safety.

The authority citation for these Special Conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.49.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration proposes the following special conditions as a part of the type certification basis for the Beech Model 2000 series airplanes:

1. Longitudinal and Lateral Control

In lieu of compliance with subparagraph (e) of § 23.145, the following apply: By using normal flight and power controls, except as otherwise noted in (a), (b) and (c) of this paragraph, it must be possible to establish a zero rate of descent at an attitude suitable for a controlled landing without exceeding the operational and structural limitations of the airplane—

(a) Without the use of the primary longitudinal control system;

(b) Without the use of the primary directional control;

(c) If a single failure of any one connecting or transmitting link would affect both the longitudinal and lateral primary control system, without the use of those longitudinal and lateral primary control surfaces which would be affected by that failure.

2. Buffet Onset Envelope

In addition to the requirements of §§ 23.251 and 23.1585, with the airplane in the cruise configuration, the positive maneuvering load factors at which the onset of perceptible buffeting occurs must be determined for the ranges of airspeed or mach number, weight, and altitude for which the airplane is to be certificated. The buffet onset evenlopes determined must be furnished as information in the POH/AFM for the airplane. This information must include evelopes of loan factor, speed, weight, and altitude, which provide a sufficient range for normal operations. The buffet onset envelopes presented may reflect the center of gravity at which the airplane is normally loaded during cruise if corrections for the effect of different center of gravity locations are furnished.

3. Inadvertent Excursions Beyond Maximum Operating Speeds

In addition to the requirements of § 23.251, it must be possible to achieve a positive load factor of 1.5 for recovery from inadvertent speed excursions beyond V_{MO}/M_{MO} and up to V_D/M_D, for each combination of weight, altitude and center of gravity.

4. Effects of Contamination on Laminar Flow Airfoils

In the absence of specific requirements for airfoil contamination, airplane airfoil designs which have airfoil pressure gradient characteristics and smooth aerodynamic surfaces which may be capable of supporting natural laminar flow must comply with the following:

(a) It must be shown by tests or analysis supported by tests that the airplane complies with the requirements of §§ 23.141 through 23.253 with any airfoil contamination which would normally be encountered in service and which would cause significant adverse effects on the handling qualities of the airplane resulting from the loss of laminar flow.

(b) Significant performance degradations identified as resulting from the loss of laminar flow must be provided as part of the information required by §§ 23.1585 and 23.1587.

5. Evaluation of Composite Structure

In lieu of complying with §§ 23.571 and 23.572, and in addition to the requirement of §§ 23.603 and 23.613, airframe structure, the failure of which would result in catastrophic loss of the airplane, in each wing, wing carrythrough, wing attaching structure, pressurized cabin, wing mounted vertical stabilizer, wing flap, and moveable control surface must be evaluated to damage tolerance criteria prescribed in paragraphs (a) through (j) of this special condition, unless shown to be impractical. In cases shown to be impractical, the aforementioned structure must be evaluated in accordance with the criteria of paragraphs (a) and (k) of this special condition. Where bonded joints are used, the structure must also be evaluated in accordance with the residual strength criteria in paragraph (h) of this special condition.

(a) It must be demonstrated by tests, or by analysis supported by tests, that the structure is capable of carrying ultimate load with impact damage. The level of impact damage considered need not be more than the established threshold of detectability considering the inspection procedures employed.

(b) The growth rate of damage that may occur from fatigue, corrosion, intrinsic defects, manufacturing defects; e.g., bond defects, or damage from discrete sources under repeated loads expected in service; i.e. between the time at which damage becomes initially detectable and the time at which the extent of damage reaches the value selected by the applicant for residual strength demonstration, must be established by tests or by analysis supported by tests.

(c) The damage growth, between initial detectability and the value selected for residual strength demonstrations, factored to obtain inspection intervals, must permit development of an inspection program suitable for application by operations and maintenance personnel.

(d) Instructions for continued airworthiness for the airframe must be established consistent with the results of the damage tolerance evaluations. Inspection intervals must be set so that after the damage initially becomes detectable by the inspection method specified, the damage will be detected before it exceeds the extent of damage for which residual strength is demonstrated.

(e) Loads spectra, load truncation, and the locations and types of damage considered in the damage tolerance evaluations must be documented in test proposals.

(f) The structure of the pressurized cabin must be shown by residual strength tests, or by analysis supported by residual strength tests, to be able to withstand the loads listed in subparagraphs (1) and (2) below, considered as ultimate loads, with damage consistent with the results of the damage tolerance evaluations.

(1) Critical limit flight loads with the combined effects of normal operating pressures and expected external aerodynamic pressures; and

(2) The expected external aerodynamic pressures in 1 g flight combined with a cabin differential pressure equal to 1.1 times the normal operating differential pressure without consideration of any other load.

(g) Each wing, wing carrythrough, wing attaching structure, wing flap, moveable control surface, and wing-mounted vertical stabilizer structure must be shown by residual strength tests, or analysis supported by residual strength tests, to be able to withstand critical limit flight loads, considered as ultimate loads, with the extent of damage consistent with the results of the damage tolerance evaluations.

(h) In lieu of a non-destructive inspection technique which assures ultimate strength of each bonded joint, the limit load capacity of each bonded joint critical to safe flight must be substantiated by either of the following methods used singly or in combination:

(1) The maximum disbonds of each bonded joint consistent with the capability to withstand the loads in paragraphs (f) and (g) of this special condition must be determined by analysis, tests, or both. Disbonds of each bonded joint greater than this must be prevented by design features.

(2) Proof testing must be conducted on each production article which will apply the critical limit design load to each critical bonded joint.

(i) The effects of material variability and environmental conditions; e.g., exposure to temperature, humidity, erosion, ultraviolet radiation, and/or chemicals, on the strength and durability properties of the composite materials must be accounted for in the damage tolerance evaluations and in the residual strength tests.

(j) The airplane must be shown to be free from flutter with the extent of damage for which residual strength is demonstrated.

(k) For those structures where the damage tolerance method is shown to be impractical, the strength of such structures must be demonstrated by tests, or analysis supported by tests, to be able to withstand the repeated loads of variable magnitude expected in service. Impact damage in composite material components which may occur must be considered in the demonstration. The impact damage level considered must be consistent with detectability by the inspection procedures employed.

6. Forward Wing and Vertical Tail Loads

(a) In addition to the requirements of § 23.301(b), the following shall be required: Methods used to determine load intensities and distribution over the various aerodynamic lifting and control surfaces must be validated by flight test measurement unless the methods used for determining those loads are shown to be reliable or conservative for the configuration under consideration.

(b) In lieu of § 23.301(d), the following applies: The forward lifting surface of a tandem wind configuration must meet all the requirements of Part 23, Subpart C, "Structure," applicable to a wing.

(c) In lieu of § 23.331, the following apply:

(1) The appropriate balancing loads must be accounted for in a rational or conservative manner when determining forward and main wing loads and linear inertia loads corresponding to any of the symmetrical flight conditions specified in §§ 23.333 through 23.341.

(2) The incremental forward-wing loads due to maneuvering and gusts must be reacted by the angular inertia of the airplane in a rational or conservative manner.

(3) Mutual influence of the aerodynamic surfaces must be taken into account when determining flight loads.

(d) In addition to the gust load requirements of § 23.341, the following applies:

The gust load factors for a tandem wing configuration must be computed using a rational analysis considering the gust criteria of § 23.333(c), or may be computed in accordance with § 23.341 provided the resulting load factors are shown to be conservative with respect to the gust criteria of § 23.333(c).

(e) In lieu of the balancing loads requirements of § 23.421, the following apply:

(1) A horizontal surface balancing load is a load necessary to maintain equilibrium in any specified flight condition with no pitching acceleration.

(2) Horizontal balancing surfaces must be designed for the balancing loads occurring at any point on the limit maneuvering envelope and in the flap conditions specified in § 23.345. The distribution in figure B6 of Appendix B of Part 23 may be used only on aft-mounted horizontal stabilizing surfaces unless its use elsewhere is shown to be conservative.

(f) In lieu of the maneuvering load requirements of § 23.423, the following apply:

(1) Each horizontal surface with pitch control must be designed for maneuvering loads imposed by the following conditions:

(i) A sudden movement of the pitching control, at V_A, to (1) the maximum aft movement, and (2) the maximum forward movement, as limited by the control stops, or pilot effort, whichever is critical. The average loading of B23.11 of Appendix B and the distribution in figure B7 of Appendix B may be used only on aft mounted-horizontal stabilizing surfaces unless its use elsewhere is shown to be conservative.

(ii) A sudden aft-movement of the pitching control at speeds above V_A, followed by a forward movement of the pitching control resulting in the following combinations of normal and angular acceleration:

Condition	Normal acceleration(n)	Angular acceleration (radian/sec^2)
Nose up pitching	1.0	$+\frac{39}{V} n_m(n_m - 1.5)$
Nose down pitching	n_m	$-\frac{39}{V} n_m (n_m - 1.5)$

where -- (a) n_m=positive limit maneuvering load factor used in the design of the airplane; and
(b) V=initial speed in knots.

(2) The conditions in this section involve loads corresponding to the loads that may occur in a "checked maneuver" (a maneuver in which the pitching control is suddenly displaced in one direction and then suddenly moved in the opposite direction). The deflections and timing of the "checked maneuver" must avoid exceeding the limit maneuvering load factor. The total horizontal surface load for both down- and up-load conditions is the sum of the balancing loads at V and the specified value of the normal load factor n, plus the maneuvering load increment due to the specified value of the angular acceleration. The maneuvering load increment in figure B2 of appendix B and the distribution in figure B7 (for nose-up pitching) and in figure B8 (for nose-down

pitching) of appendix B may be used only on airplane configurations with aft-mounted surfaces, unless their use elsewhere is shown to be conservative.

(g) In lieu of the gust loads requirements of § 23.425, the following apply:

(1) Each horizontal surface, other than the main wing, must be designed for loads resulting from—

(i) Gust velocities specified in § 23.333(c) with flaps retracted; and

(ii) Positive and negative gusts of 25 f.p.s. nominal intensity at V_F corresponding to the flight conditions specified in § 23.345(a)(2).

(2) When determining the total load on the horizontal surfaces for the conditions specified in subparagraph (g)(1) of this special condition, the initial balancing loads for steady unaccelerated flight at the pertinent design speeds V_F, V_C, and V_D must first be determined. The incremental load resulting from the gusts must be added to the initial balancing load to obtain the total load.

(h) In lieu of the unsymmetrical load requirements of § 23.427, the following apply:

(1) Horizontal surfaces other than the main wing and their supporting structure must be designed for unsymmetrical loads arising from yawing and slipstream effects, in combination with the loads prescribed for the flight conditions set forth in paragraphs (e) through (g) of this special condition.

(2) In the absence of more rational data:

(i) 100 percent of the maximum loading from the symmetrical flight conditions may be assumed on the surface on one side of the plane of symmetry; and

(ii) The following percentage of that loading must be applied to the opposite side:

$$\text{Percent} = 100 - 10\,(n-1),$$

where n is the specified positive maneuvering load factor, but this value may not be more than 80 percent.

(3) The vertical and horizontal surfaces and supporting structures must be designed for combined vertical and horizontal surface loads resulting from each prescribed flight condition taken separately.

(i) In the absence of specific requirements for wing mounted vertical stabilizers, the following apply: Vertical stabilizers mounted on the wing must meet the applicable requirements of §§ 23.441, 23.443, and, in lieu of a more rational method, § 23.445 for vertical tail surfaces. The effect of these surfaces on the spanwise loading of the wing must also be accounted for.

7. Doors and Exits

In addition to the requirement of §§ 23.783 and 23.807, each external door and exit is a pressurized fuselage (for which the initial opening movement is not inward) must comply with the following:

(a) There must be a means to lock and safeguard each external door and exit against opening in flight either inadvertently by persons or as a result of a mechanical failure or failure of a single structural element, either during or after closure.

(b) There must be a provision for direct visual inspection of the locking mechanism by a crewmember to determine, under operational lighting conditions, or by using a flashlight or equivalent lighting source, that all external doors and exits are fully closed and locked.

(c) There must be a visual warning means to signal a flight crewmember if any external door or exit is not fully closed and locked. The means must be designed such that any failure or combination of failures that would result in an erroneous closed and locked indication is improbable.

8. Flap Interconnection With Related Movable Surfaces

In lieu of § 23.701(a):

(a) The main wing flaps and the related moveable surfaces as a system must:

(1) Be synchronized by mechanical connection; or

(2) Maintain synchronization so that the occurence of an unsafe condition has been shown to be extremely improbable; or

(b) The airplane must be shown to have safe flight characteristics with any combination of extreme positions of individual moveable surfaces; however, mechanically interconnected surfaces are to be considered as a single surface.

9. Propeller Ground Clearance

In addition to the propeller clearance requirements of § 23.925, the following apply:

(a) The airplane must be designed such that the propellers will not contact the runway surface when the airplane is in the maximum pitch attitude attainable during normal takeoffs and landings; and

(d) If a tail bumper, or an energy absorption device is provided to show compliance with paragraph (a) of this special condition, the following apply:

(1) Suitable design loads must be established for the tail bumper or energy absorption device; and

(2) The supporting structure of the tail bumper, or energy absorption device must be designed to withstand the loads established in subparagraph (b)(1) of this special condition and inspection/replacement criteria must be established for the tail bumper, or energy absorbing device and provided as part of the information required by § 23.1529.

10. Propeller Marking

In the absence of specific regulations, the propellers must be marked so that their discs are conspicuous under normal daylight ground conditions.

11. Propeller Ice and Exhaust Gas Impingement Protection

In the absence of protection requirements for rear-mounted pusher propellers, the following apply:

(a) Ice impingement on the propeller. All areas of the airplane forward of the propellers that are likely to accumulate and shed ice into the propeller disc during any operating condition must be suitably protected to prevent ice formation, or it must be shown that any ice shed into the propeller disc will not create a hazardous condition.

(b) Exhaust gas impingement on propeller. If the engine exhaust gases are discharged into the propeller disc, it must be shown by tests, or analysis supported by tests, that the propeller material is capable of continuous safe operation.

12. Cockpit Smoke Evacuation

In the absence of specific requirements for smoke evacuation, the following apply:

If accumulation of hazardous quantities of smoke in the cockpit area is reasonably probable, smoke evacuation must be readily accomplished starting with full pressurization and without depressurization beyond safe limits.

13. Instruments, Systems, and Installations

In lieu of § 23.1309(b) and applicable requirements of Part 23 of the Federal Aviation Regulations to the contrary, for instruments systems, and installations whose design incorporates: Electronic displays that feature design characteristics where a single malfunction or failure could affect more than one primary instrument display or system; and/or features that make isolation and independence between powerplant instrument systems unfeasible due to use of electronic displays; or system design functions that are determined to be essential for continued safe flight and landing of the airplane, the following special condition applies:

(a) Systems and associated components must be examined separately and in relation to other airplane systems to determine if the airplane is dependent upon its function for continued safe flight and landing, and if its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions. Each item of equipment, each system, and each installation identified by this examination, upon which the airplane is dependent for continued safe flight and landing, or whose failure would reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, must be designed and examined to comply with the following:

(1) There must be no single failure or probable combination of failures under any anticipated operating condition which would prevent the continued safe flight and landing of the airplane or which would significantly reduce the capability of the airplane or the crew to cope with adverse operating condition.

(2) Warning information must be provided to alert the crew to unsafe system operating conditions, and to enable them to take appropriate corrective action. This warning information must not tend to initiate crew action which would create additional hazards.

(3) Compliance with the requirements of this special condition must be shown by analysis and, where necessary, by appropriate ground, flight, or simulator tests. The analysis must consider:

(i) Modes of failure, including malfunctions and damage from foreseeable sources;

(ii) Consequence of a single failure or probable combination of failures (latent or undetected).

(iii) Appropriate levels of reliability as determined by the severity of consequence.

(iv) The resulting effects on the airplane and occupants, considering the stage of flight and operating conditions; and

(v) The crew warning cues, corrective action required, and the capability of detecting faults.

(4) If numerical analysis is used to support the engineering examination:

(i) The occurrence of any failure condition which would prevent the continued safe flight and landing of the airplane must be shown to be extremely improbable; and

(ii) The occurrence of any other failure condition which would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions must be shown to be improbable.

(b) Each item of equipment of each system, and each installation whose functioning is essential for safe operation and that requires a power supply is an "essential load" on the power supply. The power sources and its distribution system must be able to supply the following power loads in probable operating combinations and for probable durations:

(1) Loads connected to the power distribution system with the system functioning normally.

(2) Essential equipment of each system (loads) after failure of:

(i) Any one engine on the airplane, or

(ii) Any power converter, or energy storage device, or

(iii) Essential loads for which an alternate source of power is required by this special condition, after any failure or malfunction in any one power supply system, distribution system, or other utilization system.

(c) In determining compliance with subparagraph (b(2) of this special condition, the power loads may be assumed to be reduced or shed under a monitoring procedure consistent with safety.

(d) In showing compliance with this section with regard to the electrical power system and to equipment design and installation, critical environmental and atmospheric conditions must be considered. For electrical generation, distribution, and utilization equipment required by or used in complying with this special condition, the ability to provide continuous, safe service under foreseeable environmental and atmospheric conditions may be shown by tests, design analysis, or reference to previous comparable service experience on other airplanes.

(e) Electronic display units, including those incorporating more than one function, may be installed in lieu of mechanical or electromechanical instruments if:

(1) The display units:

(i) Are easily legible under all lighting conditions encountered in the cockpit, including direct sunlight,

(ii) Do not inhibit the primary display of attitude, airspeed, altitude, or parameters needed by any pilot to set power within powerplant limitations, while in any normal mode of operation.

(iii) Do not inhibit the primary display of engine parameters needed by any pilot to properly set or monitor powerplant limitations, while in the engine starting mode of operation.

(iv) Incorporate sensory cues for the pilot that are equivalent to those in the instrument being replaced by the electronic display units, and

(v) Incorporate visual displays of instrument markings, required by §§ 23.1541 through 23.1553 or visual displays that alert the pilot to abnormal operational values, or approaches to unsafe values, of any parameter required to be displayed by Part 23 requirements.

(2) The display units, including their systems and installations, must be designed so that one display of information essential to continued safe flight and landing will remain available to the crew, without need for immediate action for continued safe operation, after any single failure or probable combination of failures.

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Jerold M. Chavkin,

Acting Director Central Region.

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BILLING CODE 4910-13-M

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14 CFR Part 91

[Docket No. 24911; Petition Notice PR 86-4]

Petition of General Aviation Manufacturers Association; To Require That Fueling Ports in Piston Engine Powered Civil Aircraft Be Restricted to Less Than 2.5 Inches in Diameter

Correction

In FR Doc. 86-6544 beginning on page 10553 in the issue of Thursday, March 27, 1986, make the following correction: On page 10555, in the first column, in the fourth line of the third complete paragraph, "does not recommend" should read "does recommend".

BILLING CODE 1505-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Labor Certification Process for the Temporary Employment of Aliens in Agriculture; Adverse Effect Wage Rates for Idaho and Oregon

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Employment and Training Administration of the Department of Labor proposes to amend the regulations for the certification of temporary employment of nonimmigrant

aliens in agriculture in the United States, to add the States of Idaho and Oregon to the list of States for which adverse effect wage rates (AEWRs) are computed and published annually. The AEWRs for Idaho and Oregon will be established and set to prevent the employment of these aliens from having an adverse effect on the wages of similarly employed United States workers.

DATE: The public is invited to submit written comments on the proposed rule on or before May 8, 1986.

ADDRESS: Send written comments to: Assistant Secretary of Labor, Employment and Training Administration, Room 8100—Patrick Henry Building, 601 D Street NW., Washington, DC 20213, Attention: Mr. Richard C. Gilliland, Director, U.S. Employment Service.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Bruening, Telephone: 202-376-6228.

SUPPLEMENTARY INFORMATION:

Introduction

The Employment and Training Administration (ETA) of the Department of Labor (DOL) is proposing to amend its regulation at 20 CFR 655.207(b)(2), to add the States of Idaho and Oregon to the list of States for which the Director, U.S. Employment Service, must compute and publish annually adverse effect wage rates (AEWRs) for the temporary employment of aliens in agricultural occupations. An AEWR is a minimum wage rate which DOL has determined must be offered and paid by the employers proposing to employ nonimmigrant alien agricultural workers (so-called "H-2 workers") in the United States. The AEWRs for Idaho and Oregon will be establish and set to prevent the employment of these aliens from having an adverse effect on the wages of similarly employed United States workers.

Temporary Alien Employment Certification Process

Whether to grant or deny an employer's petition to import a nonimmigrant alien to the United States for the purpose of temporary employment is solely the decision of the Attorney General and his designee, Commissioner of the Immigration and Naturalization Service (INS). 88 U.S.C. 1101(a)(15)(H)(ii) and 1184(a) and (c); 8 CFR Part 2.

Pursuant to the requirement that the Attorney General consult with appropriate agencies of the Government concerning the importation of H-2 workers, INS has detemined that prior to granting or denying such petitions it first will request DOL to advise INS on the availablity of qualified U.S. workers for the jobs offered to the H-2 aliens, and whether the wages and working conditions attached to such job offers will adversely affect similarly employed United States workers. 8 CFR 214.2(h)(3)(i).

Pursuant to the INS regulations, DOL has published regulations at 20 CFR Part 655, Subpart C, for the certification of nonimmigrant aliens for temporary employment in agriculture and logging in the United States. DOL has determined that similarly employed United States workers had been adversely affected by the importation and employment of nonimmigrant aliens in agricultural employment. It has been determined further that employment of those aliens in a number of States at wages below specifically computed adverse effect wage rates (AEWRs) would adversely effect the wages of similarly employed United States workers. 20 CFR 655.202(b)(9) and 655.207.

Adverse Effect Wage Rates

For many years, DOL has computed and published AEWRs for the temporary employment of nonimmigrant alien workers to be admitted by INS under H-2 visa petitions. *See* H.N. DELLON, "Foreign Agricultural Workers and the Prevention of Adverse Effect," 17 *Labor Law Journal* 739 (1966). The AEWR is the minimum wage rate that agricultural employers seeking nonimmigrant alien workers are required to offer to and pay their U.S. and alien workers.

The purpose of an AEWR, as described by the United States Court of Appeals for the Fifth Circuit, it "to neutralize any 'adverse effect' resultant from the influx of temporary foreign workers." It is a "method of avoiding wage deflation." *William* v. *Usery*, 531 F. 2d 305, 306 (5th Cir. 1976), *cert. denied*, 429 U.S. 1000; *see Florida Sugar Cane League* v. *Usery*, 531 F. 2d 305 (5th Cir. 1976); *see also Limoneira Co.* v. *Wirtz*, 225 F. Supp. 961 (S.D. Cal. 1963), *aff'd*, 327 F. 2d 499 (9th Cir. 1964); *and* 20 CFR 655.0.

Employers applying for temporary labor certifications also must agree to comply with all employment-related laws. 20 CFR 655.203(b); *see also* 8 CFR 214.2(h)(3)(i). If the employment is covered by a higher wage standard applicable under any Federal, State, or local minimum wage law, the employer must comply with that law. *See, e.g.*, 29 U.S.C. 206(a). If the prevailing wage for the occupation in the labor market is higher, the employer must offer and pay that wage. Thus, a worker in employment under the temporary alien labor certification program must be compensated at the highest of the applicable wage rates, whether that highest rate is the AEWR, the prevailing wage, or the Federal, State, or local statutory minimum wage. *Limoneria Co.* v. *Wirtz, Supra; see also Elton Orchards, Inc.* v. *Brennan*, 508 F. 2nd 493 (1st Cir. 1974); *and Flecha* v. *Quiros* 567 F. 2nd 1154 (1st Cir. 1977).

The Secretary of Labor has the authority to set AEWRs to prevent the temporary employment of nonimmigrant aliens from having an adverse effect on the wage rates of similarly employed United States workers. *Shoreham Cooperative Apple Producers Association, Inc.* v. *Donovan*, 764 F. 2d 135 (2d cir. 1985); *Rowland v. Marshall*, 650 F. 2d 28, 30 (4th Cir. 1981); and *Florida Sugarcane League* v. *Usery, supra*.

The AEWR is not set to slow the usage of temporary foreign labor in the United States. Its purpose is to ensure that the wage rates of similarly employed United States workers will not be adversely affected by the importation of low-paid nonimmigrant alien workers.

Adversely Affected Employment in the States of Idaho and Oregon

DOL proposes to determine that the employment of nonimmigrant aliens in agricultural employment in the States of Idaho and Oregon has had and will continue to have an adverse effect on the wages of similarly employed United States workers, unless the employers of these aliens are required to offer and to pay to their United States and alien workers an AEWR.

The employment of undocumented alien workers in agriculture in Idaho and Oregon, including employment at or below the statutory \$3.35/hour minimum wage, is substantiated by the records of INS. *See* 29 U.S.C. 206(a). From October, 1984 through September, 1985, INS apprehended 1,400 undocumented alien agricultural workers in Idaho and 171 in Oregon. Of the undocumented aliens apprehended while working in agriculture in Idaho, 417 were being paid less than the Federal minimum wage of \$3.35 per hour. Subsequent to these apprehensions, Idaho and Oregon agricultural employers filed requests for temporary alien labor certifications to import H-2 workers for 1986. It is anticipated that applications will be filed again for 1987 and future years.

Employment of undocumented workers in agriculture in Idaho and Oregon at wage rates at or below the Federal Fair Labor Standards Act (FLSA) minimum wage has had a depressing effect on the prevailing wage rates for similarly employed U.S. workers in the two States. State employment service agency surveys conducted in 1985 showed that the prevailing wage rates were near the FLSA minimum wage. Without specially computed and established AEWRs for the two States, employers seeking to employ H–2 alien workers in agriculture are offering wage rates to U.S. and H–2 workers that are no higher than the depressed prevailing wage rates. To avoid perpetuating the depressed prevailing wages, DOL has determined to propose to add Idaho and Oregon to the list of States for which AEWRs are computed and set annually.

The methodology for computing the AEWRs for Idaho and Oregon will be the methodology set forth at 20 CFR 655.207(b)(l). DOL has determined that the methodology can be used to construct AEWRs in a way that is reasonable, cost effective, and geared as much as possible to the reality of agricultural crops, areas, and existing wage factors.

For the above reasons, DOL proposes to amend 20 CFR 655.207(b)(2) to add Idaho and Oregon to the list of States for which AEWRs for agricultural employment are computed and published annually. However, pursuant to 20 CFR 655.207(a) and (b)(l), the wage rate for sheepherding employment in each State will be established separately.

The State of Montana has been included in the list of States in the proposed rule. A proposed rule was published on December 10, 1985, to add Montana to the list of States in § 655.207(b)(2). 50 FR 50311. If a final rule is promulgated to add Montana to the list, it is anticipated that it would be promulgated prior to a final rule in this rulemaking.

Regulatory Impact

The proposed rule would affect only those agricultural employers in the States of Idaho and Oregon who request certification of temporary employment of nonimigrant alien workers. Its financial and other impact is not so major as to require the preparation of a regulatory impact analysis. *See* Executive Order No. 12291 (February 17, 1981).

The Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to 5 U.S.C. 605(b), that the proposed rule will not have a significant economic impact on a substantial number of small entities. It applies only to the small number of employees in the State of Idaho and Oregon who apply for certification for temporary employment of nonimmigrant alien agricultural workers, and is expected to increase labor costs only moderately for those Idaho and Oregon employer-applicants whose wages are below the applicable computed AEWR.

Catalogue of Federal Domestic Assistance Number

This program is listed in the *Catalogue of Federal Domestic Assistance* at Number 17.202, "Certification of Foreign Workers for Agricultural and Logging Employment."

List of Subjects in 20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Employment, Employment and Training Administration, Forests and forest products, Guam, Labor, Migrant labor, Wages.

Proposed Rule

Accordingly, it is proposed to amend 20 CFR Part 655 as follows:

PART 655—LABOR CERTIFICATION PROCESS FOR THE TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

1. The authority citation for Part 655 is proposed to be revised to read as follows and the separate authority citations following all the sections in Part 655 are proposed to be removed:

Authority: 8 U.S.C. 1101(a)(15)(H)(ii) and 1184(c); 29 U.S.C. 49 *et seq.*; 8 CFR 214.2(h)(3)(i).

2. It is proposed to amend Part 655 by revising § 655.207(b)(2) to read as follows:

§ 655.207 Adverse effect rates.

* * * * *

(b) * * *

(2) *List of States.* Arizona, Colorado, Connecticut, Florida (other than sugarcane), Idaho, Maine, Maryland, Massachusetts, Montana, New Hampshire, New York, Oregon, Rhode Island, Texas, Vermont, Virginia, and West Virginia. Other States may be added as appropriate.

* * * * *

Signed at Washington, DC., this 1st day of April 1986.

William E. Brock,

Secretary of Labor.

[FR Doc. 86–7736 Filed 4–7–86; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 589; Re: Notice No. 581]

Grape Variety Names; Domestic Wine Labeling Reopening of Comment Period

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Reopening of comment period for notice of proposed rulemaking.

SUMMARY: On February 4, 1986, ATF published Notice No. 581 at 51 FR 4392. This notice proposed to establish a list of the names of grape varieties which may be used as varietal designations for American wines. The designations would appear in three separate lists: a list of approved prime names (§ 4.91); a list of alternate names which would be permitted in conjunction with the prime name (§ 4.92); and a list of alternate names which could be used for a period of five years after the effective date of the regulation (§ 4.93). This notice also proposed a process by which new grape varieties could be added to the list of prime or alternate names. Interested persons were given 60 days to comment on the proposed names.

ATF has received 3 requests to extend the comment period for Notice No. 581. These requests were made to give consumers, winery proprietors, and grape growers more time to consider the proposed wine grape variety names. One respondent noted that the 60-day comment period was insufficient to allow wide dissemination to these people, and that in view of the major impact on wine labeling and on consumers, an additional six-month period should be permitted for submission of comments.

AFT agrees that this proposal does have major consumer impact and that additional time should be permitted for the submission of written comments. Therefore, ATF is reopening the comment period which expired on April 7, 1986. The comment period is reopened and extended for 90 days until July 7, 1986.

DATE: Written comments or requests to hold a public hearing must be received by July 7, 1986.

ADDRESS: Send written comments to: Chief, Industry Compliance Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385; Attention: Notice No. 581

Copies of written comments received in response to this notice and Notice No. 581 will be available during normal business hours at:

ATF Reading Room, Disclosure Branch, Room 4406, Ariel Rios Federal Building, 12th and Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, Product Compliance Branch, Telephone: (202) 566-7401.

Authority

This notice is issued under the authority contained in section 5 of the Federal Alcohol Administration Act, 49 Stat. 981, as amended; 27 U.S.C. 205.

Approved: April 2, 1986.

Stephen E. Higgins,

Director.

[FR Doc. 86-7732 Filed 4-7-86; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S-301A]

Concrete and Masonry Construction Safety Standards

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

ACTION: Notice of informal public hearing.

SUMMARY: This notice schedules an informal public hearing on OSHA's proposed revised standard on Concrete and Masonry Construction (50 FR 37543, September 16, 1985).

DATES: Notices of intention to appear to give oral testimony at the informal public hearing must be postmarked by May 6, 1986. Comments, testimony and all evidence which will be offered into the hearing record must be postmarked by May 20, 1986. The hearing will be held in Washington, DC on June 3, 1986, and will begin at 9:30 a.m. If it is necessary, the hearing will continue on June 4, 1986.

ADDRESSES: Four copies of the notice of intention to appear and testimony and documentary evidence which will be introduced into the hearing record must be sent to Mr. Tom Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N3637, 200 Constitution Avenue NW., Washington, DC 20210.

Written comments may be sumitted on all hearing issues raised by this notice, as well as other relevant issues raised by the proposal. Four copies must be sent to the Docket Office, Docket No. S-301A, Room N3670, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-7894.

The informal public hearing will be held in the auditorium of the Frances Perkins Building, Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Hearing: Mr. Tom Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N3637, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-8615 or 523-8024.

Hearing Issues: Mr. James Foster, Occupational Safety and Health Administration, Room N3637, U.S. Department of Labor, Washington, DC 20210, (202) 523-8148.

SUPPLEMENTARY INFORMATION: On September 16, 1985 OSHA published a Notice of Proposed Rulemaking to revise the current standard for Concrete, Concrete Forms, and Shoring, 29 CFR 1926.700 — .702 (50 FR 37543). Written comments and requests for a hearing were to be received by November 15, 1985. The deadline for comments and requests for a hearing was subsequently extended until December 16, 1985 (50 FR 42571).

In response to the proposed rule, OSHA received two requests for public hearings. This notice announces the schedule for an informal public hearing which will be held pursuant to section 6(b)(3) of the Occupational Safety and Health Act of 1970 (OSH Act). The hearing will be held to examine specific issues raised in the comments and hearing requests, as well as other relevant issues. OSHA specifically invites comments and testimony on the issue listed below:

Hearing Issues

General Requirements

In concrete construction, loads are supported by the partially completed structure, which may not have been designed to carry such loads even if the structure was at full design strength. Proposed § 1926.701 would prohibit the imposition of construction loads on partially completed structures unless such loads have been approved by the engineer or architect. One commenter recommended that construction loads be considered in the design, as well as approved by the engineer-architect.

(a) Do engineers or architects consider all the construction loads on the partially completed structure in the design phase, and do they, in practice, approve or disapprove such loads during construction?

(b) Who should be responsible for determining that the partially completed structure will support itself and any superimposed loads prior to placement of such loads?

Reinforcing Steel

(1) Existing § 1926.700(b)(2) prohibits employees from working above vertically protruding reinforcing steel unless it has been protected to eliminate the hazard of impalement. The proposal adds fall protection as an alternative to guarding the reinforcing steel. One commenter recommended that OSHA delete the fall protection alternative because it provides less protection than the current standard. Does fall protection provide less protection against the hazards of impalement than guarding the reinforced steel?

(2) Proposed § 1926.702(c)(1) would require that reinforcing steel for walls, piers, columns and similar vertical structures be laterally supported to resist overturning forces. One commenter stated that guying is the most effective method of providing lateral support.

Are there other methods of support capable of preventing collapse of the reinforcing steel? If, so, what are they and should OSHA require these in the alternative?

Concrete Placement

Proposed § 1926.703(b) would prohibit vibrator crews from being under concrete buckets suspended from cranes or cableways. Specific issue number seven in the proposal solicited comments on the impact of a requirement to prohibit all employees from being under concrete buckets. Several commenters recommended that it is not always practical to keep everyone out from under the bucket. In some cases, the workers would be required to stop work and move and would disrupt the placing and finishing operations.

Is it always practical to keep everyone out from under concrete buckets? Please explain?

Concrete Equipment

The existing standard in § 1926.700(d)(5) recommends the installation of knuckle guards on concrete buggy handles. The proposal deleted this recommendation. One commenter recommended that knuckle guards be installed to prevent injury while the concrete buggy is turning.

OSHA solicits injury data to demonstrate that concrete buggies without knuckle guards present a hazard.

Formwork

(1) The existing standard in § 1926.701(b)(7) requires that slipforms be provided with scaffolding and work platforms encircling the area of placement. OSHA proposed to eliminate scaffolding or work platforms not required for the placement of concrete.

(a) One commenter recommended that slipform construction requires full perimeter access for strength, placement, and finishing.

Is it necessary always to have full perimeter access for strength, placement, and finishing? Under what conditions would such access be unnecessary?

(b) Another commenter suggested that the elimination of scaffolding might throw the formwork system out of balance.

OSHA seeks information as to whether the elimination of unnecessary scaffolding would throw the formwork system out of balance.

(2) Proposed § 1926.705(c)(4) would require that all base plates, shore heads, extension devices, and adjustment screws be in firm contact with the foundation and the form. One commenter recommended that the shoring be secured to the foundation and the form.

OSHA seeks information on whether it may be necessary to secure the shoring to the form and foundations.

(3) Proposed § 1926.705(c)(5) would require that single post shores be designed and inspected by a structural engineer whenever they are in more than one tier. Three commenters recommended that OSHA prohibit the practice of tiering single post shores. One of the commenters stated that this practice is an inherently unstable shoring system for formwork.

Are tiered single post shores capable of safety transferring loads to lower levels?

Formwork Removal

Proposed § 1926.705(d) would prohibit the removal of forms unless the concrete has been tested or the concrete has been in place for certain periods of time.

(a) One commenter recommended that concrete containing fly ash or ground iron blast furnace slag be tested before the removal of forms. The commenter further stated that concrete containing pozzlan may have strength levels 10 to 20 percent lower than portland cement at early ages.

OSHA seeks information on the strength gain characteristic of pozzlan concrete at early ages as compared to portland cement concrete.

Should OSHA prohibit the use of time tables to remove forms for pozzlan concrete?

(b) Another commenter recommended that the temperature in Table Q-1 be lowered to 40° because the lower temperature is contained in highway specifications.

Should OSHA permit the lower temperature (40°) to be used in the table for highway structures?

Masonry Construction

(1) Proposed § 1926.707(a)(1) is a new regulation which requires that masonry walls be laterally supported to resist horizontal forces where such walls are incapable of withstanding the forces that will be applied to them.

One comment supported by employer groups, unions, and manufacturers recommends that OSHA revise this proposed regulation as follows:

(a) Masonry walls, not supported during construction by intersecting walls, piers or pilasters, shall be temporarily laterally supported to resist horizontal forces where such walls are incapable of withstanding the forces applied during construction, and until permanent support elements of the structure are in place.

(b) A "limited access zone" be established equal to the unsupported wall height plus four feet on the side of the wall unscaffolded. This area shall be restricted to those employees actively engaged in the construction of the wall. The "limited access zone" will be in effect until wall braces are in place.

(c) Walls with an unsupported height of eight feet or less need not be braced.

OSHA seeks comment and data on the appropriateness of these recommendations.

(2) Proposed § 1926.707(a)(2) would require that the lateral supports for masonry walls be capable of supporting a load of 15 pounds per square foot applied to the wall. One comment stated that the majority of wall collapses were caused by the lack of bracing, rather than the actual design of the bracing members, and that the load specificiaton was far in excess of actual protection needs.

OSHA seeks accident data and documentation relating to masonry wall collapses where the wall braces were inadequate.

Other Requirements

OSHA received several comments that recommended new regulations. In order to establish a standard, OSHA must demonstrate that a hazard and need for regulation exist. OSHA seeks data, evidence, and documentation to demonstrate the risks associated with the following, and suggested ways to control these risks:

(a) Flying Forms;

(b) Natural Drafting Cooling Tower Construction;

(c) Cleaning Concrete Pumping Systems;

(d) Concrete Buggies;

(e) Concrete Construction Housekeeping;

(f) Storage and Handling of Concrete Blocks and Bricks;

(g) Pretensioning and Post-tensioning Concrete; and

(h) Handling and Storage of Precast Concrete Members.

Public Participation in Hearing

Notice of Intention to Appear: Persons desiring to testify or question witnesses at the hearing must have postmarked a notice of intention to appear by May 6, 1986. Such notices must be sent to Mr. Tom Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Divison of Consumer Affairs, Room N3637, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-8615 or 523-8024.

The notice of intention to appear must contain the following information:

1. The name, address and telephone number of each person to appear;
2. The capacity in which the person will appear;
3. The approximate amount of time required for the presentation;
4. The specific issues that will be addressed;
5. A detailed statement of the position that will be taken with respect to each issue addressed; and
6. Whether the party intends to submit documentary evidence, and if so, a detailed summary of the evidence.

Hearing Issues: Persons desiring to file written comments relative to the hearing issues must have postmarked such submissions by May 20, 1986. Written comments must be sent to Occupational Safety and Health Administration Docket Office, Docket No. 301A, Room N3670, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-7894.

Filing of Testimony and Evidence Before the Hearing

Any party requesting more than 10 minutes for presentation at the hearing, or who will submit documentary evidence, must provide in quadruplicate the complete text of testimony, including all documentary evidence to be presented at the hearing. These materials must be postmarked no later than May 20, 1986 and sent to Mr. Tom Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Comsumer Affairs, Room N3637, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-8615 or 523-8024.

Each submisison will be reviewed in light of the amount of time requested in the Notice of Intention to Appear. In instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of the fact prior to the hearing.

Any party who has not substantially complied with the above requirement may be limited to a 10 minute presentation, and may be requested to return for questioning at a later time.

Any party who has not filed a Notice of Intention to Appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge, but may not be allowed to question witnesses.

Notices of intention to appear, all written comments, testimony and evidence will be available for inspection and copying at the Docket Office, Docket No. S-301A, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3670, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-7894.

The hearing will commence at 9:30 a.m. on June 3, 1986 in the auditorium of the Frances Perkins Building, Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. The hearing will begin with the resolution of any procedural matters relating to the proceeding. The hearing will be presided over by an Administration Law Judge who will have all the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR Part 1911, including the power:

1. To regulate the course of the proceedings;

2. To dispose of procedural requests, objections and comparable matters;

3. To confine the presentation to the matters pertinent to the issues raised;

4. To regulate the conduct of those present at the hearing by appropriate means;

5. In the Judge's discretion, to question and permit questioning of any withness; and

6. In the Judge's discretion, to keep the record open for a reasonable time to receive written information and additional data, views, and arguments from any person who has participated in the oral proceedings.

Following the close of the hearing, the presiding Administration Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health. The notice of proposed rulemaking will be reviewed in light of all testimony and written submissions received as part of the record, and the proposed standard will be modified or a determination will be made not to modify the proposed standard based on the entire record of the proceeding.

Authority

This document was prepared under the direction of Patrick R. Tyson, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

It is issued pursuant to sec. 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655); Sec. 107 of the Construction Safety Act (83 Stat. 96, 40 U.S.C. 333): Secretary of Labor's Order No. 9-83 (48 FR 35736); and 29 CFR Part 1911.

Signed at Washington, DC, this 2d day of April 1986.

Patrick R. Tyson,

Acting Assistant Secretary of Labor.

[FR Doc. 86-7771 Filed 4-7-86; 8:45 am]

BILLING CODE 4510-26-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OPTS-62036A; FRL-2999-2]

Asbestos; Proposed Mining and Import Restrictions and Proposed Manufacturing, Importation, and Processing Prohibitions; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of the comment period.

SUMMARY: EPA is extending for 60 days the comment period on the proposed rule to ban certain asbestos products and phase out other such products. EPA is taking this action to give all interested persons additional opportunity to comment.

DATES: Public hearings will be held in Washington, D.C. beginning approximately July 14, 1986. The exact times and locations of the hearings will be available by calling EPA's TSCA Assistance Office. Comments on this proposed rule and requests to participate in the informal hearings must be submitted by June 29, 1986. Reply comments made in response to issues raised at each hearing must be submitted no later than 1 week after the close of that hearing.

ADDRESS: Since some comments are expected to contain confidential business information, all comments should be sent in triplicate to: Document Control Officer (TS-790), Office of Toxic Substances, Environmental Protection Agency, Room E-201, 401 M Street SW., Washington, DC 20460.

Comments should include the docket control number OPTS-62036A. Nonconfidential comments and nonconfidential versions of confidential comments received on this proposal will be available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. E-107, at the address given above.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M St., SW., Washington, DC 20460. Toll-free: (800-424-9065). In Washington, DC: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: EPA proposed a rule to ban certain asbestos products and phase out other such products which was published in the **Federal Register** of January 29, 1986 (51 FR 3738). The proposal allowed 90 days for public comment, with comments due by April 29, 1986. The Asbestos Information Association, General Motors Corporation, and other persons have requested that the comment period be extended 60 days, to June 29, 1986. Because of the complexity of the rulemaking, EPA has decided to extend the comment period as requested.

EPA also announces that additional material has been added to the docket since the date of proposal and that further relevant material will be added to the docket as it is received.

List of Subjects in 40 CFR Part 763

Environmental protection, Hazardous substances, Recordkeeping and reporting requirements, Asbestos.

Authority: 15 U.S.C. 2605 and 2607(c).

Dated: April 2, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 86-7768 Filed 4-3-86; 2:56 pm]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 86-79; RM-5230; FCC 86-113]

Furnishing of Customer Premises Equipment

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission adopted a Notice in which it tentatively concludes that the continuation of the structural separation requirements for the Bell Operating Companies' ("BOCs") provision of CPE is no longer cost-effective compared to other regulatory tools and proposes that the BOCs should be relieved of the structural separation requirements for their CPE offerings. The Notice also proposes certain nonstructural safeguards for the BOCs' CPE operations and tentatively concludes that certain of these safeguards should be applied to independent telephone companies ("ITCs") presenting similar competitive concerns to the BOCs. The Notice finally proposes that the states should not be permitted to impose structural separation requirements on the BOCs or the ITCs.

DATES: Comments are due by May 16, 1986. Replies by June 20, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Geoff Jarvis, Common Carrier Bureau, (202) 632-9342.

In the matter of Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies, CC Docket No. 86-79.

This is a summary of the Commission's notice of Proposed Rulemaking, CC Docket No. 86-79, adopted March 13, 1986, and released March 28, 1986.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC dockets branch (room 230), 1919 M Street Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

I. Relief From Structural Separation for the BOCs' Provision of CPE

1. In the Notice the Commission initiates a review of the structural separation requirements for the BOCs' provision of CPE that it indicated in the *BOC Separation Order* would begin within two years after the BOCs had complied with those requirements. The Commission, based on the comments in response to the BOC Petitions, and its view of changes in the telecommunications environment since it adopted the *BOC Separation Order*, tentatively concludes that the continuation of the structural separation requirements for the BOCs is no longer cost-effective compared to other regulatory tools at its disposal and proposes that the BOCs should be relieved of § 64.702 of the Commission's rules for their offerings of CPE. The Commission further tentatively concludes that the structural separation requirements should be replaced by appropriate nonstructural safeguards. Interested parties are invited to comment on these tentative conclusions.

II. Nonstructural Safeguards

A. Accounting

2. One of the Commission's primary concerns in the *BOC Separation Order* was to prevent regulated common carriers engaging in unregulated activities from improperly shifting costs from those activities to their regulated offerings. Thus, the Notice proposed that BOCs, should be required to develop an accounting plan that includes separate books of accounts for their unregulated CPE operations and procedures for allocating joint and common costs between their CPE and regulated activities. However, because the Commission is about to initiate a proceeding to examine joint and common cost allocation questions for all common carriers subject to its jurisdiction, the Notice proposes that the details of the accounting requirements applicable to the BOCs' provisions of CPE in the absence of structural separation be deferred to that proceeding.

B. Network Disclosure

3. The Notice concludes that the starting point for developing network disclosure rules for the BOCs is the disclosure rules the Commission specified for AT&T in the *AT&T Structural Relief Order*. However, the Notice proposed that for the BOCs the AT&T disclosure rules should be modified in two areas. First, for those BOCs that certify to the Commission that they do not engage in research, development, or design of CPE, the Notice proposes that they only be required to disclose network technical and marketing information when it is disclosed to unaffiliated entities that will engage in research, development, design, or manufacturing of CPE. BOCs that do not certify that they do not engage in CPE research, development, or design should be required to disclose information at the "make/buy" point adopted for AT&T. Under either trigger point, both technical and marketing information would remain subject to the disclosure rules. Second, there may be less of a need for the nondisclosure agreements required in the *AT&T Structrual Relief Order* in the case of the BOCs. The nondisclosure agreements are designed to prevent AT&T's network services competitors from obtaining premature access to the technical specifications for AT&T's new or modified services on the theory that such information would provide these competitors with an unfair advantage. The BOCs currently experience substantially less direct competition in their network services than does AT&T. Since the individual BOCs have fewer direct competitors that would be able to obtain a competitive advantage from the disclosure of information on planned network developments, the Notice does not propose for the BOCs a nondisclosure requirement applicable to CPE vendors and manufacturers similar to that provided for AT&T.

C. Customer Proprietary Network Information

4. The Notice indicates that the CPNI in the possession of the BOCs may be more valuable than that held by AT&T and, consequently, the Commission may wish to adopt more rigorous restrictions on the BOCs' ability to use CPNI than those imposed on AT&T. The Notice invites parties to submit proposals on requirements that might serve to address the concerns about carriers' CPNI. One alternative the Commission proposes is to permit BOC CPE personnel to have access to the CPNI of only those multiline business customers that have provided the BOCs with written authorization for such access. Such written authorization would not be required for residential and single-line business customers since the

competitive problems associated with CPNI are less likely to appear in sales to these customers. Moreover, at the same time the release is requested for the BOC CPE personnel, the customer could be provided with the opportunity to authorize the release of its CPNI to other CPE companies. This would provide all CPE vendors with an opportunity for equivalent access to BOC CPNI, but would not violate the proprietary nature of the information.

D. Nondiscrimination

5. In the *AT&T Structural Relief Order*, the Commission determined that a result-oriented approach (examining the average installation time for AT&T basic services for AT&T and non-AT&T CPE customers) would best be geared toward preventing any discrimination by AT&T. In that proceeding the Commission determined that centralized operations groups (COGs)—which were required for the BOCs—were not necessary to ensure nondiscriminatory access to AT&T's network services. Although the BOCs generally present the same discrimination concerns as AT&T, they already have COGs in place and would not suffer the additional costs that would have been imposed upon AT&T from instituting such procedures. In addition, the potential for discrimination may be greater for the BOCs than for AT&T because the BOCs are subject to relatively less competition in the services they provide than is AT&T and have direct contact with all of their customers, while AT&T, in most cases, only provides connections to BOC facilities and not to end-users. Therefore, the Notice proposes that the BOCs be required to retain their existing COGs and to follow reporting procedures similar to those adopted for AT&T.

III. Proposed Preemption of State Structural Separation Requirements on the BOCs and the Independent Telephone Companies ("ITCs")

6. In the *BOC Separation Order*, the Commission concluded that the decision to impose structural separation on the BOCs should be made at the federal level. The Notice proposes to continue this existing preemption of states' ability to impose structural separation on the BOCs, otherwise, if the Commission were to decide that the structural separation conditions are no longer a cost effective means of regulations for the BOCs, the imposition of structural separation on the BOCs by individual states might have confusing effects on BOC business procedures and would prevent the BOCs, consumers, and ratepayers from enjoying the benefits the Commission would have concluded the removal of structural separation can provide. The Notice further proposes a similar course of action with respect to the ITCs. In the *Second Computer Inquiry*, the Commission had allowed state regulatory authorities to impose structural separation requirements on the ITCs if they perceived a potential for abuse. However, it is a fundamental precept of American law that similiarly situated parties should receive similiar treatment under the law. Since it would appear that the ITCs as group are no more likely, and in many cases substantially less likely, to engage in anticompetitive conduct with respect to their CPE activities than are the BOCs, they should be subject to no more onerous forms of regulation than are imposed on the BOCs. Therefore, in light of the proposal to remove structural separation for the BOCs' CPE activities, the Notice proposes the preemption of state ability to impose structural separation on the ITCs.

IV. Provision of CPE by the ITCs

7. The principle that similarly situated entities should be regulated in similar fashion raises the issue of whether any of the ITCs are sufficiently similar to the BOCs to warrant the imposition of the nonstructural safeguards proposed in this Notice. In many respects the ITCs, and most especially the larger holding companies with regional or national affiliations, appear to present competitive problems similar to those the Commission has found require the continued application of nonstructural safeguards to the BOCs. They possess government-sanctioned local monopolies and are capable of improperly shifting costs from unregulated to regulated operations and providing discriminatory access to the network to the benefit of their CPE operations. In addition, at least some of the larger ITCs have sufficient resources that the relatively limited costs imposed by the nonstructural safeguards proposed in this Notice would not create a major financial burden. Therefore, the Notice proposes, in general, to require such ITCs to be subject to the same nonstructural safeguards proposed for the BOCs.

8. However, to the extent that there are meaningful differences between various ITCs and the BOCs, then less stringent safeguards would be appropriate. Many ITCs are very small and do not closely resemble either the BOCs or the major ITCs in their operations or resources. For these latter firms it may be inappropriate to apply the nonstructural safeguards we propose for the BOCs. The Notice tentatively concludes that GTE, as the ITC most closely resembling the BOCs, should be subject to essentially the same types of restraints proposed for the BOCs. The Notice further tentatively concludes that similar treatment should be accorded other large ITCs; however, parties are invited to suggest principles for differentiating among the various groups of ITCs for the purposes of applying nonstructural safeguards. One potential means of differentiating among the ITCs would be to apply nonstructural safeguards only to those carriers with a certain minimum number of access lines (for instance 50,000) or to carriers subject to NECA subsets 1 and 2.

V. BOC Requests for a Joint Marketing Waiver

9. The Commission denies the requests for a joint marketing waiver filed by BellSouth, Ameritech, Southwestern Bell, and Bell Atlantic. Unlike waivers of the structural separation rules granted in the past, the waivers sought here subsume the major part of the relief sought and raise most of the principal issues in the rulemaking proceeding. Indeed, the BOCs arguments in support of their waiver request basically replicate the cost/benefit points they make in arguing that the restrictions should be eliminated altogether. Since the BOCs have made no showing of special hardship, or that some important service is being denied to the public in the absence of a waiver, the Commission finds that granting such a waiver would be inappropriate under these circumstances.

Ordering Clauses

10. Accordingly, it is ordered, that pursuant to the provisions of sections 4(i), 4(j), 201, 202, 403, and 404 of the Communications Act, 47 U.S.C. 154(i), 154(j), 201, 202, 403, and 404, the aforementioned Notice of Proposed Rulemaking is hereby instituted.

11. It is further ordered, that comments will be due on May 16, 1986, and reply comments will be due June 20, 1986.

12. It is further ordered, that the motion for leave to file late reply comments filed by the North American Telecommunications Association is granted.

13. It is further ordered, that the request of BellSouth Corporation and the Ameritech Operating Companies for a temporary waiver of Section 64.702 of the Commission's rules regarding the joint marketing of CPE and basic services, is denied.

14. It is further ordered, that the request of Southwestern Bell

Corporation for a temporary waiver of § 64.702 of the Commission's rules regarding the joint marketing of CPE and basic services, is denied.

15. It is further ordered, that the request of the Bell Atlantic Telephone Companies for a temporary waiver of § 64.702 of the Commission's rules regarding the joint marketing of CPE and basic services, is denied.

16. It is further ordered, that the Motion for Leave to File Supplemental Submission filed by the North American Telecommunications Associations is denied.

17. It is further ordered, that the Motion for an En Banc Oral Argument filed by the North American Telecommunications Association is denied.

18. It is further ordered, that the Conditional Motion for Stay filed by the North American Telecommunications Association is denied.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-7712 Filed 4-7-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-102; RM-5124]

FM Broadcast Station in Sedona, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to allot Class C Channel 298 to Sedona, Arizona, as that community's second local FM service, in response to a petition filed on behalf of Margaret C. Durham.

DATES: Comments must be filed on or before May 22, 1986, and reply comments on or before June 6, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), table of allotments, FM Broadcast Stations; (Sedona, Arizona); MM Docket No. 86-102 and RM-5124.

Adopted: March 18, 1986.

Released: March 31, 1986.

By the Chief, Policy and Rules Division.

1. The Commission herein considers a petition for rule making filed on behalf of Margaret C. Durham ("petitioner") requesting the allotment of Class C Channel 298 to Sedona, Arizona, as that community's second local FM broadcast service. Petitioner states that she will apply for the channel, if allotted.

2. A staff engineering study reveals that although Channel 298 can be allotted to Sedona, Arizona in conformity with the minimum distance separation requirements of § 73.207(b) of the Commission's Rules, it may be necessary to impose a site restriction to avoid a short spacing to one of the applicants for Channel 298 at Tucson.[1] All of the applicants will be served with a copy of this *Notice.*

PART 73—[AMENDED]

3. In view of the above, and the fact that the proposal could provide a second local FM service to Sedona for the expression of diverse viewpoints and programming, the Commission believes it is appropriate to propose amending the FM Table of Allotments, § 73.202(b) of the Commission's Rules, with respect to that community, as follows:

City	Channel No.	
	Present	Proposed
Sedona, AZ	261A	261A, 298

4. It is ordered, That, the Secretary of the Commission shall send a copy of this *Notice* by certified mail, return receipt requested, to each of the applicants for channel 298 at Tucson, Arizona, as follows:

Golden State Broadcasting Corp., 2307 E. Broadway, Tucson, AZ 85719; Tucson Community Broadcasting, Inc., 1031 E. 6th Street, Tucson, Az 85719; and Tucson FM Broadcasting, P.O. Box 40698, Tucson, AZ 85717.

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before May 22, 1986, and reply comments on or before June 6, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel of consultant, as follows:

David Tillotson, Esquire, Arent, Fox, Kintner, Plotkin, and Kahn, 1050 Connecticut Avenue NW., Washington, DC 20036 (counsel for petitioner).

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend § 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Robert Ratcliffe,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303(g), and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.61, 0.204(b) and 0.283 of the

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[1] Applications have been filed by Golden State Broadcasting Corp. (BPH-10041), Tucson Community Broadcasting, Inc. (BPH-10345) and Tucson FM Broadcasting Corporation (BPH-10347). The application of Tucson Community proposes a site that is 1.1 kilometers short-spaced to the Sedona city reference point. Therefore, should that applicant ultimately prevail as the successful permittee, a transmitter site restriction on the Sedona proposal could avoid this short spacing.

Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice ot this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments: Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comment shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-7720 Filed 4-7-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-103; RM-4984]

FM Broadcast Station in Troy and Louisiana, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to allot Channel 268A to Troy, Missouri, as that community's first FM allocation, in response to a petition filed by James C. MaGee. The allocation requires a channel substitution and modification of the license of Station KJFM, Channel 269A, Louisiana, Missouri, to accommodate the proposal.

DATES: Comments must be filed on or before May 22, 1986, and reply comments on or before June 6, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

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

SUPPLEMENTARY INFORMATION: .

List of subjects in 47 CFR Part 733

Radio broadcasting.

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.

Notice of Proposed Rule Making and Order to Show Cause

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations, (Troy and Louisiana, Missouri); MM Docket Nos. 86-103 and RM-4984.

Adopted: March 18, 1986.

Released: March 31, 1986.

By the Chief, Policy and Rules Division.

1. Before the Commission is a petition for rule making filed by James C. MaGee ("petitioner"), requesting the allotment of FM Channel 268A to Troy, Missouri, as that community's first FM allocation. Petitioner indicated an interest in applying for the channel, if allotted.

2. Channel 268A can be allocated to Troy in compliance with the minimum distance separation requirements of the rules provided there is a site restriction 8.7 kilometers (5.4 miles) north of the community to prevent a short spacing to Station WLPM, Channel 269A, Union, Missouri. It will also be necessary to substitute Channel 271A for Channel 269A at Louisiana, Missouri, and to modify the license of Station KJFM to specify Channel 271A. The proposed substitution of Channel 271 A can be accomplished in compliance with the minimum distance separation requirements.

3. Whenever an existing licensee is ordered to switch frequencies in order to accommodate a new allotment, we require the proponent of the new assignment to make a commitment that it would reimburse the affected station for the costs incurred in changing frequencies. Petitioner has stated that he understands that it would be the responsibility of the successful applicant for Channel 268A in Troy, Missouri, to reimburse Station KJFM for its reasonable costs in changing frequency.

PART 73—[AMENDED]

4. In view of the fact that the proposed allocation could provide a first FM service at Troy, Missouri, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules as follows:

City / Channel No.	Present	Proposed
Troy, Missouri		268A
Louisiana, Missouri	269A	271A

5. It is ordered, That pursuant to section 316(a) of the Communications Act of 1934, as amended, Foxfire Communications, Inc., the licensee of Station KJFM, Louisiana, Missouri, shall show cause why its license should not be modified to specify operation on Channel 271A instead of 269A.

6. Pursuant to §1.87 of the Commission's Rules, Foxfire Communications, Inc. may, not later than May 22, 1986, request that a hearing be held on the proposed modification. If the right to request a hearing is waived, Foxfire Communications, Inc. may, not later than June 6, 1986, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. In this case, the Commission may call on Foxfire Communications, Inc. to furnish additional information, designate the matter for hearing, or issue, without further proceedings, an *Order* modifying the license as provided in the *Order to Show Cause*. If the right

to request a hearing is waived and no written statement is filed by the date referred to above, the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

7. It is further ordered, That the Secretary of the Commission SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this *Order* to the following:

Foxfire Communications, Inc., 420 North Main Street, Louisiana, Missouri 63353

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

9. Interested parties may file comments on or before May 22, 1986, and reply comments on or before June 6, 1986, and are advised to read the Appendix for the proper procedures. A copy of such comments should be served on the petitioner as follows:

Richard J. Hayes, Jr., 1359 Black Meadow Road, Spotsylvania, Virginia 22553, (counsel for the petitioner)

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend § 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

11. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assigments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, consitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attaced.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b), and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-7718 Filed 4-7-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-100; RM-5031]

FM Broadcast Station in Freedom and Morgan Hill, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allotment of Channel 241A at Morgan Hill, California, and the substitution of FM Channel 298A for Channel 240A at Freedom, California. The Morgan Hill proposal is for a first local service, in response to a petition filed by Eric R. Hilding and Claudia W. Bartosiewicz.

DATES: Comments must be filed on or before May 22, 1986, and reply comments on or before June 6, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Freedom and Morgan Hill, California); MM Docket No. 86-100; RM-5031.

Adopted: March 18, 1986.

Released: March 31, 1986.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is a petition for rule making filed by Eric R. Hilding and Claudia W. Bartosiewicz ("petitioner") requesting the allotment of Channel 241A to Morgan Hill, California, as that community's first local service. This can be accomplished by substituting Channel 298A for Channel 240A at Freedom, California, as petitioner has requested, and for which applications are pending.[1]

2. A staff engineering study reveals that Channel 241A can be allotted to Morgan Hill consistent with the minimum distance separation requirements of § 73.207 of the Commission's Rules, provided Channel 298A is substituted for Channel 240A at Freedom, California. The latter substitution requires a site restriction 6.9 kilometers (4.3 miles) south of Freedom to avoid short spacing to Station KTSN(FM) (Channel 297), Stockton, California, and to the construction permit of Station KSOL (Channel 299), San Mateo, California.

PART 73—[AMENDED]

3. Since the proposal could provide a first local service to Morgan Hill, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, with regard to those communities, as follows:

City	Channel No.	
	Present	Proposed
Freedom, California	240A	298A
Morgan Hill, California		241A

4. The Secretary SHALL SEND a copy of this *Notice of Proposed Rule Making* to the applicants for Channel 240A at Freedom, California, as follows:

Freedom Community Broadcasting, Inc., P.O. Box 1300, Freedom, CA 95019

Virginia Jo McFadden, Box 375, Acklen Station, Nashville, NV 37212

Freedom FM Wireless Co., 460 Puma Drive, Carson City, NV 89701

L.S. Adams, d/b/a El Osode Trapo Broadcasting Co., 4358 Greenholme Drive, #10, Sacramento, CA 95842

L.G. Straus and D. Albon, 12503A Old French Rd., Nevada City, CA 95959

Santa Cruz Broadcasting Co., Inc., 1640 5th St., Suite 203, Santa Monica, CA 90401

Freedom Broadcasting Corp., 9602 Hamor Road, Randallstown, MD 21133

Laura Hopper, 225 Johnson Road, Watsonville, CA 95076

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before May 22, 1986, and reply comments on or before June 6, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

John H. Midlen, Jr., Esq., Law Offices of John H. Midlen, Esq., 1050 Wisconsin Avenue, NW., Washington, DC 20007 (counsel for petitioners)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504, and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 308(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, It Is Proposed To Amend the noncommercial education FM Table of Allotments, § 73.504(a) of the Commission's rules and regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the

[1] Applications on file for Channel 240A at Freedom, California, include: Freedom Community Broadcasting, Inc. (BPH-831216BO); Virginia Jo McFadden (BPH-84112AG); Freedom FM Wireless Co. (BPH-840423IP); L.S. Adams d/b/a El Oso de Trapo Broadcsting Co. (BPH-840427IC); L.G. Straus and D. Albon (BPH-840430IH); Santa Cruz Broadcasting Co., Inc. (BPH-840430II); Freedom Broadcasting Corp. (BPH-840430IK), and Laura Hopper (BPH-840430IR). We will serve each of the applicants a copy of this *Notice* in order to elicit their comments on the proposal. If the channel allotment at Freedom is changed, those applicants will be permitted to amend their applications to specify the newly alloted channel.

proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply commments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-7716 Filed 4-7-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-101; RM-5114]

TV Broadcast Station in Anniston, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the assignment of VHF television Channel 4 to Anniston, Alabama, as that community's second local commercial television service, in response to a petition filed by Contemporary Communications. The proposal requires a change in the carrier offsets of Stations WSMV-TV, Nashville, Tennessee and WTTV(TV), Bloomington, Indiana.

DATES: Comments must be filed on or before May 22, 1986, and reply comments on or before June 6, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1982, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1983, 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.

Order for Show Cause

In the matter of Amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Anniston, Alabama) MM Docket No. 86-101; RM-5114.

Adopted: March 18, 1986.

Released: March 31, 1986.

By the Chief, Policy and Rules Division:

1. Before the Commission for consideration is a petition for rule making filed by Contemporary Communications ("petitioner") seeking the assignment of VHF television Channel 4 to Anniston, Alabama, as that community's second local commercial television service. Petitioner states that it will apply for the channel, if assigned.

2. Anniston (population 29,523),[1] the seat of Calhoun County (population 119,761) is located in northeastern Alabama, approximately 97 kilometers (60 miles) east of Birmingham.

3. A staff engineering study reveals that VHF television Channel 4 can be assigned to Anniston with a site restriction 37.3 kilometers (23.2 miles) east of the community to avoid short-spacing to co-channel television Stations WTVY, Dothan, Alabama; WCBI (construction permit issued), Columbus, Mississippi; and WSMV, Nashville, Tennessee. Additionally, Gillett Broadcasting of Tennessee, Inc. ("Gillett"), licensee of Station WSMV(TV) will be required to change its offset from "plus" to "zero" to accommodate the proposal, as will Tel-AM Holdings, Inc. ("Tel-AM"), licensee of Station WTTV (Channel 4), Bloomington, Indiana, from "zero" to "plus." As required by Commission policy, the petitioner herein will be required to reimburse both Gillett and Tel-AM for their reasonable and prudent costs associated with the change in frequency offsets of Stations WSMV(TV) and WTTV(TV), respectively, and should indicate a willingess to do so in its comments herein. Therefore, to enable the Commission to make a final determination, we are issuing an *Order to Show Cause* to Gillett and to Tel-AM to determine their willingness to modify their facilities to reflect the change in carrier offsets as described above.

[1] Population figures were extracted from the 1980 U.S. Census.

PART 73—[AMENDED]

4. In view of the above, comments are invited on the proposal to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules, with regard to the following communities:

City	Channel No.	
	Present	Proposed
Anniston, Alabama	40-	4+, 40-
Bloomington, Indiana	4, *30-, 42+, 63-.	4+, *30-, 42+, 63+
Nashville, Tennessee	2-, 4+, 5, *+, 17+, 30+, *42, and 58.	2-, 4, 5, *8+, 17+, 30+, *42, and 58

5. The proposed substitution at Bloomington, Indiana requires Canadian concurrence since that location is within 400 kilometers (250 miles) of the common U.S.-Canadian border.

6. It Is Ordered, that, pursuant to section 316(a) of the Communications Act of 1934, as amended, Gillett Broadcasting of Tennessee, Inc. shall show cause why its license for Station WSMV(TV) should not be modified to specify operation on Channel 4 with a zero offset at Nashville, Tennessee, as proposed herein, in lieu of its present operation on that channel with a plus offset.

7. Pursuant to § 1.87 of the Commission Rules, Gillett may, not later than May 22, 1986, request that a hearing be held on the proposed modification. Pursuant to § 1.87(f), if the right to request a hearing is waived, Gillett may, not later than June 6, 1986, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. In this case, the Commission may call on Gillett to furnish additional information, designate the matter for hearing, or issue, withour further proceedings, an Order modifying the license as provided

in the *Order to Show Cause*. If the right to request a hearing is waived and no written statement is filed by the date referred to above, Gillett will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final Order will be issued by the Commission if the above-mentioned channel modification is ultimately found to be in the public interest.

8. It Is Further Ordered, that, pursuant to section 316(a) of the Communications Act of 1934, as amended, Tel-AM Holding, Inc. shall show cause why its license for Station WTTV(TV) should not be modified to specify operation on Channel 4 with a plus offset at Bloomington, Indiana, as proposed herein, in lieu of its present operation on that channel with a zero offset.

9. Pursuant to § 1.87 of the Commission's Rules, Tel-AM may, not later than May 22, 1986, request that a hearing be held on the proposed modification. Pursuant to § 1.87(f), if the right to request a hearing is waived, Tel-AM may, not later than June 6, 1986, file a written statement showing with particularity why its liclense should not be modified as proposed in the *Order to Show Cause*. In this case, the Commission may call on Tel-AM to furnish additional information, designate the matter for hearing, or issue, without further proceedings, an Order modifying the license as provided in the *Order to Show Cause*. If the right to request a hearing is waived and no written statement is filed by the date referred to above, Tel-AM will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final Order will be issued by the Commission if the above-mentioned channel modification is ultimately found to be in the public interest.

10. It Is Further Ordered, that the Secretary shall send a copy of this *Notice of Proposed Rule Making and Order to Show Cause* by certified mail, return receipt requested, to the following:

Gillett Broadcasting of Tennesse, Inc., Television Station WSMV, c/o P.O. Box 1644, Wausau, WI 54401

and

Tel-AM Holdings, Inc., Television Station WTTV, c/o 3490 Bluff Road, Indianapolis, IN 46217.

11. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

12. Interested parties may file comments on or before May 22, 1986, and reply comments on or before June 6, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner as follows:

Contemporary Communications, c/o Larry G. Fuss, Sr., P.O. Box 3976, Jackson, GA 30233–0976.

13. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend § 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

14. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any commend which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authotity found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.61, 0.204(b) and 0.283 of the Commission's Rules, It Is Proposed To Amend the TV Table of Assignments, § 73.606(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required*. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in intitial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures*. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them is reply comments. They will not be considered if advanced in reply coments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service*. Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed coments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies*. In accordance with the provisions of § 1.420 of the Commission's rules and regulations, and original and four copies of all comments,

reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-7717 Filed 4-7-86; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-99; RM-5100]

TV Broadcast Station in Sulphur Springs, TX and Lake Charles, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein, at the request of Harold Hardgrave, proposes the assignment of UHF Television Channel 18 to Sulphur Springs, Texas, as that community's first commercial television service. In order to accomplish the assignment, the offset of Station KLTL-TV, Channel 18, Lake Charles, Louisiana, must be changed.

DATES: Comments must be filed on or before May 22, 1986, and reply comments on or before June 6, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

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.

Order to Show Cause

In the matter of Amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Sulphur Springs, Texas, and Lake Charles, Louisiana) MM Docket No. 86-99; RM-5100.

Adopted: March 18, 1986.
Released: March 31, 1986.
By the Chief, Policy and Rules Division:

1. Before the Commission for consideration is a petition for rule making filed by Harold Hardgrave ("petitioner"), seeking the assignment of UHF Television Channel 18 to Sulphur Springs, Texas, as that community's first commercial television service. Petitioner has expressed his intention to apply for the channel, if assigned.

2. Sulphur Springs (population 12,804),[1] seat of Hopkins County (population 25,247), is located in northeastern Texas, approximately 70 miles northeast of Dallas.

3. The channel assignment can be made in compliance with the minimum distance separation requirements of § 73.610 of the Commission's Rules. However, in order to accomplish the assignment, the offset of Station KLTL-TV, Channel 18, at Lake Charles, Louisiana, must be changed from "zero" to "minus." Therefore, Louisiana Educational TV Authority, licensee of noncommercial educational Station KLTL-TV is ordered to show cause herein why it should not change its offset from "zero" to "minus."

4. The ultimate permittee of Channel 18 at Sulphur Springs, Texas, is required by Commission policy to reimburse Station KLTL-TV for the reasonable costs of changing its offset. Petitioner and other interested parties should state their willingness to reimburse Station KLTL-TV in their comments herein.

PART 73—[AMENDED]

5. In view of the fact that Sulphur Springs could receive its first commercial television channel, the Commission believes it would be in the public interest to seek comments on the proposal to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, for the following communities:

Channel No.	City	
	Present	Proposed
Lake Charles, Louisiana	7-,*18, 29-	7-,*18-,29-
Sulphur Springs, Texas		18

6. Accordingly, It Is Ordered, That pursuant to § 316(a) of the Communications Act of 1934, as amended, Louisiana Educational Television Authority, licensee of Station KLTL-TV, Lake Charles, Louisiana, shall show cause why its license should not be modified to specify operation on Channel *18- as proposed herein instead of the present Channel *18.

7. Pursuant to § 1.87 of the Commission's Rules, Louisiana Educational Television Authority may not later than May 22, 1986, request that a hearing be held on the proposed modification. If the right to request a hearing is waived, Louisiana Educational Television Authority may, not later than June 6, 1986, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause.* In this case, the Commission may call on Louisiana Educational Television Authority to furnish additional information, designate the matter for hearing, or issue, without further proceedings, an *Order* modifying the license as provided in the *Order to Show Cause.* If the right to request a hearing is waived and no written statement is filed by the date referred to above, Louisiana Educational Television Authority will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modifications are ultimately found to be in the public interest.

8. It Is Further Ordered, that the Secretary of the Commission SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this *Order* to the following:

Louisiana Educational Television Authority, 2618 Wooddale Blvd., Baton Rouge, Louisiana 70805.

9. Interested parties may file comments on or before May 22, 1986, and reply comments on or before June 6, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner(s), or their counsel or consultant, as follows:

Harold Hardgrave, c/o George E. Gunter, Communications Consultants, 650 North Bolton Street, Jacksonville, TX 75766 (Consultant to petitioner).

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

11. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration, or court

[1] Population figures are taken from the 1980 U.S. Census.

review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commisson, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Ralph A. Haller,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, It Is Proposed To Amend the TV Table of Assignments, § 73.606(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflicts with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See §§ 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, DC.

[FR Doc. 86-7715 Filed 4-7-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 79-04, Notice 2]

Federal Motor Vehicle Safety Standard; Side Impact Protection

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of public meeting and request for comments.

SUMMARY: This notice announces a public meeting to obtain comments on a potential upgrading of Federal Motor Vehicle Safety Standard No. 214, *Side Door Strength*, to further reduce occupant deaths and injuries in side impacts. The standard currently sets requirements for testing the crush resistance of the side doors of passenger cars under static conditions. NHTSA has been conducting research on a dynamic crash test which more closely represents real world crashes. The agency has developed a side impact test dummy and a new procedure for measuring injury in side impacts. The purpose of the meeting is to inform all interested parties about the current status of the agency's side impact activities and to solicit comments on the agency's findings. In addition, the agency wants to review the current status of side impact research programs being conducted by domestic and foreign vehicle manufacturers and other organizations and obtain comments on how harmonization of test procedures, test dummies and injury criteria might best be accomplished. The information gathered at this meeting will aid the agency in deciding what further action to take in the area of side impact protection.

DATES: Those persons or organizations desiring to make presentations at the meeting should, if possible, let the agency know by May 7, 1986. Copies of the presentations, or an outline thereof, should be submitted to the contact person shown below prior to the meeting. The meeting will be held on May 28-29, 1986. Written comments on the subjects discussed at the meeting must be received not later than June 6, 1986.

ADDRESSES: The public meeting, which will begin at 9:00 a.m., will be held at the following address: U.S. Department of Commerce Auditorium, 14th Street and Constitution Avenue NW., Washington, DC.

Requests to make a presentation and a copy of the presentation, or outline thereof, should be sent to: Mr. J.E. Tomassoni, NRM-12, National Highway Traffic Safety Administration, Room 5320, 400 Seventh Street SW., Washington, DC 20590.

Written comments should refer to the docket and notice number for this notice and submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590.

Docket hours are 8:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. J.E. Tomassoni at his address given above or call, (202) 426-2242.

SUPPLEMENTARY INFORMATION: The agency's current standard for side impact protection is Federal Motor Vehicle Safety Standard No. 214, *Side Door Strength* (49 CFR 571.214). This standard specifies performance requirements for the side doors of passenger cars to mitigate injuries in side impacts by reducing the extent to which the side structure is pushed into the passenger compartment. The standard requires the door to resist crush forces that are statically applied to the door's outside surface in a laboratory test. Since the standard became effective on January 1, 1973, vehicle manufacturers have chosen to meet the performance requirements of the standard by reinforcing the side doors with metal beams. NHTSA's analysis of accident data has shown that the strengthening of the side doors with the beams is indeed effective, but primarily in single car side impacts. (NHTSA Technical Report No. DOT 806-314. This technical report and other information relevant to each of the topics to be discussed at the public meeting are available in the agency's docket room. Most of the relevant material can be found in Docket 79-04, General Reference. In addition, other information relevant to the agency's side impact protection program is available in Docket 79-04, Notice 1 and Docket 82-11, General Reference, and Docket 82-19, Notice 1).

Because of the high number of fatalities and injuries which continue to result from side impact crashes (approximately 8,000 fatalities and 25,000 serious injuries annually), the agency initiated a research program in 1977 to upgrade the current standard. This effort focused primarily on thoracic protection since data indicate that contact between the thorax and the side interior is a major source of serious injuries and fatalities. Much work has since been performed not only by the agency, but also by vehicle manufacturers and numerous research organizations as well. Details of the NHTSA work have been presented at various technical conferences and have been available for public review on a continuous basis. The major accomplishments have been in the following areas:

(1) *Test Procedure.* NHTSA has developed a two-vehicle test procedure which closely represents the type of real-world side crash that occurs most frequently today. In addition, the agency and several European organizations have developed moving deformable barriers (MDBs) to represent the striking vehicle in a two car side impact crash. The MDBs are designed to represent a typical vehicle of the future passenger car fleet. Further information on the NHTSA MDB is reported in "Results of the National Highway Traffic Safety Administration's Thoracic Side Impact Protection Research Program" Hackney et al., SAE Paper 840886 (See Docket 74-14, General Reference, Entry 55). Information on the European MDBs is reported in "Structural Improved Side Impact Protection in Europe," European Experimental Vehicles Committee (EEVC) Working Group, 9th International Technical Conference on Experimental Safety Vehicles, (See Docket 74-14, General Reference, Entry 51) and in "The CCMC Mobile Deformable Barrier for Lateral Collision Testing," Committee of Common Market Automobile Constructors Working Group, 10th International Technical Conference on Experimental Safety Vehicles (See Docket 74-14, General Reference, Entry 47). The Motor Vehicle Manufacturers Association (MVMA) of the United States is currently conducting research on a procedure for testing individual vehicle components rather than testing entire vehicles to measure side impact protection. MVMA's research is reported in "Results of the Motor Vehicle Manufacturers Association Component and Full Vehicle Side Impact Test Procedure Evaluation Program," Wasko and Wilson, 10th International Technical Conference on Experimental Safety Vehicles (See Docket 74-14, General Reference, Entry 49). Ford has also done work on component testing, which is reported in "A Force Measuring Mechanical Test Device for Estimating and Comparing the Energy Absorbing Characteristics of Vehicle Side Panels." Daniel, *et al.*, 9th International Technical Conference on Experimental Safety Vehicles. (See Docket 74-14, General Reference, Entry 63.)

(2) *Anthropomorphic Test Device.* NHTSA has developed a test dummy and several European organizations are developing a test dummy for measuring the magnitude of injury resulting from a side impact test. The agency has developed a side impact dummy (SID) which is used to measure thoracic and pelvic injury. Information on the NHTSA SID is reported in "Development of Dummy and Injury Index for NHTSA's Thoracic Side Impact Protection Research Program," Eppinger, *et al.* SAE Report No. 840885 (See Docket 74-14, General Reference, Entry 46). A group of European laboratories, working together under the auspices of the EEVC, are developing the EUROSID and may complete their work by this fall. The EUROSID is intended to measure injury in the chest, abdomen, and pelvis in side impacts. Information on that test dummy is reported in "The EUROSID Side Impact Dummy," EEVC, 10th International Technical Conference on Experimental Safety Vehicles (See Docket 74-14, General Reference, Entry 45).

(3) *Injury Criteria.* NHTSA has developed a new measure of side impact injury, called the thoracic trauma index (TTI). The TTI correlates measurements on the test dummy with thoracic injury severity observed in cadaver testing conducted for the agency. The TTI is essentialy a statistical estimate of probability of various injury severity levels derived from data on age, body weight, and peak accelerations measured at specific locations on the test dummy. Further information on this injury criterion is reported in "Development of Dummy and Injury Index for NHTSA's Thoracic Side Impact Protection Research Program," cited above. The European organizations working on different side impact test dummies are currently developing injury criteria for use with those devices. The agency is also aware of research done by General Motors which is evaluating another potential injury criterion for chest injury. GM's research has indicated that a criterion based on the product of the chest velocity times its deflection provides a good measure of thoracic injury GM's research is reported in "Thoracic Impact: A Viscous Tolerance Criterion," Viano and Lau (See Docket 74-14, General Reference, Entry 579).

(4) *Potential Vehicle Safety Improvements.* The agency has evaluated the effect of improved side strength and interior add-on padding for thoracic protection. NHTSA tested these improvements in crash testing of the VW Rabbit using the NHTSA's MDB and SID. Other crash tests conducted by the agency have shown that certain current production passenger cars might not need any improvements to meet new side impact safety requirements, while others may need improved side structures, interior padding, or both. Information on both series of crash tests is reported in "Results of the National Highway Traffic Safety Administration's Thoracic Side Impact Protection Research Program," (See Docket 74-14, General Reference, Entry 46).

Public Meeting

All interested persons are invited to attend the meeting. To assist interested parties to prepare for the meeting, the agency has developed a preliminary outline, presented below, of the five major topics to be covered at the meeting. (Based on the public response to this invitation, a final outline will be prepared and made available at the meeting.) The agency intends to conduct the meeting informally, along the lines of the public meeting on the anti-theft rule held in December 1984. The agency will begin the discussion of each topic by first summarizing its activities in that area. Then, persons wishing to make a presentation can do so. Finally, before moving to the next topic, there will be an informal question and answer period during which a panel of agency officials will direct questions to the audience, and ask for volunteers from the audience to answer questions concerning the topics. A verbatim transcript of the meeting will be prepared and placed in the docket.

The agency requests that persons planning to use visual aids, such as slides or motion pictures, in their presentation indicate those plans to the agency, by May 7, 1986, and provide a copy of the visual aid for the docket by June 6, 1986.

Preliminary Outline of Topics for Public Meeting

1. Test Procedure
   (A) Full Vehicle
   (B) Moving Deformable Barrier
   (C) Other
2. Anthropomorphic Test Devices
   (A) Side Impact Dummy (SID)
   (B) Other
3. Injury Criteria
   (A) Thorax
   (B) Pelvis
   (C) Other
4. Potential Safety Improvements
   (A) Increased Side Strength
   (B) Improved Interior Padding
   (C) Reducing Vehicle Aggressivity
   (D) Feasibility/Consequences of Improvements
5. Harmonization
   (A) Test Procedures
   (B) Test Devices
6. Additional Considerations
   (A) Improved Head Protection
   (B) Ejection Mitigation
   (C) Improved Glazing
   (D) Other

Comments

Interested persons may submit written views and data concerning the subjects to be discussed at the meeting, whether or not they attend the meeting. Those submissions should be sent to the same address as the requests to participate.

If information is to be submitted under a claim of confidentiality, three copies of the complete submission, including the purported confidential information, should be submitted to the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street SW., (NOA-30), Washington, DC 20590. In addition, 10 copies from which the purported confidential information has been deleted should be submitted to the docket. Any claim of confidentiality must be supported by a statement demonstrating that the information falls within 5 U.S.C. 552(b)(4), and that disclosure of the information is likely to result in substantial competitive damage; specifying the period during which the information must be withheld to avoid that damage; and showing that earlier disclosure would result in that damage. In addition, the commenter or, in the case of a corporation, a responsible corporate official authorized to speak for the corporation, must certify in writing that each item for which confidential treatment is requested is in fact confidential within the meaning of section 552(b)(4), and that a diligent search by the commenter has revealed that the specific information has not been previously disclosed or otherwise become available to the public.

All comments received before the close of business on the comment closing date indicated above will be available in the docket and will be considered by the agency as it examines the need for further action. Comments filed after that date will be considered to the extent possible. The agency will continue to file relevant material as it becomes available regardless of the closing date. It is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments should enclose with the submittal material a self addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Issued on: April 3, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86-7792 Filed 4-3-86; 4:31 pm]

BILLING CODE 4910-59-M

Notices

Federal Register

Vol. 51, No. 67

Tuesday, April 8, 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.

ACTION

Special Volunteer Programs; Notice of Availability of Funds; Demonstration Grants

A. The Office of Volunteer Initiative of ACTION announces the availability of funds during fiscal year 1986 for demonstration grants under the Special Volunteer Programs authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93-113; Title I, Part C; 42 U.S.C. 4992).

The purpose of this program is to strengthen and supplement efforts to meet a broad range of needs, particularly those related to poverty, by encouraging and enabling persons from all walks of life and from all age groups to perform meaningful and constructive volunteer service in agencies, institutions, and situations where the application of human talent and dedication may help to meet such needs.

Priority consideration will be given to innovative volunteer service projects that focus on literacy and employability programming for individuals 24 years of age and younger—especially unmarried mothers and high school dropouts—to increase their literacy level and to enhance their employment potential. The projects selected must also provide support services, such as transpotration, and day care for the children of the young adult and youths. In addition, the projects must work with their families in enhancing or promoting the development of family strengths.

Objectives

Volunteer Demonstration Projects address areas of human concern where individuals, as volunteers, can contribute toward the overall improvement of their communities. This request for applications is designed to fund a project to assist individuals between the ages of 14 and 24 years of age in economically distressed urban areas who have not completed high school and have few employment skills or job opportunities. This project must be capable of assisting adolescents and young adults to develop literacy so they may expand their income earning potential and prepare for more productive roles in society.

Volunteer Demonstration Projects address areas of human and social concern where citizens, as volunteers, can contribute toward individual self-reliance and community self-sufficiency. The projects funded under this announcement must have the demonstrated capability to: (1) Operate a literacy and employment training program targeted at the under 24 population—especially unmarried mothers and high school dropouts; (2) develop progamming using youths and business persons as volunteers; (3) generate local financial commitment and volunteer resources; and (4) guarantee project continuance after ACTION funding.

As part of its programs, the funded projects and their sub-grantees must: (1) Recruit volunteers to work as tutors; (2) prepare youths for GED; (3) arrange for support services such as transportation, day care, and adequate clothing; (4) place youths in jobs or job training programs; (5) recruit a corps of volunteers to work as mentors on a one-to-one basis; and (6) work with the families of the youths.

Organizations funded under this announcement must have first hand experience in: (1) Mobilizing volunteers, especially youths and business persons: (2) dealing with youth problems, especially illiteracy and employment; (3) providing literacy and employability services to individuals under age 24; (4) maintaining partnerships with other concerned organizations and the private sector; and (5) obtaining jobs for youths. Additionally, the organization must be currently operating in the targeted community.

B. Eligible Applicants

Only applicants from private, non-profit incorporated organizations and public agencies will be considered.

C. Available Funds and Scope of the Grant

Up to $150,000 may be available through this notice. However, ACTION anticipates awarding grants ranging in size from $40,000 to a maximum of $100,000, the latter based on the development of a statewide or a comparably large geographical area.

Publication of this announcement does not obligate ACTION to award any specific number of grants, or to obligate any specific amount of money for demonstration grants.

D. General Criteria for Grant Selection

Grant applications will be reviewed and evaluated in comparison with the criteria outlined below, as appropriate, as well as conformance to the instructions included in the application. Grant applicants must have demonstrated competence in using volunteers to work and focus on motivating youth, to stay in school and become self sufficient and eventually employable. The applicant must also provide a complete range of basic human needs and supportive services, in addition to working with the families of the youths.

The General Criteria are as follows:

—potential to recruit and train volunteers, especially youths and business persons.
—promise of developing innovations or knowledge in areas of priority, that are significant to national program development.
—potential for replication of the project model; plans for implementation and dissemination of results of project, including any products developed.
—capability of proposed staff.
—likelihood of completion of project within proposed timetable.
—commitment from collaborating agencies and organizations where such could be expected to contribute to the value or success of the project.
—indication of local community support or "chapter" interest or corporate interest.
—adequacy of plans for data gathering and evaluation.
—matching funds at the local level or an Advisory Board or Board of Director's commitment to pursue such.

E. Application Review Process

ACTION's Demonstration Grant Division, in the Office of Voluntarism Initiatives, which has expertise in volunteer demonstration programs, will review and evaluate all eligible applications submitted under this announcement. ACTION's Associate Director for the Office of Voluntarism

Initiatives will make the final selection from among the highest ranked applications. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

F. Application Submission and Deadline

One signed original and two copies of all completed applications must be submitted to the Associate Director for the Office of Voluntarism Initiatives, Room M-516, 806 Connecticut Avenue, NW., Washington, DC 20525. The deadline for receipt of applications is May 12, 1986. Only those applications that are received by 5:00 p.m. on this date will be eligible.

All grant applications must consist of:

a. Application for Federal Assistance (SF 242 pages 1-2 and ACTION form A-1017 pages 3-7) with a narrative budget justification and narrative of project goals and objectives.

b. CPA certification of accounting capability.

c. Articles of incorporation.

d. Proof of non-profit status or an application for non-profit status, which should be made through documentation.

e. Resume of candidates for the position of project director, if available, or the resume of the director of the applicant agency or project.

f. Organization chart of the applicant organization showing how to project is related to the organization.

To receive an application form, please call ACTION's Office of Voluntarism Initiatives, (202) 634-9749.

Signed in Washington, DC, on April 1, 1986.

Donna M. Alvarado,

Director.

[FR Doc. 86-7706 Filed 4-7-86; 8:45 am]

BILLING CODE 6050-28-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of revision of Privacy Act System of Records.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) is revising its Privacy Act Systems of Records maintained by the Extension Service, "Cooperative Extension Personnel Records System USDA/ES-2" and "State Cooperative Extension Service Employees USDA/ES-3." These Records Systems are currently published as USDA/SEA-12 and USDA/SEA-13, respectively. The purpose of this notice is to correct the records to show the organizational changes which have occurred during the reorganization which reorganized the Science and Education Administration (SEA) into several agencies including the Extension Service (ES). Also, some addresses have been changed.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act, 5 U.S.C. 552a, USDA is revising two systems of records to be maintained by the Extension Service. The purpose of this notice is to correct the records. The systems contain data on Extension Service personnel.

EFFECTIVE DATE: On or before May 8, 1986. Comments must be received by the contact person listed below on or before May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Ovid Bay, Director of Information, Extension Service, U.S. Department of Agriculture, Room 3428 South Building, 14th & Independence Avenue, SW, Washington DC 20250, (202-447-3029).

A "Report on New System" for each system of records, required by 5 U.S.C. 552a(o), as implemented by OMB Circular A-130, was sent to the President of the Senate, the Speaker of the House of Representatives and the Office of Management and Budget on March 31, 1986.

Signed at Washington, DC, on March 31, 1986.

Richard E. Lyng,

Secretary of Agriculture.

USDA ES-2

SYSTEM NAME:

Cooperative Extension Personnel Records System, USDA.

SYSTEM LOCATION:

Personnel Staff, Extension Service, Room 3547 South Building, 14th & Independence Ave., SW, Washington, DC 20250.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees of State Extension Services who hold an Excepted Federal Appointment without compensation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Microfiche copies of personnel actions taken by individual states under delegated personnel authority to support entitlement of employees to the benefit areas of retirement, life and health insurance, workman's and unemployment compensation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 7 U.S.C. 341, et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Office of Personnel Management and Department of Labor are supplied supporting documentation for benefit claims of employees and Cooperative Extension Service Personnel Offices are supplied specific assistance upon request. Disclosure may be made to a congressional office from the records of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on microfiche at the address listed.

RETRIEVABILITY:

Records are indexed by name of employee.

SAFEGUARDS:

In authorized locked cabinet.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with General Services Administration retirement and/or destruction schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel Staff, ES, Room 2437 South Building, U.S. Department of Agriculture, Washington, DC 20250.

NOTIFICATION PROCEDURE:

Any individual may request information concerning himself from this system. A request for information should be addressed to the System Manager and should contain: Name, address and particular information requested.

RECORD ACCESS PROCEDURES:

Any individual may obtain information as to the procedures for gaining access to a record in the System which pertains to him by submitting a written request to the System Manager.

CONTESTING RECORD PROCEDURES:

Use same procedures as for requesting access.

RECORD SOURCE CATEGORIES:

Information in this System comes primarily from the employee with additional data provided by the employee's personnel office.

USDA ES-3

SYSTEM NAME:

State Cooperative Extension Service Employees, USDA.

SYSTEM LOCATION:

Reports and Analysis Branch, Management Operations Staff, Extension Service, USDA, Room 3547 South Building, 14th & Independence Ave., SW, Washington, DC 20520.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All professional employees of the State Cooperative Extension Services from 1968 to present.

CATEGORIES OF RECORDS IN THE SYSTEEM:

Magnetic tapes are made from punch cards on information from the personnel records taken and submitted by State Cooperative Extension Services.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 7 U.S.C. 341, et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tape at the address listed.

RETRIEVABILITY:

Records are entered by social security number or other unique State identifying number.

SAFEGUARDS:

Authorization must be obtained from the Administrator, ES, USDA or Director of Personnel, ES, USDA, before information is released. All printed matter is kept in locked rooms.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel and Management Services Division, Room 3547 South Building, Washington, DC 20250.

NOTIFICATION PROCEDURE:

Any individual may request information concerning himself from this system. A request for information should be addressed to the System Manager and should contain: Name, address, social security number, and the particular information requested.

RECORD ACCESS PROCEDURES:

Any individual may obtain information as to the procedures for gaining access to a record in the System which pertains to him by submitting a written request to the System Manager.

CONTESTING RECORD PROCEDURES:

Use same procedures as for requesting access.

RECORD SOURCE CATEGORIES:

Information in this System comes primarily from the employee with additional data provided by the employee's personnel office.

[FR Doc. 86-7595 Filed 4-7-86; 8:45 am]

BILLING CODE 3410-16-M

Forest Service

Comprehensive Plan for the Continental Divide National Scenic Trail

AGENCY: Forest Service, USDA.

ACTION: Notice of adoption and availability.

SUMMARY: The comprehensive management plan for the Continental Divide National Scenic Trail is now available for public inspection.

EFFECTIVE DATE: The plan was approved by R. Max Peterson on November 6, 1985, and is now in effect.

ADDRESSES: The plan may be inspected at the following Federal and State offices:

Forest Service, USDA, Recreation Management Staff, Room 4231, South Building, 12th & Independence Ave., SW., Washington, DC 20013, 202-447-2311

Northern Region, Forest Service, USDA, Federal Building, P.O. Box 7669, Missoula, Montana 59807, 406-329-3584

Rocky Mountain Region, Forest Service, USDA, 11177 W. 8th Ave., Box 25127, Lakewood, Colorado 80225, 303-236-9501

Southwestern Region, Forest Service, USDA, Federal Building, 517 Gold Avenue, SW., Albuquerque, New Mexico 87102, 505-842-3656

Intermountain Region, Forest Service, USDA, Federal Building, 324 25th Street, Ogden, Utah 84401, 801-625-5161

Rocky Mountain Region, National Park Service, USDI, 655 Parfet Street, P.O. Box 25287, Lakewood, Colorado 80225, 303-236-8720

Glacier National Park, West Glacier, Montana 59936, 406-888-5441

Yellowstone National Park, P.O. Box 168, Yellowstone National Park, Wyoming 82190, 307-344-7381

Colorado State Office, Bureau of Land Management, USDI, 1037 20th Street, Denver, Colorado 80202, 303-294-7100

Idaho State Office, Bureau of Land Management, USDI, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1919

Montana State Office, Bureau of Land Management, USDI, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107, 406-657-6474

New Mexico State Office, Bureau of Land Management, USDI, P.O. Box 1449, Santa Fe, New Mexico 87501, 505-988-6227

Wyoming State Office, Bureau of Land Management, USDI, P.O. Box 1828, Cheyenne, Wyoming 82003, 307-772-2326

Natural Resouces Department, State of New Mexico, Villagra Building, Santa Fe, New Mexico 87503, 505-827-7829

Recreation Commission, State of Wyoming, 604 East 25th Street, Cheyenne, Wyoming 82002, 307-777-7695

FOR FURTHER INFORMATION CONTACT: Thomas P. Lennon, Recreation Management Staff, Forest Service, USDA, Phone No. (202) 447-2311.

SUPPLEMENTARY INFORMATION: The Comprehensive Management Plan for the Continental Divide National Scenic Trail (CDNST) has been completed pursuant to sec. 5 of The National Trails System Act, (16 U.S.C. 124 (note), 1241-1249).

The Forest Service, as lead Agency, has developed the Comprehensive Management Plan in full consultation with the other Federal agencies and States who administer segments of the Continental Divide National Scenic Trail as well as the Advisory Council for the Trail. The Federal agencies and States involved are the National Park Service and the Bureau of Land Management of the U.S. Department of the Interior and the States of New Mexico and Wyoming.

Copies have been submitted to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

The Comprehensive Plan provides for the management and use of the Continental Divide National Scenic Trail and includes the following items:

(1) Specific objectives and practices to be observed in the management of the Trail, including the integration of management of the Trail with Agency land and resource management plans; the identification of all significant natural, historical, and cultural resources to be preserved; details of any anticipated cooperative agreements to be consummated with State and local Government agencies or private

interests; guidelines for establishing carrying capacities; and a schedule for the implementation of the plan;

(2) The adoption of a logo to be used along the Trail and the process to be followed by the appropriate agencies in marking the Trail;

(3) The process for integrating site-specific location and devolopment plans for the Trail into the overall land and resource management plans for the specific Federal area through which the Trail may pass and estimates of anticipated costs; and

(4) Maps showing the general route of the Trail. These maps are for information and planning purposes only, and are not intended to indicate the actual location of any specific segment of the Trail. Notices of the specific location of trail segments will be published in the Federal Register as they are finalized by the various Federal agencies following the procedure provided for in the Comprehensive Plan.

Dated: April 1, 1986.

J. Lamar Beasley,

Deputy Chief.

[FR Doc. 86-7744 Filed 4-7-86; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-508-602]

Oil Country Tubular Goods From Israel; Initiation of Antidumping Duty Investigation

AGENCY: Inernational Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether oil country tubular goods (OCTG) from Israel are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before April 28, 1986, and we will make ours on or before August 19, 1986.

EFFECTIVE DATE: April 8, 1986.

FOR FURTHER INFORMATION CONTACT: Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-5288.

SUPPLEMENTARY INFORMATION:

The Petition

On March 12, 1986, we received a petition in proper form filed by Lone Steel Company and CF&I Steel Corp., in compliance with filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36). The petition alleged that imports of the subject merchandise from Israel are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury to a United States industry. Critical circumstances have also been alleged under section 733(e) of the Act.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and, further, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on OCTG from Israel and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether oil country tubular goods are being, or are likely to be, sold in the United States at less than fair value.

Scope of Investigation

The products covered by this investigation are "oil country tubular goods", which are hollow steel products of circular cross-section intended for use in the drilling for oil or gas. These products include oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or non-API (such as proprietary) specifications as currently provided for in the *Tariff Schedules of the United States, Annotated (TSUSA)* under item numbers:

610.3216, 610.3219, 610.3233, 610.3234, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4210, 610.4220, 610.4230, 610.4240, 610.4310, 610.4320, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, 610.5244

This investigation includes oil country tubular goods that are in both finished and unfinished condition.

In prior cases, the ITC has ruled that drill pipe is a separate "like product" from other types of OCTG. As neither of the petitioners manufacture, produce, or wholesale drill pipe, they would not be "interested parties" with respect to drill pipe, within the meaning of section 771(9)(C) of the Act, if the ITC continued to abide by this ruling. Therefore, they would not have standing to file a petition regarding drill pipe under section 732(b). If, in its preliminary determination, the ITC continues to hold that drill pipe is a separate "like product" from other forms of OCTG, we will not investigate sales of drill pipe in this investigation. If, however, the ITC reverses its position and determines that drill pipe is the same like product as other forms of OCTG, then drill pipe will be included in this investigation.

United States Price and Foreign Market Value

Petitioners were unable to obtain price information for U.S. sales. Consequently, they calculated United States price based on the Customs value for OCTG imported from Israel during the period from July through December 1985. Petitioners made no adjustment for foreign inland freight.

Petitioners were unable to provide information on foreign sales or costs. As provided in 19 CFR 353.36(a)(7), petitioners based foreign market value on Lone Star Steel Company's production costs adjusted for cost differences in certain production inputs in Israel. They included selling, general, and administrative and interest charges based on Lone Star's experience plus eight percent profit.

Based on the comparison of the United States price and the constructed foreign market value, petitioners allege dumping margins ranging from 172.1 to 304.1 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by April 28, 1986, whether there is a reasonable indication that imports of OCTG from Israel are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

April 1, 1986.

[FR Doc. 86-7733 Filed 4-7-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-001]

Leather Wearing Apparel From Mexico; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on leather wearing apparel from Mexico. The review covers the period July 1, 1983 through June 30, 1984 and nine programs.

As a result of the review, the Department has preliminarily determined the total bounty or grant to be zero for three firms and 17.52 percent *ad valorem* for all other firms. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: April 8, 1986.

FOR FURTHER INFORMATION CONTACT: Stephen Nyschot or Bernard Carreau, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On February 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 6024) the final results of its last administrative review of the countervailing duty order on leather wearing apparel from Mexico (46 FR 21357, April 10, 1981). We began the current administrative review under our old regulations on August 7, 1984 and sent a questionnaire to the Mexican government on that day. After the promulgation of our new regulations, a domestic interested party and the Mexican government, on September 27, 1985 and November 15, 1985, respectively, requested an administrative review of the order, in accordance with § 355.10(a) of the Commerce Regulations. We published the new initiation on November 27, 1985 (50 FR 48825). The Department has now conducted that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Mexican leather wearing apparel. Such merchandise is currently classifible under items 791.7620, 791.7640 and 791.7660 of the Tariff Schedules of the United States Annotated. These products include leather coats and jackets for men, boys, women, girls and infants, and other leather apparel products including leather vests, pants and shorts. Also included are outer leather shells and parts and pieces of leather wearing apparel.

The review covers the period July 1, 1983 through June 30, 1984, and nine programs: (1) CEDI; (2) FOMEX; (3) CEPROFI; (4) FOGAIN; (5) FONEI; (6) state tax incentives; (7) import duty reductions and exemptions; (8) NDP preferential discounts; and (9) Article 94 of the Banking Law.

Analysis of Programs

We found the Mexican government's response to our questionnaire and supplemental requests for information to be inadequate. Although the response covered approximately 84 percent of imports of Mexican leather wearing apparel into the United States during the period of review (based on U.S. Census figures), because of the zero rate certification procedure in this case (described below), any weighted-average countervailing duty rate for firms not certified to have a zero rate would have been based on imports of only one firm which accounted for less than 1.5 percent of total imports and approximately 5 percent of the imports subject to the weighted-average rate.

Further, the response covered only six exporters out of a universe which we believe to number well over 50 firms. The large number of exporters not covered by the response may have received a large amount of potentially unreported benefits. In addition, the response indicated that only one of the six received any benefits, but of the five remaining firms, only three provided the required certifications.

There were further deficiencies in the response. We did not receive information requested concerning FOMEX pre-export loans granted to the one firm shown as receiving benefits, so we do not have a basis on which to calculate accurately the aggregate bounty or grant for that firm. We also asked for official Mexican export statistics, showing exports of each product by firm, to assist us in determining the universe exporters. The Mexican government did not supply any information or address any of the deficiencies we found, but urged us to proceed on the basis of the information already submitted.

Because the questionnaire response is inadequate, we have proceeded using the best information otherwise available. As best information, we are using positive rates found for each program in a final determination in an investigation or final results of review for any Mexican product during a contemporaneous period. If there is more than one rate for a contemporaneous period, we are using the highest rate. If there is no positive rate for a contemporaneous period, we are using the rate for the closest period available with a positive rate. On this basis, the rate for each program is:

	Percent ad valorem
(1) Tax Rebate Certificates ("CEDI")	0.00
(2)(a) Fund for the Promotion of Mexican Manufactured Products ("FOMEX") pre-export loans	1.36
(2)(b) FOMEX export loans	3.70
(3) Certificates for Fiscal Promotion ("CEPROFI")	4.25
(4) Guarantee and Development Fund for Medium and Small Industries ("FOGAIN")	0.70
(5) Fund for Industrial Development ("FONEI")	7.02
(6) State tax incentives	0.04
(7) Import duty reductions and exemptions	0.07
(8) National Development Plan ("NDP") discounts	0.25
(9) Article 94 of the General Law of Credit Institutions and Auxiliary Organizations	0.13

Firms Not Receiving Any Benefits

In this case, the Department established a certification process allowing a zero rate of assessment and of cash deposit of estimated countervailing duties for those firms certified and verified as having neither applied for nor received countervailable benefits. During this review, we received certificates from three firms stating that they neither applied for nor received benefits under the nine programs during the period of review and would not do so in the future. We also received a certificate from the Mexican government stating that those three firms did not receive benefits during the period of review. Those firms are:

(1) Elegance de Baja California, S.A.
(2) Karen Internacional, S.A. de C.V.; and,
(3) Manufacturas Industriales de Nogales, S.A.

Preliminary Results of Review

As a result of our review, we preliminarily determine the bounty or grant to be zero for the three certified firms listed above and 17.52 percent *ad valorem* for all other firms.

The Department intends to instruct the Customs Service to assess no countervailing duties on shipments of this merchandise from the three certified firms and countervailing duties of 17.52 percent of the f.o.b. invoice price on shipments from all other firms exported on or after July 1, 1983 and on or before June 30, 1984.

The Department intends to instruct the Customs Service not to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments of this merchandise from the three certified firms and to collect 17.52 percent of the entered value of shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

The Department received requests, pursuant to § 35.42 of the Commerce Regulations, that the countervailing duty order be revoked with respect to Elegance de Baja California, S.A. Karen Internacional, S.A., and Manufacturas Industriales de Nogales, S.A. These requests, based on non-use of benefits, were also made in the previous administrative review. In the final results of that review, we decided not to revoke the countervailing duty order. We note that our decision not to revoke in the previous review is now before the Court of International Trade.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 55 days after the date of publication or the last workday preceding. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10; 50 FR 32556, August 13, 1985).

Dated: April 2, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary Import Administration.

[FR Doc. 86-7773 Filed 4-7-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-508-601]

Initiation of Countervailing Duty Investigation; Oil Country Tubular Goods from Israel

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Israel of oil country tubular goods (OCTG), as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of the subject merchandise from Israel materially injure, or threaten material injury to, a U.S. industry. The petition also alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Tariff Act of 1930, as amended (the Act). If this investigation proceeds normally, the ITC will make its preliminary determination on or before April 25, 1986, and we will make ours on or before June 5, 1986.

EFFECTIVE DATE: April 8, 1986.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-0161.

SUPPLEMENTARY INFORMATION:

The Petition

On March 12, 1986, we received a petition in proper form from Lone Star Steel Company and CF&I Steel Corporation with respect to OCTG from Israel. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Israel of OCTG receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act). In addition, the petition alleges that such imports materially injure, or threaten material injury to, a U.S. industry producing a like product. The petition also alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Act.

Since Israel is a "country under the agreement" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Israel materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on OCTG and have found that it meets the requirements of section 702(b) of the Act. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Israel of OCTG as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the Act. If our investigation proceeds normally, we will make our preliminary determination on or before June 5, 1986.

Scope of Investigation

The products covered by this investigation are "oil country tubular goods," which are hollow steel products of circular cross-section intended for use in drilling for oil or gas. These products include oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or non-API (such as proprietary) specification as currently provided for in the *Tariff Schedules of the United States, Annotated (TSUSA)* under item numbers:

610.3216, 610.3219, 610.3233, 610.3234, 610.3242, 610.3343, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4210, 610.4220, 610.4225, 610.4230, 610.4235, 610.4240, 610.4310, 610.4320, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, 610.5244

This investigation includes OCTG in both finished and unfinished condition.

In prior cases, the ITC has ruled that drill pipe is a separate "like product" from other types of OCTG. As neither of the petitioners manufacture, produce, or wholesale drill pipe, they would not be "interested parties" with respect to drill pipe, within the meaning of section 771(9)(C) of the Act, if the ITC continued to abide by this ruling. Therefore, they would not have standing to file a petition regarding drill pipe under section 732(b). If, in its preliminary determination, the ITC continues to hold that drill pipe is a separate "like product" from other forms of OCTG, we will not investigate sales of drill pipe in this investigation. If, however, the ITC reverses its position and determines that drill pipe is the same like product as other forms of OCTG, then drill pipe will be included in this investigation.

Allegations of Subsidies

The petition lists a number of practices by the government of Israel which allegedly confer subsidies on manufacturers, producers, or exporters in Israel of OCTG. We are initiating an investigation on the following alleged programs:

- *Encouragement of Capital Investments Law 5719–1959 (ECIL)*
  - —Investment Grants
  - —Loans
  - —Property Tax Exemptions on Buildings and Equipment
  - —Preferential Accelerated Depreciation
  - —Other Tax Benefits
  - —Interest Subsidy Payments
- Bank of Israel Export Loans
  - —Export Production Fund
  - —Export Shipments Fund
  - —Imports-for-Exports Fund
  - —Special Export Financing Loans
- Encouragement of Industry (Taxes) Law 5729–1969
  - —Preferential Accelerated Depreciation
  - —Reduction in Income Tax Rates
  - —Tax Deductible Inventory Adjustments
- Exchange Rate Risk Insurance Scheme
- Encouragement of Industrial Research and Development Law
- Other Benefits referenced in the ECIL
  - —Low Cost Development Loans
  - —Labor Training Supported by the Ministry of Labor
  - —Working Capital to Finance Export Operations

Although the following programs were not alleged by petitioners, we are including them in this investigation to determine whether the government of Israel provides benefits to manufacturers, producers, or exporters in Israel of OCTG under the following ECIL programs:

- Drawback Grants
- Partial Non-payment of Employers' Tax

Allegation of Critical Circumstances

Petitioners allege that critical circumstances exist with respect to imports of OCTG from Israel. They claim that the products concerned benefit from export subsidies that are inconsistent with the GATT Subsidies Code, and that imports have been massive over a relatively short period. We will determine whether critical circumstances exist with respect to these imports in our preliminary and final determinations.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by April 25, 1986, whether there is a reasonable indication that imports of OCTG from Israel materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

April 1, 1986.

[FR Doc. 86-7734 Filed 4-7-86; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

Department of Agriculture

SN 6-462,491 (4,563,348)

Sec-Butyl (Z)-7-Tetradecenoate and its Use as a Sex Attractant for the Grapeleaf Skeletonizer

SN 6-625,265 (4,565,695)

Synthetic Pheromone 10-Methyl-2-Tridecanone and its Use in Controlling the Southern Corn Rootworm and Related Diabroticites

SN 6-764,040

Method and Instrument to Estimate the Weights of Green Trees and Logs

SN 6-809,803

Modified Plant Fiber Additive for Food Formulations

Department of Commerce

SN 6-801,972

Amplification by a Phase Locked Array of Josephson Junctions

SN 6-829,052

Robot End Effector

Department of Health and Human Services

SN 6-643,729

Method of Continuous Production of Retroviruses (HTLV-III) from Patients with AIDS and Pre-AIDS Using Permissive Cells

SN 6-808,729

Process for Manufacture of L-Asparaginase From Erwinia Carotovora

Department of the Air Force

SN 6–393,236 (4,559,613)
Digital Frequency Synthesizer Circuit
SN 6–399,567 (4,558,451)
Tubular Singlet Delta Oxygen Generator
SN 6–400,179 (4,560,779)
Preparation and Polymerization of Oxether-1
SN 6–442,493 (4,561,018)
Apparatus for Continuously Inspecting the Physical Characteristics of Particulate Matter
SN 6–482,127 (4,559,626)
Portable Minicomputer for Testing Memories
SN 6–524,627 (4,560,120)
Spin Stabilized Impulsively Controlled Missile (SSICM)
SN 6–538,879 (4,559,445)
Wide Angle Optical Transmitter/Receiver
SN 6–555,803
High Efficiency Fiber-shaped Detector
SN 6–566,354 (4,559,404)
Preparation of Ethynyl Substituted 2-Phenylbenzothiazoles
SN 6–688,853 (4,558,597)
Surface Tension Screen Failure Detection Method and Apparatus
SN 6–766,723
Conducting Poly (p-Xylylidenes)
SN 6–771,529
Dual Frequency Microstrip Antenna
SN 6–785,691
Micromirror Spatial Light Modulator
SN 6–789,864
Pulsed Integral Rocket
SN 6–790,714
Non-Perturbing Beam Deflection System and Method for High Repetition Rate Temperature Measurement of Combustion Flames
SN 6–804,034
Direct Air Cooling System for Airborne Electronics
SN 6–804,193
Dual Mode Heat Exchanger
SN 6–804,194
Quadrature Switch Apparatus for Multi Mode Phase Shift Drivers
SN 6–804,201
Orientation of Circular Connectors Using Vision Processing
SN 6–805,008
Frameless Transparencies for Aircraft Cockpit Enclosures

Department of the Army

SN 6–819,652
Method of Making a Resonator Having a Desired Frequency from a Quartz Crystal Resonator Plate

Department of the Interior

SN 6–652,391 (4,562,049)
Recovery of Titanium from Perovskite by Acid Sulfation

National Security Agency

SN 6–468,423 (4,567,572)
Fast Parallel Sorting Processor

[FR Doc. 86–7724 Filed 4–7–86; 8:45 am]

BILLING CODE 3510-04-M

Intent to Grant Exclusive Patent License; Collaborative Research, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Collaborative Research, Inc., having a place of business at Lexington, Massachusetts an exclusive right in the United States and selected foreign countries to manufacture, use, and sell products embodied in the invention entitled "Reconstituted Basement Membrane Complex with Biological Activity," U.S Patent Application S.N. 6–771,409. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to George Kudravetz, Senior Licensing Specialist, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,
Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 86–7753 Filed 4–7–86; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Restraint Limits for Certain Cotton, Wool, and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia Effective on January 1, 1986; Correction

April 3, 1986.

On December 27, 1985 a notice was published in the **Federal Register** (50 FR 52990) which established the 1986 import restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Malaysia. In the directive to the Commissioner of Customs which followed that notice the overall limit for Categories 645/646 and 647/648 should have been 180,200 dozen and 848,000 dozen, respectively.

Leonard A. Mobley,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–7728 Filed 4–7–86; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Contract Market Proposals; Commodity Exchange, Inc.; The Stock Index

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Commodity Exchange, Inc. ("COMEX") has applied for designation as a contract market in the Stock Index. The Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission"), acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before June 9, 1986.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the COMEX Stock Index futures contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254–7227.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed COMEX Stock Index futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by COMEX in support of its application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by COMEX in support of its application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by June 9, 1986.

Issued in Washington, D.C., on April 3, 1986.

Paula A Tosini,

Director, Division of Economic Analysis.

[FR Doc. 86–7766 Filed 4–7–86; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

Board of Visitors to the United States Naval Academy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Board of Visitors to the United States Naval Academy will meet 23 April 1986, at the U.S. Naval Academy, Annapolis, Maryland. The session, which is open to the public, will commence at 8:30 a.m. and terminate at 11:50 a.m., 23 April 1986, in Room 301, Rickover Hall.

The purpose of the meeting is to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic method of the Naval Academy.

For further information concerning this meeting contact: Captain John W. Renard, USN, Retired, Secretary to the Board of Visitors, Dean of Admissions, United States Naval Academy, Annapolis, Maryland 21402–5017, (301) 267–4361.

Dated: April 3, 1986.

William F. Roos, Jr.

Lieutenant, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 86–7815 Filed 4–7–86; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Training Program for Special Programs Staff and Leadership Personnel

AGENCY: Department of Education.

ACTION: Notice of proposed training priorities for fiscal year 1986.

SUMMARY: The Secretary of Education proposes priorities for training activities to be funded under the Training Program for Special Programs Staff and Leadership Personnel. The training priorities will assist applicants for training grants in developing proposals which address the most significant training needs of the Special Programs staff and leadership personnel. Training grant awards are made in order to improve the opeation of the Special Programs projects (Talent Search, Upward Bound, Educational Opportunity Centers, and Special Services for Disadvantaged Students) and are limited to staff of these projects.

DATE: Interested persons are invited to submit comments or suggestions on the proposed training priorities on or before May 8, 1986.

ADDRESS: All written comments and suggestions should be sent to Jowava M. Leggett, Chief, Special Services Branch, Division of Student Services, P.O. Box 23772, L'Enfant Plaza Station, Washington DC 20026–3772.

FOR FURTHER INFORMATION CONTACT: Jowava M. Leggett at the address provided above or call (202) 245–2165.

Proposed Training Priorities for Fiscal Year 1986

The proposed priorities for FY 1986 are based on comments received from persons having special knowledge about the training needs of Special Programs personnel, a recent Inspector General's Report entitled, "Results of OIG's Limited Review of the Special Programs for Disadvantaged Students," previous evaluation reports of the Special Programs, and Department of Education program staff concerns. The Secretary proposes to give funding priority in FY 1986 to the following activities:

(1) Workshops which provide instruction, including written materials, to Special Programs project directors and project staff with regard to complying with Special Programs regulations (34 CFR Parts 643, 644, 645, 646), and the Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, and 77, particularly in documenting eligibility of project participants, documenting the services provided to project participants, avoiding duplication of services, and accounting for project expenditures. It is the Department's goal under this priority to train two staff members from each Special Programs project: The project director and one other professional staff member most involved in the overall management of the project.

(2) Workshops for directors of Upward Bound projects, which provide instruction, including written materials, with regard to designing and carrying out exemplary summer components under Upward Bound.

(3) Workshops for staff of Special Services for Disadvantaged Students and Upward Bound projects, which provide instruction, including written materials, for improving, documenting, and evaluating retention of participants in those projects.

All applications addressing the above priorities must include procedures for working with the Department of Education to ensure that the content of training materials produced for the workshops correctly reflects Special Programs legislative and regulatory mandates (sections 417 and 417F of the Higher Education Act of 1965, as amended (20 U.S.C. 1070d and 1070d–1d), and the regulations referred to in priority (1) above).

Establishing priorities for the Training Program will enable the Secretary to award grants to applicants that address the most significant training needs of the Special Programs staff and leadership personnel. The Secretary proposes to award eight and one-third points to each application that meets one of the above priorities.

The Secretary will also consider comments from the public on other training topics which are germane to the Special Programs for Students from Disadvantaged Backgrounds.

This Notice does not solicit application proposals or concept papers. The final priorities will be selected on the basis of public comment, the availability of funds, and any other relevant Departmental considerations. Final priorities will be announced in an Application Notice in the **Federal Register**. That Notice will solicit grant applications and establish the closing date.

(20 U.S.C. 1070d and 1070d–1d)

(Catalog of Federal Domestic Assistance Number: 84.103 Training Program for Special Programs Staff and Leadership Personnel)

Dated: April 3, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86-7796 Filed 4-7-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CI86-263-000, et al]

The Estate of Orville Eberly, Deceased, et al.; Application for Abandonment of Service

April 2, 1986.

Take notice that the Applicants listed herein have filed applications pursuant to section 7 of the Natural Gas Act for authorization to abandon service as described herein.

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order Nos. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register,** file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party in the proceedings herein must file petitions to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI86-263-000, B, Mar. 13, 1986	The Estate of Orville Eberly, Deceased, *et al.*[1]	Arkla Energy Resources, a division of Arkla, Inc., Red Oak Field, Le Flore County, Oklahoma.	([2])	
CI86-272-000, B, Mar. 17, 1986	The Estate of Orville Eberly, Deceased, *et al.*[1]	Arkla Energy Resources, a division of Arkla, Inc., South East Reams Field, Pittsburg County, Oklahoma.	([3])	

[1] Applicants are: The Estate of Orvilie Eberly, Deceased, Robert E. Eberly, Sr., James C. Meade, K. T. Meade, Jr., and Devon Energy Corporation, which operate under small producer certificates in Docket Nos. CS71-1092, CS76-908, CS76-897, CS76-896, and CS76-842, respectively.

[2] Applicants propose to abandon for a limited period of time a sale of gas, in excess of Arkla's requirements. Estimated volumes are 179,029 Mcf per month from the Nos. 1-9 Reed, 1-17 Stout and No. 1-8 Thompson wells. Applicants state that the wells qualify as NGPA section 109 wells. By letter agreement dated February 12, 1986, Arkla and Applicants agreed to release excess NGPA section 102(c), 103(c), 104 and 106(a) gas for a primary term from March 1, 1986, through December 31, 1986, and continuing on a month to month basis thereafter. Under the letter agreement Arkla is entitled to credit any released gas nominated for purchase or sold under the release against any obligation it has to take gas, or to pay for gas not taken. In addition, Applicants released Arkla from any prior liability it may have incurred for failure to take gas, or to pay for gas not taken. The gas is proposed to be sold to Arkla Released Gas Company, a division of Arkla Energy Marketing Company for resale on the spot market. Applicants state they will receive 97% of the weighted average resale price received by Arkla Released Gas Company.

[3] Applicants propose to abandon for a limited period of time a sale of gas, in excess of Arkla's requirements. Estimated volumes are 19,634 Mcf per month from the Nos. 1-6 Helms, 1-32 Lake, 1-5 Lake, and 1-6 Lalman wells. Applicants state that the wells qualify as NGPA section 109 wells. By letter agreement dated February 12, 1986, Arkla and Applicants agreed to release excess NGPA section 102(c), 103(c), 104 and 106(a) gas for a primary term from March 1, 1986, through December 31, 1986, and continuing on a month to month basis thereafter. Under the letter of agreement Arkla is entitled to credit any released gas nominated for purchase or sold under the release against any obligation it has to take gas, or to pay for gas not taken. In addtion, Applicants released Arkla from any prior liability it may have incurred for failure to take gas, or to pay for gas not taken. The gas is proposed to be sold to Arkla Released Gas Company, a division of Arkla Energy Marketing Company for resale on the spot market. Applicants state they will receive 97% of the weighted average resale price received by Arkla Released Gas Company.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 86-7782 Filed 4-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-57-004]

Natural Gas Pipeline Company of America; Tariff Filing

April 2, 1986.

Take notice that on March 18, 1986, Natural Gas Pipeline Company of America (Natural) tendered for filing Second Revised Sheet No. 5E, First Revised Sheet No. 88, First Revised Sheet No. 89, and First Revised Sheet No. 90 to be part of its FERC Gas Tariff, Third Revised Volume No. 1, and First Revised Sheet No. 1988 to be part of its FERC Gas Tariff, Second Revised Volume No. 2.

Natural states that the purpose of these sheets is to (1) reflect the current rate levels to be effective under Rate Schedule IOS, (2) delete any reference to Rate Schedule X-IOS, (3) revise the term of Rate Schedule IOS, and (4) cancel Rate Schedule X-IOS, in compliance with the Commission order issued March 13, 1986, in Docket No. CP85-57-003.[1]

Natural requests waiver of the Commission's regulations to the extent necessary to permit tariff sheets as submitted by Natural to become effective on March 13, 1986, the date certificate authorization was granted by the Commission in Docket No. CP85-57-003.

Natural further states that it will be making monthly filings to adjust the applicable rates under Rate Schedule IOS. Natural requests a waiver from § 381.204 of the Commission's regulations to the extent necessary to make the payment of such fees inapplicable to each monthly filing.

[1] 34 FERC ¶ 61.335 (1986).

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 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1985)). All such motions or protests should be filed on or before April 9, 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-7780 Filed 4-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-57-005]

Natural Gas Pipeline Co.; of America; Tariff Filing

April 2, 1986.

Take notice that on March 27, 1986, Natural Gas Pipeline Company of America (Natural) tendered for filing Third Revised Sheet No. 5E to be a part of its FERC Gas Tariff, Third Revised Volume No. 1.

Natural states that its sheet sets out the threshold percentages and discount rates applicable to Rate Schedule IOS for the month of April, 1986, in accordance with the provisions of Rate Schedule IOS which was authorized by FERC order issued March 13, 1986 at Docket No. CP85-57-003.

Natural requests waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet to become effective April 1, 1986. Natural has mailed copies of this filing to its jurisdictional customers and to interested state regulatory agencies.

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 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211 (1985)). All such motions or protests should be filed on or before April 9, 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-7781 Filed 4-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-276-000 and CI86-283-000]

Phillips Petroleum Co.; Applications for Abandonment and Blanket Certificate of Public Convenience and Necessity

April 2, 1986.

Take notice that on March 20, 1986, as supplemented on March 27, 1986, Phillips Petroleum Company (Applicant), 336 Home Savings and Loan Building, Bartlesville, Oklahoma 74004, pursuant to § 2.77 and Parts 154 and 157 of the Commission's Regulations, filed applications in Docket No. CI86-283-000 for permanent abandonment authorization for two sales made to United Gas Pipe Line Company (United), and in Docket No. CI86-276-000 for a blanket certificate of public convenience and necessity to make sales for resale of this gas with pregranted abandonment. Applicant makes sales to United from the Valentine Field, Lafourche Parish, Louisiana, under a contract dated June 9, 1975, certificated in Docket Nos. G-19284 and CI84-526-000 pursuant to Applicant's FERC Gas Rate Schedule Nos. 10 [1] and 658, respectively. Applicant states that the subject contract expired on August 1, 1985. Applicant states that it has received from United, by letter dated January 31, 1986, allegations of a continuing situation of *force majeure*, commercial impracticability and impossibility on its pipeline system due to severely depressed markets and continued reduction in purchases. Applicant further states that such letter asserts United's intent to permanently cease taking all gas not subject to the Natural Gas Act (NGA) and to temporarily cease taking, through the Fall of 1986, all gas subject to the NGA. The subject field, according to Applicant, is primarily an oil field producing casinghead gas. Applicant states that the suspension of purchases by United will require the utilization of the gas in gas lift operations, which is now proving to be uneconomic. Venting or flaring of the gas not taken will be necessary, according to Applicant, to maintain the oil production or the oil production will have to be shut-in until such time as gas sales can be recommended. Applicant states its belief that its situation warrants expeditious treatment pursuant to Section 2.77 of the Commission's Regulations due to substantially reduced takes without payment. Applicant states that the subject gas qualifies under section 106(a) of the Natural Gas Policy Act of 1978 (NGPA) and that the subject deliverability is approximately 3,000 Mcf/d.

Applicant also requests a blanket certificate of public convenience and necessity authorizing sales of gas from the Valentine Field with blanket pre-granted abandonment. Applicant states that the certificate must be of a blanket nature with pre-granted abandonment in order for it to respond expeditiously to changes in natural gas markets. Applicant states that the authority requested herein would permit below market priced gas to be available to interstate service immediately and would continue until such time as a long-term disposition of the subject gas could be arranged. Applicant further states that it would accept a time limit on the requested blanket certificate that would permit time to negotiate a long-term disposition as well as receive any required regulatory approval for such arrangements. Applicant suggests a period of thrity-six months if a time limit must be imposed. In further support of its request for a blanket certificate, Applicant states that the price to be charged for any subsequent sales would be the interstate rollover maximum lawful price plus allowance for any costs borne by it and permitted by regulation. Applicant further states that it will file any rate schedules that may be required by an order granting the subject requests; however, Applicant suggests a reporting requirement in lieu thereof.

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order Nos. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should, on or before 15 days from the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC, 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to the proceedings herein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-7783 Filed 4-7-86; 8:45 am]

BILLING CODE 6717-01-M

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[1] Designated Phillips Oil Company FERC Gas Rate Schedule No. 10. Effective August 1, 1985, Phillips Oil Company was merged into Phillips Petroleum Company, which filed a successor-in-interest filing on January 2, 1986, in Docket No. G-3895-003, *et al.* Phillips Oil Company's Rate Schedule No. 10 has not yet been given a Phillips Petroleum Company Rate Schedule designation.

[Docket No. SA86-13-000]

South Carolina Pipeline Corp.; Petition for Exemption and Interim Relief

Issued: April 2, 1986.

On February 26, 1986, South Carolina Pipeline Corporation (Carolina) filed pursuant to section 206(d) of the Natural Gas Policy Act of 1978 (NGPA)[1] and § 282.206(b) of the Commission's regulations [2] a petition for exemption from the Commission's incremental pricing regulations issued under section 201 of the NGPA.[3] Carolina requests interim and permanent relief from incremental pricing surcharges applicable to sales of its gas to nonexempt industrial users based on applicable alternative fuel price ceilings. Carolina states this relief is needed to enable it to immediately reduce or eliminate its incremental pricing surcharges so that prices of its gas to nonexempt industrial users will be market-competitive.

In support of its request, Carolina asserts that the incremental pricing surcharges levied on industrial end users of its gas are causing their gas costs to rise above the price of available alternative fuels; that this has already caused Carolina significant nonexempt industrial load losses; and that Carolina is in danger of considerably more of such load losses as a result of the recent volatility in world oil markets. Carolina further states that its industrial load losses will cause high priority end users on its system to absorb fixed costs which would otherwise be borne by lost industrial sales and that such load losses will also result in irrevocable revenue losses to Carolina. Interim relief was granted Carolina by order of the Director of the Office of Pipeline and Producer Regulation issued March 28, 1986, in this docket.

The procedures applicable to the conduct of this proceeding are set forth in Subpart K of the Commission's rules of practice and procedure.[4] Any person desiring to participate in this proceeding must file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene in accordance with Subpart K within 15 days after publication of this notice in the **Federal Register.**

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-7784 Filed 4-7-86; 8:45 am]

BILLING CODE 6717-01-M

[1] 15 U.S.C. 3346(d) (1982).

[2] 18 CFR 282.206(b) (1985).

[3] 15 U.S.C. 3341 (1982).

[4] 18 CFR 385.1101-385.1117 (1985).

[Docket No. CI85-675-001]

Texas Gas Exploration Corp.; Petition of Texas Gas Exploration Corporation for Extension of Certificate of Public Convenience and Necessity and Limited-Term Abandonment Authority and for Expedited Consideration

April 3, 1986.

Take notice that on March 31, 1986, Texas Gas Exploration Corporation (TGEC), pursuant to sections 4 and 7 of the Natural Gas Act, Part 157 and § 2.77 of the regulations of the Commission, and Rule 207 of the Commission's Rules of Practice and Procedure, filed a petition for an extension of the term of the certificate of public convenience and necessity and limited-term abandonment authority issued in the above-captioned proceeding to March 31, 1987, as more fully set forth in the petition which is on file with the Commission and open for public inspection.

TGEC states that absent the extension of this authority, referred to as limited-term abandonments (LTAs), significant quantities of NGPA section 102(d) natural gas will be shut-in and subjected to substantially reduced takes by TGEC's interstate pipeline purchasers without payment to TGEC, resulting in irreparable harm to TGEC and the public. TGEC requests expedited consideration of its petition pursuant to § 2.77 of the Commission's regulations.

Any person desiring to be heard or to make any protests with reference to said Petition should on or before April 21, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedures herein provided for, unless othewise advised, it will be unnecessary for Petitioner to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-7785 Filed 4-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER896-368-000 et al.]

Electric Rate and Corporate Regulation Filings; El Paso Electric Co. et al.

March 31, 1986.

Take notice that the following filings have been made with the Commission:

1. El Paso Electric Company

[Docket No. ER86-368-000]

Take notice that on March 26, 1986, El Paso Electric Company ("EPE" or "the Company") tendered for filing rate schedules increasing its rates for contract demand service to Imperial Irrigation District ("Imperial"), and Texas-New Mexico Power Company ("TNP") and for all requirements service to Rio Grande Electric Cooperative Inc. ("Rio Grande") at Dell City and Van Horn, Texas. The increase is in two steps. The first step would result in an increase of $22,041,968 and the second in an additional increase of $10,207,797. The combined increase amounts to $32,249,765, 105.81% above the revenues under existing rates. These increases, shown below by customer for each step, are stated on the basis of expected revenues in a 1986 test year.

	Step 1	Step 2	Total
Imperial	$17,122,154	$4,438,220	$21,560,374
TNP	3,892,806	5,429,640	9,322,446
Rio Grande:			
Van Horn	303,710	74,639	378,349
Dell City	723,298	265,298	988,596
Totals	22,041,968	10,207,797	32,249,765

The primary purpose of the increase is to enable the Company to include in rate base as plant in service its investment in the Palo Verde No. 1 nuclear generating unit. The unit entered commercial service on December 31, 1985. the Company currently has only a portion of its Construction Work in Progress ("CWIP") in the unit in rate base supporting the present rates for service to TNP and Rio Grande and none of that CWIP in the rate base supporting the rates presently being charged to Imperial. The Company has stopped accruing Allowance for Funds Used During Construction ("AFUDC") on Palo Verde No. 1 and needs prompt rate relief to replace that AFUDC with a cash return.

The Company has set the first step of the increase at a level designed to insure a minimum suspension. The first step is designed to produce a return on common equity of 13.75%, two percentage points below the 15.75% supported by the Company's cost of capital witness Mr.

Robert S. Jackson as the Company's cost of common equity and is also based on inclusion of 10 months of Palo Verde No. 1 in rate base. The second step is based on a 15.75% return on common equity and 12 months of Palo Verde No. 1 in rate base. The Company asks that the first step be allowed to become effective 60 days from today on May 26, 1986, and the second 61 days from today on May 27, 1986. The Company requests that any suspension of either step be limited to one day. If both steps are suspended for the same period, the Company asks that the first step be treated as withdrawn.

The Company has served the filing on the affected customers and state commissions.

Comment date: April 11, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. New York State Electric & Gas Corporation

[Docket No. ER86-370-000]

Take notice that New York State Electric & Gas Corporation (NYSEG), on March 27, 1986, tendered for filing proposed changes in the following Rate Schedules, under which the Company supplies firm transmission wheeling service to the Power Authority of the State of New York (NYPA):

Rate Schedule FPC No. 36
Rate Schedule FPC No. 67
Rate Schedule FERC No. 70
Rate Schedule FERC No. 80
Rate Schedule FERC No. 84

Currently, NYSEG provides full requirements transmission service for NYPA for the benefit of NYPA's in-state municipal and cooperative customers pursuant to Rate Schedules 67, 70 and 80, as supplemented, at a rate of $2.85 per month per kilowatt of billing demand, subject to refund. The rate filed for by NYSEG is $3.43 per month for that same service.

NYSEG also provides contract requirement transmission service for NYPA for the benefit of Allegheny Electric Cooperative, Inc. and the City of Cleveland pursuant to Rate Schedules 36 and 84, as supplemented, respectively. The filing by NYSEG would increase the rate for that service from $2.06 per month per kilowatt of contract demand to $3.60 per month per kilowatt of contract demand.

The total estimated annual revenue increase under the revised wheeling rates for NYPA for the benefit of both its in-state and out-of-state customers is $1,347,237, based upon the twelve-month period ending April 30, 1987. The increased rates are necessary to cover all expenses associated with this firm transportation service and to provide NYSEG with an adequate rate of return.

Copies of the filing were served upon PASNY, the Public Service Commission of the State of New York, Allegheny Electric Cooperative, Inc., the City of Cleveland, and the Municipal Electric Uitlities Association.

Comment date: April 11, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Virginia Electric and Power Company

[Docket No. ER86-372-000]

Take notice that Virginia Electric and Power Company (the Company) on March 27, 1986, tendered for filing proposed changes in its electric resale rate schedules presently on file with the Commission which are applicable to Rural Electric Cooperatives, Wholesale Municipalities, and Old Dominion Electric Cooperative. Based on the test period 12 months ending December 31, 1986, conditions, the Company estimates that the proposed changes in resale rates will increase annual revenues from Cooperative Customers other than Old Dominion Electric Cooperative, by $2.2 million, increase annual revneues from Old Dominion Electric Cooperative by $11.5 million, and from Municipal Customers by $2.7 million.

The Company states that the increase in wholesale rates is needed to compensate for the costs associated with the Bath County Pumped Storage Project, to cover the increased costs of doing business, and to achieve a reasonable overall rate of return of 11.11 percent.

Copies of the proposed rates were served upon all of the Company's jurisdictional Wholesale Customers, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: April 11, 1986, in accordance with Standard Paragraph E at the end of this notice.

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 Procedure (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 insepction.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 86-7777 Filed 4-7-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. ER86-381-000 et al.]

Electric Rate and Corporate Regulation Filings; Ohio Power Co. et al.

Take notice that the following filings have been made with the Commission:

1. Ohio Power Company

[Docket No. ER86-381-000]

April 2, 1986.

Take notice that the American Electric Power Service Corporation (AEP) on March 28, 1986, tendered for filing on behalf of its affiliate Ohio Power Company (Ohio Power) Supplemental Schedule IV, dated as of January 1, 1986, to Service Schedule A—Transmission Service under Agreement, dated as of April 1, 1974 (1974 Agreement), between American Municipal Power Ohio, Inc. (AMP-Ohio) and Ohio Power, Ohio Power Rate Schedule FERC No. 74.

Supplemental Schedule IV defines an Interconnection Point and a Delivery Point that is required by Service Schedule A so that AMP-Ohio can avail itself of the Transmission Service provided for in Service Schedule A. This schedule has been proposed by AMP-Ohio to become effective January 1, 1986, therefore waiver of the Commission's notice requirements is requested.

Copies of this filing were served upon the Public Utilities Commission of Ohio and AMP-Ohio.

Comment date: April 15, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Central Hudson Gas & Electric Corporation

[Docket No. ER 86-341-000]

April 2, 1986.

Take notice that Central Hudson Gas & Electric Corporation ("Central Hudson"), on March 28, 1986, tendered for filing a supplement to its Rate Schedule submitted for filing on February 28, 1986. This Rate Schedule was in the form of a Letter Agreement between Central Hudson and the County of Orange, New York ("County"), relating to the distribution by the County of "Preference Power" purchased from the New York Power Authority ("NYPA"). The Rate Schedule has been supplemented by a consent executed by the County to the Rate Schedule becoming effective on March 21, 1986, prior to the expiration of the 60 day notice period under 18 CFR 35.3(a). Central Hudson, accordingly, requests that such 60 day notice requirement be waived and that the Rate Schedule become effective on March 21, 1986. Central Hudson also requests waiver of certain filing requirements with respect to the Rate Schedule.

Copies of the filing were mailed to the County and the Public Service Commission of the State of New York.

Comment date: April 15, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Monongahela Power Company

[Docket No. ER86-379-000]

April 2, 1986

Take notice that Monongahela Power Company, on March 28, 1986, tendered for filing proposed changes in its FERC Electric Tariff, Original Volume No. 1. The proposed changes would increase revenues from jurisdictional sales and service by $1,435,664.11, based on the twelve month period ending December 31, 1986. The proposed effective date for the increased rates is June 1, 1986.

The changes proposed are for the purpose of recovering increased costs incurred by the Company.

Copies of the filing were served upon the jurisdictional customers, and the West Virginia Public Service Commission.

Comment date: April 15, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power Corporation

[Docket No. ER 86-380-000]

April 2, 1986.

Take notice that on March 28, 1986, Florida Power Corporation (Florida Power) tendered for filing revisions to the capacity charges, reservation fees and energy adder for various interchange services provided by Florida Power pursuant to interchange contracts with Florida Power & Light Company, Fort Pierce Utilities Authority, Jacksonville Electric Authority, Kissimmee Utility Authority, Orlando Utilities Commission, Sebring Utilities Commission, Seminole Electric Cooperative, Inc., Tampa Electric Company, and the Cities of Gainesville, Homestead, Lakeland, Lake Worth, New Smyrna Beach, St. Cloud, Starke, Tallahassee and Vero Beach, Florida. The interchange services which are affected by these revisions are Service Schedule B—Short Term Firm, current negotiated commitments under Service Schedule D—Long Term Firm, Service Schedule F—Assured Capacity and Energy, Service Schedule G—Backup Service, Service Schedule H—Reserve Service, and the Contract for Assured Capacity and Energy with Florida Power & Light Company. Florida Power states that the revised capacity charges, reservation fees, and energy adder were developed using the same methodology as used in the original filings.

Florida Power requests that the revised capacity charges, reservation fees and energy adder be made effective on May 1, 1986, and therefore requests waiver of the sixty day notice requirement. According to Florida Power, the filing has been served on each of the affected utilities and the Florida Public Service Commission.

Comment date: April 15, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Iowa-Illinois Gas and Electric Company

[Docket No. ES86-33-000]

April 3, 1986.

Take notice that on March 27, 1986, Iowa-Illinois Gas and Electric Company filed an application seeking an order pursuant to section 204 of the Federal Power Act authorizing the issuance from time to time of not more than $70 million of short-term notes with a final maturity date of not later than June 30, 1989.

Comment date: April 28, 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 filling 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 Procedure (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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-7778 Filed 4-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-383-000 et al.]

Natural Gas Certificate Filings; Colorado Interstate Gas Co. et al.

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Company

[Docket No. CP86-383-000]

April 3, 1986.

Take notice that on March 13, 1986, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP86-383-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the 2,200 horsepower Borger compressor station and 6.5 miles of 18-inch pipeline, which extends from the Borger compressor station to the Sanford compressor station, both located in Hutchinson County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG states that these facilities were installed for the purpose of receiving, compressing, and transporting gas purchased from J. M. Huber Corporation (Huber). CIG notes that the volumes available for purchase from Huber, originally estimated to reach levels up to 40,000 Mcf per day, have steadily declined to an average of less than 600 Mcf per day in 1985. Effective May 1, 1984, CIG states that it has released a portion of the gas it purchased back to Huber for its use in the production of carbon black. CIG asserts that, because of these conditions, no current or future need for the subject facilities is anticipated.

It is explained that Huber has constructed facilities to allow direct delivery of its gas to the Phillips Petroleum Company's (Phillips) Rock Creek processing plant (Rock Creek plant) for processing, because the Phillips Sanford processing plant, which formerly processed the Huber gas, has been retired. CIG states that it continues to purchase a portion of the Huber gas which is derived from the residue stream of the Rock Creek plant. It is stated that this gas is conveyed through the 8-inch line between the Borger and Sanford compressor stations and is used by CIG as fuel for certain compressor facilities located at CIG's Sanford compressor station.

CIG states that abandonment of the Borger facilities would involve the removal of all surface equipment, anticipating that some of the retired equipment may be used, if appropriate, elsewhere on CIG's system. The 18-inch line would be retired in place, it is stated.

Comment date: April 24, 1986, in accordance with Standard Paragraph F at the end of this notice.

2. Transcontinental Gas Pipe Line Corporation

[Docket No. CP86-389-000]

April 2, 1986.

Take notice that on March 17, 1986, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP86-389-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for ANR Pipeline Company (ANR) all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco proposes to transport for ANR on an interruptible basis, up to 35,500 Mcf of natural gas per day, such quantity being equivalent to ANR's capacity entitlement in the Central Texas Gathering System (CTGS), offshore Texas, and from time to time quantities in excess of such capacity, pursuant to a transportation agreement between Transco and ANR, dated January 27, 1986. It is stated that ANR would purchase the gas to be transported from the following producers and sources:

Area/producer	Percent commitment to ANR
Mustang Island Area, Block A-85, ANR Production Company (50 percent interest in block)	66.67
Brazos Area, Block 451, Arco Oil and Gas Company	100

It is averred that pursuant to the transportation agreement, Transco would receive quantities moved within ANR's CTCS capacity at the terminus of the CTCS located near the inlet side of Transco's Compressor Station No. 30, Wharton County, Texas (Wharton receipt point), and would receive gas quantities which are in excess of ANR's capacity in the CTGS at existing points of interconnection between ANR's facilities and Transco's facilities in the Brazos area, Blocks 474 and A-133 (Brazos receipt points). Transco indicates that it would redeliver, on an interruptible basis, equivalent quantities (less quantities retained for compressor fuel and line loss make-up, less fuel for dehydration, and less a reduction in volume and Btu due to processing, if any) at the existing point of interconnection between the facilities of Transco and the jointly-owned facilities of Transco, ANR and Columbia Gulf Transmission Company at Transco's Compressor Station No. 30 and/or the existing point of interconnection between the facilities of ANR and the terminus of the High Island Offshore System (HIOS) in West Cameron Area, Block 167.

For this transportation service, Transco proposes to retain initially for compressor fuel and line loss make-up 1.8 percent of the quantities received for delivery at the terminus of HIOS and 0.6 percent of the quantities received for delivery at Transco's Compressor Station No. 30. In addition, Transco proposes to charge ANR the following rates for the transportation service:

[Cents per dt equivalent]

Delivery points	Rates
(Within ANR's capacity in the CTGS)	
Transco's Compressor Station No. 30	0.0
Terminus of HIOS	12.4
(In excess of ANR's capacity in the CTGS)	
Transco's Compressor Station No. 30	10.7
Terminus of HIOS	20.7

It is stated that the transportation agreement would remain in effect for a primary term of 10 years from the date of initial deliveries and year to year thereafter unless and until terminated by either party's giving proper notice.

Comment date: April 23, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Transcontinental Gas Pipe Line Corporation

[Docket No. CP78-328-005]

April 2, 1986.

Take notice that on March 14, 1986, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP78-328-005 a petition pursuant to section 7(c) of the Natural Gas Act to amend the order issued August 8, 1978, in Docket No. CP78-328, as amended, so as to authorize the addition of a receipt point in Jefferson Davis Parish, Louisiana, for the receipt of gas transported for Consolidated Gas Transmission Corporation (Consolidated), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that by the August 8, 1978 order, as amended, Transco is presently authorized to transport for Consolidated up to 71,548 dt equivalent to natural gas per day on a firm basis and up to 100,000 dt equivalent of natural gas per day on an interruptible basis from sixteen points on Transco's system onshore and offshore Louisiana, to Clinton County, Pennsylvania. Transco reqests authorization to add the Lake Charles receipt point, located on Transco's Lake Arthur Lateral in Jefferson Davis Parish, for the receipt of gas for interruptible transportation for Consolidated pursuant to an amendment, dated December 17, 1985, to the transportation agreement between Transco and Consolidated.

Transco states that it would charge a transportation rate of 49.8 cents per dt equivalent for volumes of gas within Consolidated's contract demand and 27.2 cents per dt equivalent for volumes in excess of Consolidated's contract demand. Transco states that it would retain 5.2 percent of the transported volumes to compensate for line loss make-up and compressor fuel.

It is asserted that existing facilities would be used to receive gas at the Lake Charles point. Transco explains that it would file revised tariff sheets to reflect the change in the transportation service on receipt of an amended certificate.

Comment date: April 13, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice

4. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP86-369-000]

April 3, 1986.

Take notice that on March 10, 1986, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 22234 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86-369-000, a request pursuant to § 157.205 of the Commission's regulations (18 CFR 157.205) for authority to acquire by purchase from ARCO Oil and Gas Company, Division of Atlantic Richfield Company (ARCO), certain offshore compression facilities, under the certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Northern proposes to acquire by purchase and operate two 3300 horsepower Solar Centaur centrifugal compressor units, miscellaneous valves, piping and appurtenances located on the West Cameron (WC) Block 238 A platform, offshore Louisiana, at a cost of $7,939,557, which Northern indicates would be financed from funds on hand.

Northern indicates that the purpose of the facilities to be acquired is to maintain production of Northern purchases from the WC 238 field for its system supply and to meet the pipeline pressure of the downstream transporters, ANR Pipeline Company and/or Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

Northern states that over time wellhead pressures have declined to a point where the reserves attributable to this field can no longer be produced against existing line pressure. Northern indicates that under such circumstances, Northern's obligation under its gas purchases contracts with ARCO require Northern to reduce line pressure or provide compression. Northern alleges that installing compression was the only viable option because it was unable to control the line pressure of the downstream transportors. Northern states that ARCO installed the compression with the understanding that it would be reimbursed for the cost of the facilities. Northern indicates it is proposing to acquire the facilities to fulfill its contractual obligations to ARCO.

Comment date: May 19, 1986, in accordance with Standard Paragraph G at the end of this notice.

5. Arkla Energy Resources, a Division of Arkla, Inc.

[Docket No. CP86-403-000]

April 3, 1986.

Take notice that on March 25, 1986, Arkla Energy Resources, a Division of Arkla, Inc. (AER), P.O. Box 21734, Shreveport Louisiana 71151, filed in Docket No. CP86-403-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap and appurtenant facilities under the certificate issued in Docket Nos. CP82-384-000 and CP82-384-001, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request, which is on file with the Commission and open to public inspection.

AER proposes to construct and operate a sales tap and appurtenant facilities on its pipeline near Fletcher, Oklahoma, to enable AER to deliver gas to Temple-Eastex Incorporated (Temple-Eastex). Total volumes delivered to Temple-Eastex would be up to 4 billion Btu's per day.

AER states that the proposed transaction would be a routine delivery of gas to a direct retail sales customer. AER explains that the direct sales gas would be delivered from AER's general system supply, which AER states is adequate to provide the service.

Comment date: May 19, 1986, in accordance with Standard Paragraph G at the end of this notice.

6. Locust Ridge Gas Company

[Docket No. CP86-390-000]

April 3, 1986.

Take notice that on March 17, 1986, Locust Ridge Gas Company (Locust Ridge), 3400 West Marshall Avenue, Suite 201, Longview, Texas 75608, filed in Docket No. CP86-390-000 a petition for an order declaring its company exempt under section 1(b) of the Natural Gas Act (NGA) and vacating all certificates of public convenience and necessity issued under section 7 of the NGA and cancelling all tariff sheets currently on file with the Commission, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Locust Ridge states that it owns and operates a small natural gas system located in Tensas Parish, Louisiana, and Jefferson County, Mississippi, consisting of 88.23 miles of various small diameter gathering lines, laterals, connecting lines and appurtenant facilities situated within the radius of an affiliated natural gasoline plant located in Tensas Parish, Louisiana. It is stated that of the total system mileage, 8.22 miles are downstream of the plant.

Locus Ridge maintains that the primary, if not exclusive, function of the company's activity is to gather gas. It further maintains that the company's facilities would conform to two or more of the tests traditionally applied by the Commission in determining non-jurisdictional gathering activity. Locust Ridge therefore petitions the Commission to issue a declaratory order that Locust Ridge and the natural gas system operated by Locust Ridge are exempt from the regulatory requirements of a natural gas company under the NGA by reason of the exemption of gathering companies and gathering systems under section 1(b) of the NGA. Locust Ridge also requests that all Locust Ridge certificates of public convenience and necessity issued under Section 7 of the NGA be vacated and that all tariff sheets currently on file with the Commission be cancelled.

Comment date: April 24, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

7. Southern Natural Gas Company, South Georgia Natural Gas Company

[Docket No. CP86-382-000]

April 3, 1986.

Take notice that on March 13, 1986, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202, and South Georgia Natural Gas Company (South Georgia), P.O. Box 1279, Thomasville, Georgia 31792 (Applicants), filed in Docket No. CP86-382-000 an application pursuant to section 7 of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas for one-year, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants request a one-year limited-term certificate of public convenience and necessity authorizing the transportation of up to 3 billion Btu of natural gas per day on an interruptible basis. It is stated that the Mullite Company of America (Mullite) has contracted to purchase natural gas from Sonat Exploration Company (Sonat) to serve the natural gas requirements of its plant in Andersonville, Georgia. It is explained that to effectuate delivery of said gas, Andersonville, the local distribution company serving Mullite, by an agreement with Mullite has agreed to transport the gas purchased by Mullite to its plant, and to South Georgia's system. It is further explained that Andersonville entered into an agreement with South Georgia, South Georgia agreement, wherein South Georgia agreed to transport Mullite's gas and to act as agent for Andersonville in arranging for the transportation of Mullite's gas through Southern system. Accordingly, South Georgia entered into an agreement with Southern, Southern agreement, which sets forth the terms under which Southern would transport Mullite's gas, it is explained.

The Southern agreement provides that South Georgia would cause gas to be delivered to Southern at various existing points on Southern's system in Marion County, Mississippi, and St. Mary Parish, Louisiana, it is explained. It is further explained that Southern would redeliver to South Georgia at an existing interconnection in Lee County, Alabama, an equivalent quantityy of gas, less 3.25 percent for compressor fuel and company-use gas, less any and all shrinkage, fuel or loss resulting from processing the gas, and less South Georgia's *pro-rata* share of any gas which is lost or vented for any reason.

The South Georgia agreement provides for South Georgia to receive gas at Lee County, Alabama, and redeliver to Andersonville at Andersonville's No. 2 and No. 3 stations on South Georgia's Montezuma Line and Mulcoa Line, respectively, in Sumter County, Georgia, it is explained. It is stated that South Georgia would deliver an equivalent quantity to Andersonville, less 0.5 percent for compressor fuel and company-use gas and less Andersonville's *pro-rata* share of gas which is lost or vented for any reason.

The Southern agreement provides that South Georgia would pay Southern each month the following transportation rate:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to South Georgia under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to South Georgia do not exceed the daily contract demand of South Georgia, the transportation rate would be 39.9 cents per million Btu; and

(b) If the sum specified in (a) does exceed the daily contract demand of South Georgia, the transportation rate for the excess volumes would be 64.9 cents per million Btu.

The South Georgia agreement provides for Andersonville to pay South Georgia each month a transportation rate of 49.88 cents per million Btu of gas redelivered by South Georgia and to reimburse for all transportation and fuel charges and other costs South Georgia pays Southern, it is explained. Both agreements also provide for collection of the GRI surcharges, it is explained.

Southern also requests flexible authority to add receipt points in the event Mullite obtains alternative sources of supply. It is stated that flexible authority would not be used to authorize a change in the receipient of the service, the location of the redelivery point or the maximum daily quantity of gas to be transported by Southern.

Comment date: April 24, 1986, in accordance with Standard Paragraph F at the end of this notice.

8. Southern Natural Gas Company, South Georgia Natural Gas Company

[Docket No. CP86-401-000]

April 3, 1986.

Take notice that on March 21, 1986, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202 and South Georgia Natural Gas Company (South Georgia), P.O. Box 1279, Thomasville, Georgia 31792 (Applicants), filed in Docket No. CP86-401-000 an application pursuant to section 7 of the Natural Gas Act for a limited term certificate of public convenience and necessity authorizing the transportation of up to 6 billion Btu of natural gas per day on an interruptible basis for Engelhard Corporation (Engelhard), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that Engelhard has acquired the right to purchase gas from SNG Trading Inc. (SNG) in order to serve the natural gas requirements of its plant in Attapulgus, Georgia, and in order to effect delivery of the gas purchased from SNG, Engelhard has entered into an agreement with South Georgia dated March 11, 1986 (South Georgia agreement) wherein South Georgia has agreed to transport Engelhard's gas and to act as agent for Engelhard in arranging for the transporation of the gas through Southern's pipeline system. It is stated that South Georgia, as agent for Engelhard, and Southern entered into a transportation agreement dated March 13, 1986 (Southern agreement) under which Southern would transport Engelhard's gas. Applicants request a limited-term certificate to expire one year from the date of the Commission's order granting the requested authorization. Southern also requests flexible authority to add delivery points should Engelhard obtain alternative sources of natural gas. The flexible authority would not be used to change the recipient of the service, location of redelivery points or the maximum daily quantity of gas transported by Southern, it is stated.

The Southern agreement provides that South Georgia would cause gas to be delivered to Southern at various existing delivery points on Southern's pipeline system in Main Pass area Block 73, offshore Louisiana, and the Dexter field, Walthall and Marion Counties, Mississippi, it is explained. Further, it is explained that Southern would redeliver to South Georgia at an existing delivery point in Lee County, Alabama, an equivalent quantity of gas less 3.25 percent for compressor fuel and company-use gas; less any and all shrinkage, fuel or loss resulting from processing the gas; and less South Georgia's *pro-rata* share of any gas which is lost or vented for any reason. It is stated that South Georgia would pay Southern each month the following transportation rate:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to South Georgia under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to South Georgia do not exceed the daily contract demand of South Georgia, the transportation rate shall be 39.9 cents per million Btu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to South Georgia under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to South Georgia exceed the daily contract demand of South Georgia, the transportation rate for the excess volumes shall be 64.9 cents per million Btu.

The South Georgia agreement provides that South Georgia would receive the gas at Lee County, Alabma and redeliver to Engelhard at the Engelhard meter station in Decatur County, Georgia, an equivalent quantity of gas less 0.5 percent for compressor fuel and company-use gas and less Engelhard's *pro-rata* share of any gas delivered for Engelhard's account which is lost or vented for any reason, it is explained. It is further explained that Engelhard would pay South Georgia each month a transportation rate of 49.88 cents for each million Btu of gas redelivered by South Georgia plus Engelhard would reimburse South Georgia for all transportation and fuel charges and other costs South Georgia pays Southern under the Southern Agreement.

Applicants state that Southern would collect from South Georgia the GRI surcharge and South Georgia, in turn, would collect the GRI surcharge from Engelhard. No new facilities are proposed herein, it is stated.

Applicants state that Engelhard has the installed capability to use fuel oil and has switched to that fuel for substantially all of its energy requirements. The proposed transportation would enable Engelhard to diversify its natural gas sources and to obtain gas at competitive prices, and would benefit both Southern's and South Georgia's systems by retaining Engelhard as a customer on South Georgia's system, it is explained. In addition, it is stated that Southern would obtain take-or-pay credit on the gas Engelhard would obtain from its suppliers. Southern would release for resale by others gas in Natural Gas Policy Act categories 102(c), 103, 107 and section 102(d) gas subject to receipt of appropriate abandonment authorization, it is explained.

Comment date: April 24, 1986, in accordance with Standard Paragraph F at the end of this notice.

9. Superior Offshore Pipeline Company

[Docket No. CP86-387-000]

April 33, 1986.

Take notice that on March 17, 1986, Superior Offshore Pipeline Company (SOPCO), Nine Greenway Plaza, Suite 2700, Houston, Texas 77046, filed in Docket No. CP86-387-000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas for others, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

SOPCO states that it accepts and would comply with the conditions in paragraph (c) of § 284.221 of the Commission's Regulations which paragraph refers to Subpart A of Part 284 of the Commission's Regulations. However, SOPCO notes that it is curently authorized by the Commission to charge one cent per Mcf under its Rate Schedule T-1 for all transportation services. SOPCO explains that in authorizing the rate the Commission waived compliance with its rate regulations on the condition that the rate of one cent per Mcf remain in effect until SOPCO files for a rate change under section 4(e) of the Natural Gas Act. SOPCO further explains that the rationale for SOPCO's one-cent rate was that its predecessor, The Superior Oil Company, collected one cent per Mcf for the same delivery service pursuant to the Commission's Regulations which allow producers to collect one cent per Mcf for offshore gathering services. SOPCO asserts that because of its unique status continuation of the one-cent per Mcf rate for all transportation services is appropriate and, therefore, requests waiver of §§ 284.7(d)(2) through 284.7(d)(5) of the Commission's Regulations.

Comment date: April 24, 1986, in accordance with Standard Paragraph F at the end of this notice.

10. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP86-396-000]

April 3, 1986.

Taken notice that on March 19, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86-396-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Tennessee to transport gas on an interruptible basis for HNG InterNorth Gas Marketing, Inc. (HIGMI), on behalf of the National Railroad Passenger Corporation (AMTRAK), all as more fully set forth in this application which is on file with the Commission and open to public inspection.

Tennessee requests authority to render a transportation service for AMTRAK for a term of 15 years and year to year thereafter pursuant to the terms of a gas transportation agreement, dated February 4, 1986. It is stated that Tennessee would accept and receive up to 3.5 billion Btu of natural gas per day on interruptible basis for the account of HIGMI from the following points of receipt:

1. Tennessee's Meter No. 2-0550 at Sabine in Newton County, Texas (Sabine),
2. Tennessee's Meter No. 1-1330 in the Lake Chemard Field, DeSoto Parish, Louisiana (Lake Chemard),
3. For gas produced by Rosewood Resources, Tennessee's Meter No. 1-1787 near Black Lake in Nachitoches Parish, Louisiana (Rosewood Resources), and/or
4. Tennessee's Meter No. 1-1781 in Chautauqua County, New York (Chautauqua County).

It is further stated that Tennessee would transport and redeliver such quantities for HIGMI at the following points of delivery:

1. The interconnection between the facilities of Tennessee and Southern Connecticut Gas Company at Tennessee's Meter No. 2-0425 at Milford, Connecticut and/or
2. Tennessee's Meter No. 2-0126 at Bridgeport, Connecticut.

For the transportation service, Tennessee proposes to charge HIGMI a quantity charge equal to the product of 65.23 cents for quantities received from the Rosewood or Lake Chemard receipt points, 68.48 cents for quantities received at Sabine and/or 23.73 cents for quantities received at Chautauqua County multiplied by the total quantity in million Btu of gas delivered for the account of HIGMI during the month.

Comment date: April 24, 1986, in accordance with Standard Paragraph F at the end of this notice.

11. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP86-389-000]

April 3, 1986.

Take notice that on March 20, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP86-398-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee requests authorization to transport up to 5 billion Btu of natural gas per day on an interruptible basis which Gas Systems Network Inc. (GSNI) has the right to purchase from reserves produced by Pend Oreille Oil and Gas Company, in the Bay Baptiste area in Plaquemines Parish, Louisiana. Tennessee also proposes to transport up to 20 percent of the transportation quantity in excess gas should any excess gas be made available. It is stated that Tennessee would receive such gas at Tennessee's Meter No. 1-1145 in Plaquemines Parish, Louisiana, and transport and deliver for the account of GSNI a thermally equivalent quantity of gas at an existing interconnection between Tennessee and Columbia Gulf Transmission Company at Egan in Acadia Parish, Louisiana. The transportation agreement between the parties provides for a primary term of 5 years from the date of initial deliveries, and from year-to-year thereafter until terminated by either party.

Tennessee proposes to charge GSNI for the proposed service a charge equal to the product of 11.47 cents multiplied by the total quantity of gas delivered by Tennessee for the account of GSNI at Egan. In addition, GSNI would provide to Tennessee a daily quantity of gas for Tennessee's system fuel and uses and gas lost and unaccounted for equal to 0.51 percent of the quantities received from GSNI on any day, it is explained. It is further explained that Tennessee may at its sole option elect to provide such gas to GSNI at Tennessee's weighted average cost of gas.

Comment date: April 24, 1986, in accordance with Standard Paragraph F at the end of this notice.

12. Northern Natural Gas Company Division of InterNorth, Inc.

[Docket No. CP86-368-000]

April 2, 1986.

Take notice that on March 10, 1986, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP86-368-000 a request pursuant to § 157.205 of the Commission's regulations (18 CFR 157.205) for authority to acquire by purchase from ARCO Oil and Gas Company, Division of Atlantic Richfield Company (ARCO), certain existing offshore compression facilities under the certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the

Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Northern proposes to acquire and operate two 1975 horsepower Superior compressor units located in the West Cameron area (WC) Block 205, offshore Louisiana. Northern estimates the acquisition cost of said compression at $6,450,775, which it is indicated would be financed from funds on hand.

Northern indicates that the purpose of the facilities to be acquired is to maintain production of Northern's purchases from the WC 205 field for its system supply and to meet the pipeline pressure of the downstream transporter, ANR Pipeline Company.

Northern states that over time, wellhead pressures have declined to a point where the reserves attributable to this field can no longer be produced against existing line pressure. Northern indicates that under such circumstances, Northern's obligation under its gas purchase contracts with ARCO require Northern to reduce line pressure or provide compression. Northern alleges that installing compression was the only viable option because it was unable to control the line pressure of the downstream transporter. Northern states that ARCO installed the compression with the understanding that it would be reimbursed for the cost of the facilities. Northern indicates it is proposing to acquire the facilities to fulfill its contractural obligations with ARCO.

Comment date: May 19, 1986, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-7779 Filed 4-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-32-000]

Northwest Central Pipeline Corp.; Amendment to Change in FERC Gas Tariff and Formal Conference

April 4, 1986.

Take notice that on April 2, 1986, Northwest Central Pipeline Corporation (Nothwest Central) filed an amendment to the letter of transmittal filed on December 20, 1985 in the above-referenced proceeding. Northwest Central states that the cost and revenue study filed on December 20, 1985, will be used as the basis for discussions with customers and interested parties concerning implementation of Order No. 436 transportation services.

Take further notice that a conference will be convened on April 15 at 1:00 p.m. and continuing April 16, 1986, at the offices of the Federal Energy Regulatory Commission for the purpose of discussing Order No. 436 transportation services. Northwest Central has undertaken preliminary discussion and correspondence concerning these matters with jurisdictional customers and others. Northwest Central has requested that an expedited notice be issued and that a new date for interventions and protests be established so that interested persons who are not already a party may indicate their interest in this proceeding.

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 Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before April 14, 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.

Lois D. Cashell,

Acting Secretary.

[FR. Doc. 86-7892 Filed 4-7-86; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 86-105 et al.]

Michigan Bell Telephone Co. and Century Teleview of Michigan, Order Designating Applications for Hearing

In re the applications of Michigan Bell Telephone Company, for a new 1-way station to operate on frequency 158.10 MHz in the Public Land Mobile Service at Ann Arbor, Michigan, CC Docket No. 86-105 and File No. 23646-CD-P/L-84 and Century Teleview of Michigan, for a new 1-way station to operate on frequency 158.10 in the Public Land Mobile Service at Ann Arbor, Michigan, File No. 22941-CD-P/L-84.

Adopted March 24, 1986.

Release April 1, 1986.

By the Common Carrier Bureau.

1. On April 24, 1984 Century Teleview filed an applicaiton for a new one-way station to operate on frequency 158.10 MHz in Ann Arbor, Michigan. On June 1,

1984, Michigan Bell Telephone Company also filed an application for a new one-way station to operate on frequency 158.10 MHz in Ann Arbor. On October 1, 1984, Michigan Bell filed a petition for expedited comparative treatment asserting that the applications are mutually exclusive, that lottery selection would not be appropriate [1] and requesting, under § 22.33 of the Rules, that they be set for comparative hearing.[2] The applications have not been protested and no responsive pleadings to Michigan Bell's petition have been filed.

2. After careful examination of the applications, we find both applicants to be legally, technically and otherwise qualified to construct and operate their respective proposed facilities. We further find that the proposals of Michigan Bell and Century to use frequency 158.10 MHz in the same geographical area are electrically mutually exclusive. In addition, we find that Michigan Bell's request to select a licensee by comparative proceedings in lieu of lottery selection meets the requirements of § 22.33(c) and that the public interest will be served by granting Michigan Bell's petition.

3. Accordingly, it is ordered that the captioned applications of Michigan Bell Telephone Company and Century Teleview of Michigan are designated for hearing in a consolidated proceeding pursuant to section 309(e) of the Communications Act of 1934, as amended, upon the following issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) To determine on a comparative basis, the areas and populations that each applicant will serve within the prospective interference-free area within the 43 dBu contours,[3] based upon the standards set forth in § 22.504(a) of the Commission's Rules [4] and to determine and compare the relative demand for the proposed services in said areas; and

(c) to determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience, and necessity.

4. It is further ordered, that the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

5. It is further ordered, that the Chief, Common Carrier Bureau, is made a party to the proceeding.

6. It is further ordered, that the applicants may avail themselves of an opportunity to be heard by filing with the Commission, within 20 days of the release date hereof, a written notice stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in the Designation Order. See § 1.221 of the rules.

7. This order is issued under § 0.291 of the Commission's Rules and is effective upon its release date. Applications for review under § 1.115(e)(3) of the rules may be filed within 30 days of the date of public notice of this order. See also § 1.4(b)(2). Petitions for reconsideration of designation orders may not be filed except insofar as they relate to an adverse ruling as to participation of a party in the hearing, under § 1.106(a)(1).

8. The Secretary shall cause a copy of this order to be published in the **Federal Register.**

Federal Communications Commission.

Michael Deuel Sullivan,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 86-7714 Filed 4-7-86; 8:45 am]

BILLING CODE 6712-01-M

[1] Michigan Bell asserts that its proposed facilities would expand its already authorized paging services throughout the Detroit LATA and that it would serve far more people and a much larger area (the entire City of Ann Arbor and eastern Washtenau County) than the facilities proposed by Century.

[2] Section 22.33(c) provides that a mutually exclusive applicant in the Public Land Mobile Service proposing to expand an authorized station may request that its application and those mutually exclusive with it be designated for comparative hearing and that the Commission shall determine whether the public interest would be served by using comparative procedures instead of a lottery.

[3] For the purpose of this proceeding, the interference-free area is defined as the area within the 43 dBu contour as calculated from § 22.504, in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. R-6404, equation 8.

[4] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 43 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in one-way communications service on frequencies in the 150 MHz band. Propagation data set forth in § 22.504(b) are the proper bases for establishing the location of service contours F (50,50) for the facilities involved in this proceeding. (The applicants should consult with the Bureau counsel with the goal of reaching joint technical exhibits.—

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and secion 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in §§ 522.7 and/or 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address below:

Agreement No.: 018-010909.

Title: Island Shipping Lines, Ltd./ Lykes Bros. Steamship Co., Connecting Carrier Agreement.

Parties:

Island Shipping Lines, Ltd. (ISL)
Lykes Bros. Steamship Co., Inc. (Lykes)

Synopsis: The proposed agreement would enable ISL, as publishing carrier, to transship cargo between West Coast ports of the United States and Guam and Saipan at Japan utilizing vessels owned or operated by Lykes. Pending approval of the proposed agreement, the parties will operate under an exempt, nonexclusive transshipment agreement in the trade.

Filing Party: Nathan J. Bayer, Esquire, Freehill, Hogan & Mahar, 80 Pine Street, New York, New York 10005.

By Order of the Federal Maritime Commission.

Dated: April 3, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86-7772 Filed 4-7-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Cumberland Valley Financial Corp. et al.;

Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 30, 1986.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Cumberland Valley Financial Corporation*, London, Kentucky; to acquire at least 66.67 percent of the voting shares of Farmers National Bank, Williamsburg, Kentucky.

2. *Witley-Williamsburg Financial Corporation*, Williamsburg, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers National Bank, Williamsburg, Kentucky.

Board of Governors of the Federal Reserve System, April 2, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-7707 Filed 4-7-86; 8:45 am]

BILLING CODE 6210-01-M

Washington National Holdings, N.V., Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits tothe public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 30, 1986.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Washington National Holdings, N.V.*, Curacao, Netherlands Antilles; Colson, Inc., Wilmington, Delaware; and Washington Bancorporation, Washington, DC; to engage *de novo* through its subsidiary Washington Brokerage Services, Inc., Washington, DC, in discount brokerage services, the offering of individual retirement accounts, and related securities credit and incidental activities pursuant to § 225.25(b)(15) of Regulation Y.

Board of Governors of the Federal Reserve System, April 2, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-7708 Filed 4-7-86; 8:45 am]

BILLING CODE 6210-01-M

Union Bankshares, Ltd., Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking, activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 30, 1986.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Union Bankshares, Ltd.*, Denver, Colorado; to acquire Colorado Bankers Mortgage, Inc., Denver, Colorado, and thereby engage in mortgage banking activities and real estate appraisals pursuant to § 225.25(b) (1) and (13) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 2, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-7709 Filed 4-7-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86E-0098]

Determination of Regulatory Review Period for Purposes of Patent Extension; Cefotan

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Cefotan and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Cefotan (cefotetan disodium), which is indicated for the therapeutic treatment of a variety of infections caused by certain organisms. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Cefotan from Yamanouchi Pharmaceutical Co., Ltd., and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated March 17, 1986, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that its active ingredient, cefotetan disodium, represented the first permitted commercial marketing or use of that active ingredient. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Cefotan is 1,546 days. Of this time, 839 days occurred during the testing phase of the regulatory review period, while 707 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 507(d) of the Federal Food, Drug, and Cosmetic Act became effective*: October 4, 1981. FDA verified the applicant's claim that the notice of claimed investigational exemption became effective on October 4, 1981.

2. *The date the application was initially submitted with respect to the human drug product under section 507 of the Federal Food, Drug, and Cosmetic Act*: January 20, 1984. FDA verified the applicant's claim that the new drug application for the drug (NDA 50-588) was initially submitted on January 20, 1984.

3. *The date the application was approved*: December 27, 1985. FDA verified the applicant's claim that NDA 50-588 was approved on December 27, 1985.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 598 days of patent extension.

Anyone with knowledge that any of the dates as published in incorrect may, on or before June 9, 1986, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 6, 1986, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 2, 1986.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 86-7723 Filed 4-7-86; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Meetings

Correction

In FR Doc. 86-6953, appearing on page 10930, in the issue of Monday, March 31, 1986, make the following corrections.

In the second column, second complete paragraph from bottom, second line, "April 24" should read "April 25".

BILLING CODE 1505-01-M

[Docket No. 86M-0066]

CooperVision, Inc.; Premarket Approval of the QwikCare ™ System

Correction

In FR Doc. 86-5296, beginning on page 8560, in the issue of Wednesday, March 12, 1986, make the following corrections:

1. On page 8560, third column, in the heading, second line, after "QuikCare", "TH" should read "™".

2. On the same page, under For Further Information Contact, "Georgia" was misspelled.

3. On the same page, under Supplementary Information, in the fifth and sixth line, after "QuikCare", "TH" should read "™".

4. On page 8561, first column, in each of the first four lines, "TM" should read "TM".

5. On the same page, fourth complete paragraph, first line, "QwikCare" was misspelled, and after this word, insert "TM". On the next line, after "indicated" insert the words "for chemical (not heat) disinfection and storage of extended".

6. On the same page, first column, fourth complete paragraph, fifteenth line, after "labeling", insert "informs".

7. On the same page, second column, first complete paragraph, second line, after "before", insert "April 11, 1986,".

8. On the same page, second column, second complete paragraph, fourth line, after "360e", "(g)" should read "(d)", after "360j", "(b)" should read "(h)".

BILLING CODE 1505-01-M

Public Health Service

Coordination and Maintenance Committee; Meeting

Notice is hereby given that the ICD-9-CM Coordination and Maintenance Committee will convene on Wednesday, May 21, 1986 and Thursday, May 22, 1986 from 9:30 a.m. to 4:00 p.m. both days in Room 703A of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20021.

AGENCY: National Center for Health Statistics (NCHS), Public Health Service.

SUMMARY: This notice announces the third meeting of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM) Coordination and Maintenance Committee.

SUPPLEMENTARY INFORMATION: The ICD-9-CM is the clinical modification of the World Health Organization's International Classification of Diseases, Ninth Revision. It is the coding system required for use by hospitals and other health care facilities in reporting both diagnoses and surgical procedures for Medicare, Medicaid and all other health-related HHS programs. The work of the ICD-9-CM Coordination and Maintenance Committee will allow this coding system to continue to be an appropriate reporting tool for use by Federal programs.

The Committee is composed entirely of representatives from various Federal agencies interested in the International Classification of Diseases (ICD) and its modification, updating, and use for Federal programs. It is Co-Chaired by the National Center for Health Statistics and the Health Care Financing Administration.

At the third meeting of the ICD-9-CM Committee, members will continue the previous discussions for updating ICD-9-CM, Volume 3 procedures. These discussions include proposals for developing additional ICD-9-CM codes for new technologies such as lasers in medicine and surgery and parenteral and enteral nutrition. The meeting is open to the public and attendance, proposal submittals and participation by interested parties are encouraged.

FOR FURTHER INFORMATION, CONTACT: Ms. Sue Meads, Co-Chairperson, National Center for Health Statistics, Room 2-19, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7019 or Ms. Lisa Levine, telephone (301) 597-0610.

Date: March 26, 1986.

Manning Feinleib, M.D., Dr. P.D.,

Director, National Center for Health Statistics.

[FR Doc. 86-7760 Filed 4-7-86; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Alaska Land Use Council; Work Program Items

As required by the operating procedures of the Alaska Land Use Council, which was established under the Alaska National Interest Lands Conservation Act (ANILCA), the Council invites the public to submit, for its consideration, projects and issues they believe should be considered by the Council. The Council is comprised of Federal, State, and Native land and resource decision-makers in Alaska. The Council is mandated to conduct cooperative studies, develop programs and procedures for implementing ANILCA, and to advise the Federal and State governments on a variety of complex land and resource management issues in Alaska.

In submitting a potential project or issue please include a brief description of the work to be accomplished, the completion date, the anticipated product, and the nature of the Council's involvement. The Cochairmen, after consultation with the Council's Staff Committee, will prepare a recommended work program considering the requirements of ANILCA, projected Council resources, special requests, and recommendations from the public, the Council's Land Use Advisors Committee, and Council members. The proposed work program will be submitted in May to the Council for adoption. Any interested parties having a proposed work program item should submit the information to the Cochairman prior to May 9, 1986. Submittals should be sent to either:

Robert L. Grogan, State Cochairman Designee, Alaska Land Use Council, Office of Management & Budget, Division of Governmental Coordination, 2600 Denali Street, Suite 700, Anchorage, AK 99503-2798

Vernon R. Wiggins, Federal Cochairman, Alaska Land Use Council, P.O. Box 100120, Anchorage, AK 99510-0120

Anyone having questions regarding the Council's work program may call State Cochairman Designee's Office at (907) 274-3528 or the Federal Cochairman's Office at, (907) 272-3422.

William F. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

April 2, 1986.

[FR Doc. 86-7745 Filed 4-7-86; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

Las Vegas District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: District Advisory Council Meeting.

SUMMARY: Notice is hereby given, in accordance with Pub. L. 94-579, (FLPMA), that a meeting of the Las Vegas District Advisory Council will be held on Wednesday, April 30, 1986 at 9:00 a.m. in the Conference Room of the Bureau of Land Management's (BLM), Las Vegas District Office, 4765 W. Vegas Drive, Las Vegas, Nevada 89108.

Anyone wishing to make an oral statement must notify the District Manager, BLM, Las Vegas District Office, P.O. Box 26569, Las Vegas Nevada 89126, by the close of business, April 15, 1986. Depending on the number of person requesting to make oral statements, a per person time limit be established by the District Manager.

Summary minutes of the meeting will be maintained in the District offices and will be available for public inspection and reproduction during regular business hours, (Monday through Friday 7:30 a.m.—4:15 p.m.), within thirty days following the meeting. The agenda will be as follows:

Bureau of Land Management

Las Vegas District Advisory Council

Proposed Meeting Agenda

April 30, 1986

Time

1. Welcome and Introduction—Ben Collins, District Manager—9:00 a.m.
2. Review of April—1985 Meeting Notes—John Arlidge, Acting Chairman—9:15 a.m.
3. Budget Up-Date—John Crew, A.D.M. Administration—9:30 a.m.
4. Resource Program Up-Date—Joe Ross, A.D.M. Resources—10:00 a.m.
5. Break—10:45 a.m.
6. Groom Range EIS Update—Frank Maxwell, District Environmental Specialist—11:00 a.m.
7. District Reparian Strategy Plan—Sid Slone, District Wildlife Biologist—11.45 a.m.
8. Election of Officers—John Arlidge, Acting Council Chairman—12:30 p.m.
9. FY86 Projects—Joe Ross, A.D.M. Resources—1:00 p.m.
   Projects Priority Ranking—Tom Combs, A.D.M. Operations—1:00 p.m.
10. Desert Tortoise Habitat Management—Joe Ross, A.D.M. Resources—1:45 p.m.
11. Land Acquisition with Summa Corp.—Bill Civish, Acting A.D.M.—2:15 p.m.
   Red Rock Canyon Property—2:15 p.m.
12. BLM/FS Interchange Update—Proposed—Ben Collins, District Manager—2:30 p.m.
13. New Items—Chairman—2:45 p.m.
14. Resolutions—Chairman—3:00 p.m.
15. Public Comments—Chairman—3:15 p.m.
16. Proposed Next Meeting Date and Proposed Agenda Items—Chairman—3:30 p.m.
17. Adjournment.

Ben F. Collins,

District Manager, Las Vegas District.

March 30, 1986.

[FR Doc. 86-7758 Filed 4-7-86; 8:45 am]

BILLING CODE 4310-HC-M

Coeur d'Alene District; Cottonwood Resource Area, Idaho; Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Competitive and Direct Sale Offerings of Public Lands in Idaho and Clearwater Counties, Idaho.

DATE AND ADDRESS: The sale offerings will be held on Friday, June 27, 1986, at 11:00 a.m. at the Cottonwood Resource Area Office, Route 3, Box 181, Cottonwood, Idaho 83522. Unsold parcels where no bids are received will be offered every Thursday through November 21, 1986, on which date this sale offering will be suspended.

SUMMARY: The following described lands have been examined and through the public-supported land use planning process have been determined to be suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976, at no less than fair market value as determined by an appraisal. Fair market value will be available no less than 30 days prior to the sale date.

Parcel	Legal description	Sale method
I-22273	T. 36 N., R. 2 E, B.M. sec. 25, lot 2 (18.15 acres).	Competitive bid.
I-22274	T. 32 N., R. 2 E., B.M. sec. 32, lot 33 (0.82 acres).	Direct.

When patented, the lands will be subject to a right-of-way reservation to the United States for ditches and canals (43 U.S.C. 945) as well as any valid existing rights.

The previously described lands are hereby segregated from appropriation under the public land laws including the mining laws for a period of 245 days or until patent is issued, whichever comes first.

Sale Procedures

Sale parcel I-22273 will be sold by competitive bidding procedures as follows: A sealed bid must be submitted in person or by mail prior to the date and time of sale in the Cottonwood Resource Area Office, Route 3, Box 181, Cottonwood, Idaho 83522. The bid must be sealed in an envelope with the envelope specifying the serial number and sale date in the lower left hand corner (i.e. "Sealed bid—public land sale I-22273—June 27, 1986"). If two or more valid sealed bids are received for the same amount and are the high bid, a supplemental bidding of the high bidders will be held.

Sale parcel I-22274 is being offered directly to the Wallace C. Jessup Estate because of past inadvertent use of the parcel. If an acceptable bid is not received on the date of sale, the parcel will be sold by competitive procedures as described in the previous paragraphs.

Bids must be an amount equal to or greater than fair market value. A bid will constitute an application to purchase the mineral estate. There are no known mineral values. A thirty percent (30%) deposit must accompany each bid and an additional $50.00 fee for processing of the mineral conveyance must also be submitted with each bid. The filing fee and deposit must be in the form of a certified check, money order, bank draft or cashier's check. Bids will be rejected if accompanied by a personal check. Filing fees and deposits will be returned to all unsuccessful bidders following the sale offering.

SUPPLEMENTARY INFORMATION: Detailed information concerning the conditions of the sale can be obtained by contacting Ron L. Grant at (208) 962-3245.

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, 1808 North 3rd Street, Coeur d'Alene, Idaho 83814. 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 Interior.

Dated: March 31, 1986.

Wayne Zinne.

District Manager.

[FR Doc. 86-7756 Filed 4-7-86; 8:45 am]

BILLING CODE 4310-GG-M

Minerals Management Service (MMS), Interior

Royalty Management Advisory Committee, Oil and Coal Valuation Regulations Review Working Panels; Meeting

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of Meeting.

SUMMARY: The Minerals Management Service (MMS), Royalty Management Program, hereby gives notice that two Working Panels, established by the Royalty Management Advisory Committee, will meet in Denver, Colorado, at the locations and on the dates indicated below. These Panels are the Oil Valuation Regulations Review Working Panel and the Coal Valuation Regulations Review Working Panel. A third Valuation Panel, the Gas Valuation Regulations Review Working Panel, is being formed and will be scheduled for a meeting in the near future. A notice will be published regarding this meeting.

On February 5, 1986, MMS published an advance notice of proposed rulemaking in the **Federal Register** making available for public comment draft regulations pertaining to the valuation of oil, coal, and gas and associated products, as well as gas processing allowances and transportation allowances. All public comments will be made available to the Royalty Management Advisory Committee and the Valuation Panels. The Panels will review the draft regulations and make recommendations to the Advisory Committee as to clarifications and revisions.

DATES: Location and dates: The Panels will meet at the Clarion Hotel, 3203 Quebec, Denver, Colorado, April 16-18, 1986.

The Panels will meet from 8 a.m. to 5 p.m. daily. They will meet in joint session on April 16, 1986, and meet in separate sessions on April 17 and 18, 1986. If the meetings are completed in less than the three days scheduled, the Panel(s) will adjourn upon such completion.

The public is invited to attend these meetings and make oral or written comments. A time will be set aside by each Panel chairperson during which the public will be invited to make oral comments. Neither the meeting discussions nor the oral comments are being recorded by a stenographer at the working sessions. If the person making oral comments desires that the panel have written comments such comments should be submitted by May 2, 1986, to the address listed below.

FOR FURTHER INFORMATION CONTACT: Vernon B. Ingraham, Minerals Management Service, Royalty Management Program, Office of External Affairs, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 660, Denver, Colorado 80225, telephone number (303) 231-3360, (FTS) 326-3360.

SUPPLEMENTARY INFORMATION: The Oil and Coal Valuation Regulations Review Working Panels are two of the six working panels established by the Royalty Management Advisory Committee. The panels are composed of both Advisory Committee members and non-Committee members and are established to provide the Advisory Committee with analyses of specific issues and proposed recommendations. Panel recommendations will be reviewed by the Advisory Committee which will then decide what advice and recommendations to give to the Department of the Interior (DOI) and Minerals Management Service (MMS). Although the panels may meet with DOI or MMS staff members to obtain information they require in conducting their analyses, advice and recommendations of the panels will be made to the Advisory Committee and not to the DOI or the MMS.

Dated: April 3, 1986.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 86-7770 Filed 4-7-86; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf Oil and Gas Lease Sales; List of Restricted Joint Bidders

Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period from May 1, 1986, through October 31, 1986. The List of Restricted Joint Bidders published in the Federal Register on October 4, 1985, at 50 FR 40618, covered the bidding period of November 1, 1985, through April 30, 1986.

Group I. Chevron U.S.A. Inc.; Chevron Corporation.
Group II. Exxon Corporation.
Group III. MTS Limited Partnership (Mesa Petroleum Co., Texaco Inc., Sequoia Petroleum Inc.); Texaco Inc.; Getty Oil Company; Texaco Oils Inc.; Texaco Producing Inc.
Group IV. Shell Offshore Inc.; Shell Oil Company; Shell Western E&P Inc.
Group V. Mobil Oil Corporation; Mobil Oil Exploration and Producing Southeast Inc.; Mobil Producing Texas and New Mexico Inc.; Superior Oil Company.

Dated: April 1, 1986.

Wm. D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 86-7775 Filed 4-7-86; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Park System Advisory Board; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Park System Advisory Board will be held in Charlottesville, Virginia, April 28 through May 1, 1986.

The general business sessions on April 28 and 29, starting at 8:00 a.m., each morning, will be held in the Trophy Room of the Boar's Head Inn. The Advisory Board will consider administrative matters pertaining to the Board; policies regarding natural and cultural resources; National Historic Trail studies; National Historic Landmarks; and public participation on public lands.

The business meetings will be open to the public. Space and facilities to accomodate members of the public are limited and persons will be accommodated on first-come, first-served basis. Any member of the public may file with the Advisory Board a written statement concerning matters to be discussed. Persons wishing further information concerning this meeting or who wish to submit written statements may contact David G. Wright, Associate Director, Planning and Development, Room 3130, National Park Service, Department of the Interior, Washington, DC 20240, (202-343-6741).

Summary minutes of the meeting will be available for public inspection 10-12 weeks after the meeting in room 3328 Interior Building, 18th and C Streets, NW., Washington, DC.

David G. Wright,

Associate Director, Planning and Development, National Park Service.

[FR Doc. 86-7822 Filed 4-7-86; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 29, 1986. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by April 23, 1986.

Beth Grosvenor,

Acting Chief of Registration, National Register.

ALABAMA

Morgan County

Decatur, *Cotaco Opera House,* 115 Johnston St., SE

CONNECTICUT

Hartford County

West Hartford vicinity, *Revolutionary War Campsite,* N of Albany Ave.

FLORIDA

Liberty County

Rowlett's Mill Site

Suwannee County

Live Oak, *Old Live Oak City Hall,* 212 N. Ohio Ave.

Live Oak, *Union Depot and Atlantic Coast Line Freight Station,* 200 Block of N. Ohio Ave.

GEORGIA

Stewart County

Richland, *Richland Historic District,* Roughly bounded by Ponder and Harmony Sts., GA 27 and Broad St.

Thomas County

Thomasville, *Birdwood,* Millpond Rd. and Pinetree Blvd.

INDIANA

Perry County

Rockhouse Cliffs Rock Shelters (12 Pe 98; Pe 100)

KANSAS

Dickinson County

Abilene, *Seelye, A. B., House*, 1105 N. Buckeye

Wyandotte County

Kansas City, *Argentine Carnegie Library*, Twenty-eighth St. and Metropolitan Ave.
Kansas City, *Kansas City, Kansas City Hall and Fire Headquarters*, 805 and 815 N. Sixth St.
Kansas City, *Wyandotte High School*, 2500 Minnesota

KENTUCKY

Fayette County

Lexington, *First African Baptist Church*, 264–272 E. Short St.

Jefferson County

Jeffersontown vicinity, *Tucker, Hazael, Farm (Boundary Increase) (Jefferson County MRA)*, 2406 Tucker Station Rd.
Jeffersontown vicinity, *Tyler Settlement Rural Historic District (Jefferson County MRA)*, Roughly bounded by Southern RR, Taylorsville Rd., and Jeffersontown City

LOUISIANA

Vernon Parish

Fullerton, *Fullerton Mill and Town*, Forest Service Rd. 427

MAINE

Aroostock County

Presque Isle, *United States Post Office—Presque Isle Main*, 23 Second St.

Cumberland County

Portland, *U.S. Post Office—Portland Main*, 125 Forest Ave.

Knox County

Camden, *United States Post Office—Camden Main*, Chestnut St.

Penobscot County

Old Town, *U.S. Post Office—Old Town Main*, Center St.

MASSACHUSETTS

Bristol County

Fall River, *Truesdale Hospital (Fall River MRA)*, 1820 Highland Ave.

MICHIGAN

Oakland County

Holly, *Downtown Holly Commercial District*, Roughly bounded by S. Broad St., Grand Trunk RR, S. Saginaw and Maple Sts.

MINNESOTA

Mower County

Johnsburg, *Freund Store*, CR 7

MISSISSIPPI

Humphreys County

Midnight Mound Site (22 Hu 509)

Leflore County

Falls Site (22–Lf–507)

Wilkinson County

Anderson Mound

Yazoo County

Shellwood Site (22Yz600)

MISSOURI

St. Louis (Independent City)

Dorris Motor Car Company, 4100 Laclede

MONTANA

Carbon County

Joliet, *Baker and Lovering Store (Joliet Montana MRA)*, Main St.
Joliet, *Fire Hall (Joliet Montana MRA)*, Main St.
Joliet, *House on Railroad Avenue (Joliet Montana MRA)*, Railroad Ave.
Joliet, *Joliet Bridge (Joliet Montana MRA)*, Main St. S of Joliet over Rock Creek.
Joliet, *Joliet High School (Joilet Montana MRA)*, Main St.
Joliet, *Joliet Residential Historic District (Joliet Montana MRA)*, Roughly bounded by Northern Pacific RR and US 12, State St., Carbon Ave., and Second St.
Joliet, *Rock Creek State Bank (Joliet Montana MRA)*, Main St.
Joliet, *Smith, T. W., House (Joliet Montana MRA)*, Front St.
Joliet, *Southern Hotel (Joliet Montana MRA)*, Main St.

NEW YORK

Broome County

Binghamton, *State Street—Henry Street Historic District*, Roughly bounded by Water, Washington, State & Lewis Sts., Prospect Ave,. and Henry St.

NORTH CAROLINA

Catawba County

Newton, *North Main Avenue Historic District*, Roughly bounded by W. Ninth St., N. Main Ave., W. Fourth and W. Sixth St., N. Deal Ave. and W. Eighth St.

Guilford County

Gibsonville vicinity, *Low House (Proposed Move)*

OHIO

Franklin County

Columbus, *Central Ohio Lunatic Asylum*, 1960 W. Broad St.
Columbius, *Iuka Ravine Historic District*, Roughly bounded by E. Lane and E. Northwood Aves., N. Fourth, Twentieth, E. Nineteenth, and Indianola Aves.

Lorain County

Lorain, *Eagles Building*, 575 Broadway

OKLAHOMA

Garvin County

Linsay, *Santa Fe Depot of Linsay (Territorial Era Santa Fe Depots in South Central Olkahoma TR)*, 120 N. Main

PENNSYLVANIA

Bradford County

Rome, *Bliss, Phillip Paul, House*, Main St.

Bucks County

Quakertown, *Roberts, Enoch, House*, 1226 W. Broad St.

Dauphin County

Harrisburg, *Cameron, Simon, School*, 1839 Green St.

Huntingdon County

Huntingdon, *Huntingdon Borough Historic District*, Roughly bounded by Moore, Second, Allegheny, and Ninth Sts.

Lancaster County

Lititz, *Lititz Moravian Historic District*, Roughly bounded by E. Main, Willow, Locust, Marion, S. Cedar, Orange, and S. & N. Broad Sts.

Washington County

Canonsburg, *Hawthorne School*, Hawthorne and Bluff Sts.

SOUTH DAKOTA

Butte County

Belle Fourche, *Vale Cut Off Belle Fourche River Bridge (Rural Butte and Meade Counties MRA)*, 7 mi SW of Newell

Pennington County

Mystic, *Mystic Townsite Historic District*, Black Hills National Forest

TEXAS

Grayson County

Denison, *Clifton House Hotel*, 229 W. Gandy

Jefferson County

Port Arthur, *Untied States Post Office and Federal Building*, 500 Austin Ave.

Travis County

Austin, *Schulze, Walter, House and Industrial Structure (East Austin MRA)*, 102 Chicon St.

WYOMING

Albany County

Ames Monument vicinity, *Dale Creek Crossing*, 4 miles W of Sherman
Laramie, *Barn at Oxford Horse Ranch*, 868 US Hwy. 287
Laramie, *Old Main*, Ninth St. and Ivinson Ave., University of Wyoming Campus

Carbon County

Dixon, *Stockgrowers Bank*, Third St.

[FR Doc. 86–7794 Filed 4–7–86; 8:45 am]

BILLING CODE 4310-70-M

Upper Delaware Citizens Advisory Council Meeting

AGENCY: National Park Service; Upper Delaware Citizens Advisory Council, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council.

Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: April 18, 1986, 7:00 p.m.

Inclement weather reschedule date: May 2, 1986.[1]

ADDRESS: Town of Tusten Hall, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent, upper Delaware Scenic and Recreational River, Drawer C, Narrowsburg, NY 12764-0159, (717) 729-8251.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95-625, 16 U.S.C. 1274 note, to encourage maximum public involvent in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation of a management plan and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will include continued review of proposed River Management Plan. The meeting will be open to the public.

Any member of the public may file with the council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, NY 12764. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Upper Delaware Scenic and Recreational River, River Road, 1¾ miles North of Narrowsburg, NY, Damascus Township, Pennsylvania.

Dated: March 27, 1986.

James W. Coleman, Jr.,

Regional Director, Mid-Atlatic Region.

[FR Doc. 86-7795 Filed 4-7-86; 8:45 am]

BILLING CODE 5310-70-M

[1] Announcements of cancellation due to inclement whether will be made by radio stations WDNH, WDLC, WSUL, and WVOS.

United States World Heritage Nomination Process; Calendar Year 1986

AGENCY: National Park Service, Interior.

ACTION: Public Notice and Request for Comment.

SUMMARY: The Department of the Interior, through the National Park Service, announces the process that will be used in calendar 1986 to identify possible U.S. nominations to the World Heritage List. This notice lists the properties that are included in the Inventory of Potential Future U.S. World Heritage Nominations, and solicits public comments and suggestions on properties that should be considered as potential U.S. World Heritage nominations this year. This notice identifies the requirements that U.S. properties must satisfy to be considered for nomination, and references the rules that the Department of the Interior has adopted to implement the World Heritage Convention. In addition, this notice contains the criteria which cultural or natural properties must satisfy for World Heritage status, and the 14 U.S. properties inscribed on the World Heritage List as of January 1, 1986.

DATES: Comments or suggestions of cultural natural properties as potential 1987 U.S. World Heritage nominations must be received within 60 days of this notice. Comments should pertain to the merit of properties included on the inventory or others which the respondent believes should be considered for nomination to the World Heritage List in 1987. Comments should also specify how the recommended property satisfies one or more of the World Heritage criteria. The Department will decide the issue of nominations for this year and will publish the decision in the **Federal Register**, with a request for further public comment in the event that potential nominations are identified. Comments on potential U.S. nominations which may be listed must be received within 30 days of the second notice. In the event that nominations are favorably identified and received, the Department of the Interior will subsequently publish in the **Federal Register** a final list of proposed 1987 U.S. World Heritage nominations. A detailed nomination document will be prepared for each such proposed nomination. In November, the Federal Interagency Panel for World Heritage will review the accuracy and completeness of draft 1987 U.S. nominations, and will make recommendations to the Department of the Interior. The assistant Secretary for Fish and Wildlife and Parks will subsequently transmit approved nomination(s) on behalf of the United States to the World Heritage Committee Secretariat, through the Department of State, by December 15, 1986, for evaluation by the World Heritage Committee in a process that could lead to inscription on the World Heritage List by fall 1987.

ADDRESS: Written comments or recommendations should be sent to the Director, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013-7127. Attention: World Heritage Convention-773.

FOR FURTHER INFORMATION CONTACT: Mr. David G. Wright, Associate Director, Planning and Development, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013-7127 (202/343-6741).

SUPPLEMENTARY INFORMATION: The Convention Concerning the Protection of the World Cultural and Natural Heritage, ratified by the United States and 89 other countries, has established a system of international cooperation through which cultural and natural properties of outstanding universal value to mankind may be recognized and protected. The Convention seeks to put into place an orderly approach for coordinated and consistent heritage resource protection and enhancement throughout the World. The Convention complements each participating nation's heritage conservation programs, and provides for:

(a) The establishment of an elected 21-member World Heritage Committee to further the goals of the Convention and to approve properties for inclusion on the World Heritage List;

(b) The development and maintenance of a World Heritage List to be comprised of natural and cultural properties of outstanding universal value;

(c) The preparation of a List of World Heritage in Danger;

(d) The establishment of a World Heritage Fund to assist participating countries in identifying, preserving, and protecting World Heritage properties;

(e) The provision of technical assistance to participating countries, upon request; and

(f) The promotion and enhancement of public knowledge and understanding of the importance of heritage conservation at the international level.

Participating nations identify and nominate their sites for inclusion on the World Heritage List. The World Heritage Committee reviews and evaluates all nominations against established criteria. Under the Convention, each participating nation assumes responsibility for taking appropriate legal, scientific, technical, administrative, and financial measures necessary for the identification, protection, conservation, and rehabilitation of World Heritage properties situated within its borders.

In the United States, the Department of the Interior is responsible for directing and coordinating U.S. participation in the World Heritage Convention. The Department implements its responsibilities under the Convention in accordance with the statutory mandate contained in Title IV of the National Historic Preservation Act Amendments of 1980 (Pub. L. 96-515; 16 U.S.C. 470a-1, a-2). On May 27, 1982, the Interior Department published in the Federal Register the policies and procedures which are used to carry out this legislative mandate (47 FR 23392). The rules contain additional information on the Convention and its implementation in the United States, and identify the specific requirements that U.S. properties must satisfy before they can be nominated for World Heritage status, i.e., the property must have previously been determined to be of national significance, its owner must concur in writing to its nomination, and its nomination must include evidence of such legal protections as may be necessary to ensure preservation of the property and its environment.

The Federal Interagency Panel for World Heritage assists the Department in implementing the Convention by making recommndations on U.S. World Heritage policy, procedures, and nominations. The Panel is chaired by the Assistant Secretary for Fish and Wildlife and Parks, and includes repesentatives from the Office of the Assistant Secretary for Fish and Wildlife and Parks, the National Park Service, Fish and Wildlife Service, and the Bureau of Land Management within the Department of the Interior; the President's Council on Environmental Quality; the Smithsonian Institution; the Advisory Council on Historic Preservation; National Oceanic and Atmospheric Administration, Department of Commerce; Forest Service, Department of Agriculture; the U.S. Information Agency; and the Department of State.

I. Potential U.S. World Heritage Nominations

The Department encourages any agency, organization, or individual to submit written comments on how one or more properties on the U.S. World Heritage Indicative Inventory which follows, or other qualified property, relates to and satisfies one or more of the World Heritage criteria (Section II of this notice). In order for a United States property to be considered for nomination to the World Heritage List, it must satisfy the requirements set forth earlier, i.e., (a) it must have previously been determined to be of national significance, (b) its owner must concur in writing to such nomination, and (c) its nomination document must include evidence of such legal protections as may be necessary to preserve the property and its environment. Information provided by interested parties will be used in evaluating the World Heritage potential of a particular cultural or natural property.

The following properties were published in the Federal Register on May 6, 1982, as the Inventory of Potential Future U.S. World Heritage Nominations (47 FR 19648) and amended in (48 FR 38100). The Inventory discusses briefly the significance of each site, and identifies the specific World Heritage criteria that the sites appear to satisfy. The properties included on the Inventory minus properties nominated in intervening years are as follows:

Natural

Acadia National Park, Maine
Aleutian Islands Unit of the Alaska Maritime National Wildlife Rufuge, Alaska
Arches National Park, Utah
Arctic National Wildlife Refuge, Alaska
Big Bend National Park, Texas
Bryce Canyon National Park, Utah
Canyonlands National Park, Utah
Capitol Reef National Park, Utah
Carlsbad Caverns National Park, New Mexico
Colorado National Monument, Colorado
Crater Lake National Park, Oregon
Death Valley National Monument, California
Denali National Park, Alaska
Gates of Arctic National Park, Alaska
Glacier Bay National Park, Alaska
Grand Teton National Park, Wyoming
Guadalupe Mountains National Park, Texas
Haleakala National Park, Hawaii
Joshua Tree National Monument, California
Katmai National Park, Alaska
Mount Rainier National Park, Washington
North Cascades National Park, Washington
Okefenokee National Wildlife Refuge, Georgia-Florida
Organ Pipe Cactus National Monument/ Cabeza Prieta National Wildlife Range, Arizona
Point Reyes National Seashore, California
Rainbow Bridge National Utah
Rocky Mountain National Park, Colorado
Saguaro National Monument, Arizona
Sequoia-Kings Canyon National Parks, California
Virginia Coast Reserve, Virginia
Zion National Park, Utah

Cultural

Aleutian Islands Unit of the Alaska Maritime National wildlife Refuge (Fur Seal Rookeries), Alaska
Auditorium Building, Illinois-Chicago
Bell Telephone Laboratories, New York-New York City
Brooklyn Bridge, Brooklyn, New York
Cape Krusenstern Archaeological District, Kotzebue, Alaska
Carson, Pirie, Scott and Company Store, Chicago, Illinois
Casa Grande National Monument, Coolidge, Arizona
Chapel Hall, Gallaudet College, District of Columbia
Eads Bridge, Illinois-Missouri
Fallingwater, Mill Run, Pennsylvania
Frank Lloyd Wright Home and Studio, Oak Park, Illinois
General Electric Research Laboratory, Schenectady, New York
Goddard Rocket Launching Site, Auburn, Massachusetts
Hohokam Pima National Monument, Arizona
Leiter II Building, Chicago, Illinois
Lindenmeier Site, Colorado
Lowell Observatory, Flagstaff, Arizona
Marquette Building, Chicago, Illinois
McCormick Farm and Workshop, Walnut Grove, Virginia
Monticello, Charlottesville, Virginia
Mound City Group National Monument, Ohio
Moundville Site, Alabama
New Harmony Historic District, New Harmony, Indiana
Ocmulgee National Monument, New Mexico
Poverty Point, Bayou Macon, Louisianna
Prudential (Guaranty) Building, Buffalo, New York
Pupin Physics Laboratories, Columbia University, New York
Reliance Building, Chicago, Illinois
Robie House, Chicago, Illinois
Rookery Building, Chicago, Illinois
San Xavier Del Bac, Tucson, Arizona
Savannah Historic District
South Dearborn Street-Printing House Row North Historic District, Chicago, Illinois
Taliesin, Spring Green, Wisconsin
Taos Pueblo, Taos, New Mexico
Trinity Site, Bingham, New Mexico
Unity Temple, Oak Park, Illinois
University of Virginia Historic District, Charlottesville, Virginia
Ventana Cave, Arizona
Wainwright Building, St. Louis, Missouri
Warm Springs Historic District, Georgia
Washington Monument, District of Columbia

Additional information on each of the properties listed above may be found in the May 6, 1982, Federal Register notice (47 FR 19648), which inlcudes a description of the properties on the U.S. World Heritage inventory. This notice is available from the National Park Service (see addresses). Written comments are welcome on these and other qualified properties.

II. World Heritage Criteria

The following criteria are used by the World Heritage Committee in evaluating the World Heritage potential of cultural and natural properties nominated to it:

A. Criteria for the Inclusion of Cultural Properties on the World Heritage List

(1) A monument, group of buildings or site which is nominated for inclusion on the World Heritage List will be considered to be of outstanding universal value for the purposes of the Convention when the Committee finds

that it meets one or more of the following criteria *and* the test of authenticity. Each property nominated should therefore:

(i) Represent a unique artistic achievement, a masterpiece of the creative genius; or

(ii) Have exerted great influence, over a span of time or within a cultural area of the world, on developments in architecture, monumental arts or townplanning and landscaping; or

(iii) Bear a unique or at least exceptional testimony to a civilization which has disappeared; or

(iv) Be an outstanding example of a type of structure which illustrates a significant stage in history; or

(v) Be an outstanding example of a traditional human settlement which is representative of a culture and which has become vulnerable under the impact of irreversible change; or

(vi) Be directly or tangibly associated with events or with ideas or beliefs of outstanding universal significance. (The Committee considers that this criterion should justify inclusion in the List only in exceptional circumstances or in conjunction with other criteria); and

In addition, the property must meet the test of authenticity in design, materials, workmanship, or setting.

(2) The following additional factors will be kept in mind by the Committee in deciding on the eligibility of a cultural property for inclusion on the List:

(i) The state of preservation of the property should be evaluated relatively, that is, it should be compared with that of other property of the same type dating from the same period, both inside and outside the country's borders; and

(ii) Nominations of immovable property which is likely to become movable will not be considered.

B. Criteria for the Inclusion of Natural Properties on the World Heritage List

(1) A natural heritage property which is submitted for inclusion in the World Heritage List will be considered to be of outstanding universal value for the purposes of the Convention when the Committee finds that it meets one or more of the following criteria and fulfills the conditions of integrity set out below. Properties nominated should therefore:

(i) Be outstanding examples representing *the major stages of the earth's evolutionary history;* or

(ii) Be outstanding examples representing *significant ongoing geological processes, biological evolution, and man's interaction with his natural environment;* as distinct from the periods of the earth's development, this focuses upon ongoing processes in the development of communities of plants and animals, landforms, and marine areas and fresh water bodies; or

(iii) *Contain superlative natural phenomena, formations or features;* for instance, outstanding examples of the most important eco-systems, areas of exceptional natural beauty or exceptional combinations of natural and cultural elements; or

(iv) *Contain the foremost natural habitats where threatened species of animals or plants of outstanding universal value* from the point of view of science or conservation still survive.

(2) In addition to the above criteria, the sites should also fulfill the conditions of integrity:

(i) The sites described in (i) above should contain all or most of the key interrelated and interdependent elements in their natural relationships; for example, an "ice age" area would be expected to include the snow field, the glacier itself, and samples of cutting patterns, deposition, and colonization (striations, moraines, pioneer stages of plant succession, etc.).

(ii) The sites described in (ii) above should have sufficient size and contain the necessary elements to demonstrate the key aspects of the process and to be self-perpetuating. For example, an area of "tropical rain forest" may be expected to include some variation in elevation above sea level, changes in topography and soil types, river banks or oxbow lakes, to demonstrate the diversity and complexity of the system.

(iii) The sites described in (iii) above should contain those ecosystem components required for the continuity of the species or of the other natural elements or processes objects to be conserved. This will vary according to individual cases; for example, the protected area of a waterfall would include all, or as much as possible, of the supporting upstream watershed; or a coral reef area would include the zone necessary to control siltation or pollution through the stream flow or ocean currents which provide its nutrients.

(iv) The sites containing threatened species as described in (iv) above should be of sufficient size and contain necessary habitat requirements for the survival of the species.

(v) In the case of migratory species, seasonal sites necessary for their survival, wherever they are located, should be adequately protected. The Committee must receive assurances that the necessary measures be taken to ensure that the species are adequately protected throughout their full life cycle. Agreements made in this connection, either through adherence to international conventions or in the form of other multilateral or bilateral arrangements, would provide this assurance.

(3) The property should be evaluated relatively, that is, it should be compared with other properties of the same type, both inside and outside the country's borders, within a biogeographic province, or migratory pattern.

III. World Heritage List

As of January 1, 1985, the World Heritage Committee had approved the following 14 cultural and natural properties in the United States for inscription on the World Heritage List. (The World Heritage List currently includes 216 properties worldwide.)

Cahokia Mounds State Historic Site
Everglades National Park
Grand Canyon National Park
Great Smoky Mountains National Park
Independence Hall
Mammoth Cave National Park
Mesa Verde National Park
Olympic National Park
Redwood National Park
San Juan National Historic Site and La Fortaleza
The Statute of Liberty
Wrangell-St. Elias National Park
Yellowstone National Park
Yosemite National Park

Dated: April 3, 1986.

Susan E. Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-7793 Filed 4-7-86; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[I.C.C. Order No. 6]

Rerouting Traffic; Green Mountain Railroad Corp. et al.

In the matter of Green Mountain Railroad Corporation; Vermont Railway Inc; Central Vermont Railway, Inc.; Canadian National Railways; CP Rail; Consolidated Rail Corporation; Bangor and Aroostook Railroad Company; Pioneer Valley Railroad Company, Inc.; Masschusetts Central; Lamoille Valley Railroad Company and Grand Trunk Railway System.

On March 3, 1986, the Brotherhood of Maintenance of Way Employees (BMWE) struck Maine Central Railroad Company (MEC), one of three rail carriers controlled by Guilford Transportation Industries, Inc. (GTI). The other carriers controlled by GTI are Boston and Maine Corporation (BM) and Delaware and Hudson Railway Company (DH).

On March 6, 1986, MEC embargoed all traffic to majority of its system (29 stations) in the State of Maine; five (5) stations in New Hampshire, and all Trailer on Flat Car/Container on Flat Car (TOFC/COFC) traffic to and from Portland, Waterville, and Bangor, Maine. Later, the dispute spread to the BM, and on March 18, 1986, BM embargoed all traffic to six (6) stations in Maine; forty-nine (49) stations in Massachusetts; thirty-nine (39) stations in New Hampshire, and fourteen (14) stations in Vermont. The embargo contains provisions for certain traffic to move to specific locations on the embargoed lines under permit, and a few lines remain unembargoed. Service is being performed by supervisory personnel and is substantially reduced from normal.

Essentially, three classifications of traffic are affected by the strike and the embargoes: (1) Local traffic, which originates or terminates on the embargoed lines; (2) overhead traffic, which is received in interchange from connecting carriers for movement over the receiving carriers' lines and delivery to still other carriers for further transportation movement, and (3) the movement of shipper owned and foreign line empty cars.

Numerous requests for rerouting authority have been received from shippers, connecting rail carriers, and State officials. The requests for Commission action generally emphasize the need for alternative routings for traffic normally routed over the disabled lines. The requests also complain that shippers and connecting carriers are suffering considerable economic losses by either having to order the diversion of traffic, at substantially higher rates in order to utilize alternative rail routings, or by diverting the rail traffic to motor carriers. In addition, several carriers and shippers are faced with shutting down due to the absence of equipment and available routes. The equipment shortage is due to the fact that much of the traffic involved moves in shipper controlled, specialized equipment, which is not readily available from the railroads. Finally, the authority to reroute would help to relieve congestion at interchange connections with GTI. Connecting carriers report substantial accumulations of loaded and empoty cars, some of which have exceeded six hundred cars at a single location. In addition, accumulations of foreign loaded and empty cars on the disabled GTI System have increased noticeably.

The Order contemplated here is intended to relieve congestion, and restore prompt service and the expeditious movement of traffic in interstate commerce. 49 U.S.C. 11124. As quickly as BM and MEC can restore satisfactory service over their lines, the shipper specified routings will be restored.

It is the opinion of the Commission that the BM and MEC presently are unable to transport all traffic routed via their lines; that the interests of connecting carriers, and affected shippers and States, require this authority; that this authority will not constitute an undue burden for any originating or connecting carrier, and that this matter is considered to be outside the scope of a single carrier, as provided by Ex Part No. 376, *Rerouting of Traffic*, 364 I.C.C. 827, thereby making this action by the Commission necessary.

It is ordered:

(a) *Rerouting traffic*. The Boston and Maine Corporation (BM) and Maine Central Railroad Company (MEC) being unable to transport promptly all traffic via their lines due to work stoppage and embargo, their above-named connections are authorized to reroute any traffic routed via BM and MEC. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. All traffic accepted for movement via this routing must be rerouted in accordance with this order and will not be subject to diversion or other charges beyond those covered by paragraph (d) of this order. The billing covering all such cars rerouted shall carry a reference to this order as authority for the rerouting.

(b) *Notification to shippers*. Each originating carrier accepting traffic to be rerouted in accordance with this order, shall notify each shipper at the time each shipment is accepted and, to the best of its ability, shall furnish to such shipper the alternative routing.

(c) *Concurrence of receiving roads to be obtained*. The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered. Further, originating carriers are required to verify that the carrier to effect the rerouting and named in this order has the concurrence of a carrier to which the traffic may be diverted.

(d) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted shall be rates which were applicable at the time of shipment on the shipments as originally routed.

(e) In executing the directions of the Commission provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(f) *Effective date*. This order shall become effective at 12:01 p.m., April 4, 1986.

(g) *Expiration date*. This order shall expire at 11:59 p.m., May 3, 1986 unless otherwise modified, amended or vacated by order of this Commission.

This action is taken under the authority of 49 U.S.C. 11124.

This order shall be served upon each named carrier, Guilford Transportation Industries, Inc., the Association of American Railroads, Transportation Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association.

A copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, DC, April 4, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Chairman Gradison did not participate in the disposition of this matter.

James H. Bayne,

Secretary.

[FR Doc. 86-7949 Filed 4-7-86; 10:10 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Consent Judgment in Action To Enjoin Violation of the Clean Air Act ("CAA"); Plaza Material Corp.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a consent judgment in *United States v. Plaza Materials Corporation*, Civil Action No. 84 Civ. 1804 (J.E.S.), was lodged with the United States District Court for the Southern District of New York on March 19, 1986. The consent judgment establishes a compliance program for the Suffern, New York facility owned and operated by Plaza Materials Corporation, to bring the facility into compliance with the

Clean Air Act ("CAA"), 42 U.S.C. 7401 *et seq.*, and the applicable New York State Implementation Plan ("SIP") Part 212 and requires payment of a civil penalty in the amount of $17,500.00

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent judgment. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Plaza Material Corporation*, D.J. Ref. No. 90-5-2-1-660.

The consent judgment may be examined at the Office of the United States Attorney, Southern District of New York, U.S. Courthouse, One St. Andrews Plaza, New York, New York 10007; at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the consent judgment may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of 1.70 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-7757 Filed 4-7-86; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program; Unemployment Insurance Program Letter No. 23-86; Status of Interest Relief for 1986 and Beyond and/or Cap on Offset Credit Reduction

Unemployment Insurance Program Letter No. 23-86 advises States of the current status and applicability of interest relief provisions and/or cap on offset credit reduction for 1986 and beyond pursuant to Title XII of the Social Security Act and section 3302 of the Internal Revenue Code of 1954. UIPL 23-86 is published below.

Dated: March 31, 1986.

Roger D. Semerad,

Assistant Secretary of Labor.

Dated: April 1, 1986.

Expiration date: April 30, 1987.

Directive: Unemployment Insurance Program Letter No. 23-86.

To: All State Employment Security Agencies.

From: Barbara Ann Farmer, Acting Administrator for Regional Management.

Subject: Status of Interest Relief for 1986 and Beyond and/or Cap on Offset Credit Reduction.

1. *Purpose.* To advise States of the current status and applicability of interest relief provisions and/or cap on offset credit reduction for 1986 and beyond.

2. *References.* Social Security Act, Title XII; Internal Revenue Code of 1954, section 3302; Pub. L. 97-35, sections 2406 and 2407; Pub. L. 97-248, section 274; Pub. L. 98-21, sections 511 and 512; and UIPLs 13-82, 31-83 (and Changes 1, 2 and 3) and 35-83.

3. *Background.* Legislation passed by the Congress in recent years requires the Secretary of Labor to certify that States with outstanding Title XII loans, used to pay unemployment benefits, meet specific criteria in order to: (a) Receive a deferral, delay or discount of interest due; (b) have a limit (cap) placed on the amount of the FUTA offset credit reduction employers in a State are subject to; and (c) continue to receive relief granted by deferrals in subsequent periods.

Over the past few years, the Secretary has certified a number of States for these types of relief. In each case, in order to qualify for relief, the State has had to meet criteria that are intended to move the State closer to solvency. Some of the provisions as outlined in UIPL 31-83 have expired and do not apply for 1986 and beyond. Some provisions remain in effect and some provisions (granting past interest deferrals) require action on the part of the State to continue to receive the benefits of interest deferrals. This UIPL will provide a status on those provisions as well as provide further guidance on "cash flow" loans.

4. *Questions Regarding Interest on Cash Flow Loans.* Because of questions raised by some States concerning the liability for interest on trust fund advances obtained and repaid on or between January 1 and September 30 (cash flow loans), the Department of Labor has conducted a review of the issue. The review has found that any and all advances received by a State on or after January 1 and repaid in full prior to October 1 of the same calendar year would not be subject to interest payments unless additional loans are obtained by the State after September 30 but before the end of the same calendar year. If an additional loan is obtained after September 30 and within the same calendar year, interest on loans secured prior to October 1 of the calendar year is due and payable the day after the day that first additional borrowing occurs. It is therefore possible for a State to have several episodes of borrowing and repayment during a calendar year but prior to October 1 and not be liable for interest on those cash flow loans. Section 1202(b)(2) and (3)(A).

5. *Interest Relief Provisions.* The interest relief provisions are deferral, delay and/or discount of interest.

a. *Deferral of interest.*

(1) The provision for deferring the payment of interest on advances made during the months of May, June, July, August and September until the end of the following calendar year remains in effect. Interest will accrue on this deferred interest from the date it was due to be paid until it is paid. This is the only deferral provision under which deferred interest accrues interest. Section 1202(b)(3)(B).

(2) The provision for high unemployment deferral of interest payment also remains in effect. High unemployment under this provision is defined as an insured unemployment rate (IUR) equal to or greater than 7.5 percent during the first 6 months of the preceeding calendar year. This provision authorizes deferral of 75 percent of interest charges due prior to October 1 of a year to be paid in three equal installments over the next three years. No interest accrues on these deferred interest payments. Section 1202(b)(3)(C).

(3) The provision for average tax rate deferral of interest payment expired in 1985. This provision allowed deferral of 80 percent of interest charges due prior to October 1 if total State unemployment compensation revenues to the unemployment fund equaled at least two percent of total wages paid by employers covered under the State unemployment compensation law for taxable year 1982. Section 1202(b)(8)(B)(i) or (ii) (II). The State must pay at least one-fourth of the deferred interest in three annual installments beginning with the year following the fiscal year in which it was due and the balance in the fourth year following the fiscal year in which it was due. The installment payments must be made prior to October 1 in each year. Section 1202(b)(8)(A).

(4) The provision that allows a State to obtain *new* legislative-action deferrals expired in 1985. The 80 percent deferral is the same as described in (3) above. Section 1202(b)(8)(B)(i) and (ii)(I).

Note: Once a legislative-action deferral is approved under Section 1202(b)(8)(B)(i) and (ii)(I), a State must continue to maintain its solvency effort until all deferred interest is paid. Failure to do so will result in the requirement of immediate payment of all deferred interest. States previously qualifying under this provision are required to certify to the Secretary of Labor prior to September 30 of each year of deferral as to any tax or benefit change occurring after September 30 of the prior year with the cost impact of each change or, if no changes, certification to that effect.

b. *Delay of interest for up to nine months after the September 30 due date.* The provision for high unemployment delay of interest remains in effect. High unemployment under this provision is defined as a total unemployment rate (TUR) of 13.5 percent or higher for the most recent 12-month period for which data is available prior to the date on which interest is due. Section 1202(b)(9).

c. *Discounted rate of interest.* This provision provided for a discounted interest rate of one percentage point below the interest rate that would otherwise apply if certain substantive legislative action were taken. This provision that allows a State to obtain new discounted interest expired in 1985 but still applies in the case of previously approved legislative-action deferrals under a(4) above. Section 1202(b)(8)(D).

d. A State desiring any interest relief under this section must request that relief by letter of application from the Governor. The Secretary shall not assume that the Governor of a State wishes any of the provisions of this section 5 to apply.

6. *Due dates for interest payments.* All provisions of Section 1202(b) on interest payments specify a due date for payment which is on or prior to a specified or determinable calendar day. In all cases if the last day for payment falls on a Treasury non-business day, the interest must be paid not later than the next preceding Treasury business day. There is one necessary exception to this rule. If under the second sentence of section 1202(b)(3)(A) the due date falls on a Treasury non-business day, the due date becomes the next succeeding Treasury business day.

7. *Offset credit reduction provisions.*

a. Full cap provisions permit a State so qualifying to cap FUTA offset credit reductions at the greater of 0.6 percent of FUTA wages or the reduction that was in effect with respect to the State for the preceding year. Section 3302(f)(1).

Full cap provisions remain in effect requiring:

(1) No reduction in tax effort;

(2) No net decrease in solvency;

(3) Average tax rate greater than or equal to the 5-year benefit cost rate; and

(4) Outstanding loans do not increase over balance at end of third preceding year.

Section 3302(f)(2).

b. Partial cap provisions reduce the annual offset credit reductions by 0.1 or 0.2 percentage points under prescribed conditions. Reductions earned in prior years will carry forward. Section 3302(f)(8)(A) limits any such partial caps to "a taxable year prior to 1987" (thereby ending no later than 1986). However the Report of the Conference on Pub. L. 98-21, containing these provisions, appears to indicate that it was intended by the conferees that partial caps would be limited to taxable years prior to 1986 (thereby ending no later than 1985). In order to provide resolution to this inconsistency, the Department has requested a technical correction amendment to section 3302(f)(8)(A), limiting application of the partial cap to "a taxable year prior to 1986". Such change is included in the House-passed *Tax Reform Act of 1985* (H.R. 3838). The bill will be considered by the Senate during the Second Session of the 99th Congress which began on January 21, 1986. Ultimate disposition of the issue remains uncertain. If no action results in 1986, the partial cap provisions will remain in effect through that year.

c. Avoidance of offset reduction when State makes certain repayments. (Section 3302(g)). Under this provision the State makes payments from its trust fund to cover any loans for the year and the equivalent offset reduction from additional funds gained as a result of a law change. The State must further demonstrate it will not be required to borrow Title XII loans from November 1 through January 30. This provision remains in effect.

d. The provision that the additional (and succeeding) fifth year offset credit reduction under section 3302(c)(2)(C) could be waived and additional reduction computed under section 3302(c)(2)(B) if a State has taken no action to reduce its solvency for one Year before September 30 remains in effect. Section 3302(c)(2) (last sentence).

e. A State must request that any modification in Federal Unemployment Tax Act offset credit provisions be granted; otherwise the full offset provisions will be allowed to apply as provided for in section 3302(c)(2) (A), (B) and (C). The Secretary shall not assume that the Governor of a State wishes any of the provisions of this section 7 to apply, absent an express application from the Governor requesting a cap or avoidance and furnishing evidence of meeting the qualifying requirements for granting a cap of avoidance.

8. *OMB Approval.* OMB approved the reporting requirements for UIPL 31-83. This UIPL does not change any of those reporting instructions.

9. *Action Required.* States wishing to secure a cap on or avoidance of offset credit reductions and interest relief are asked to review the requirements explained in detail under UIPL 31-83.

10. *Inquires.* Direct inquires to the appropriate regional office.

[FR Doc. 86-7735 Filed 4-7-86; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; United States Steel Corp. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period March 24, 1986—March 28, 1986.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-16,597; United States Steel Corp., Texas Uranium Operation, George West, TX

In the following case the investigation revealed that criterion (3) had not been met for the reason specified.

TA-W-16,642; United Die Corp., Hazelton, PA

Aggregate U.S. Imports of steel cutting dies are negligible.

Affirmative Determinations

TA-W-16,564; Remington Arms Co., Ilion, NY

A certification was issued covering all workers of the firm separated on or after August 1, 1985.

TA-W-16,575; Altra, Inc., Boulder, CO

A certification was issued covering all workers of the firm separated on or after October 9, 1984 and before August 30, 1985.

TA-W-16,560; Delta International Machinery Corp., Tupelo, MS

A certification was issued covering all workers of the firm separated on or after October 11, 1984 and before February 28, 1986.

TA-W-16,609; Westinghouse Electric Corp., Union City, IN

A certification was issued covering all workers of the firm separated on or after January 1, 1985.

TA-W-16,617; Main Pants and Clothing Corp., West Pittston, PA

A certification was issued covering all workers of the firm separated on or after July 1, 1985 and before December 22, 1985.

TA-W-16,583; Kerr-McGee Chemical Corp., Hobbs Potash Facility, Hobbs, NM

A certification was issued covering all workers of the firm separated on or after October 3, 1984.

TA-W-16,599; Zenith Electronics Corp., Plants #32 and #41, Evansville, IN

A certification was issued covering all workers of the firm separated on or after August 1, 1985.

TA-W-16,537; Arkwright Finishing Plant, United Merchants & Manufacturers, Inc., Fall River, MA

A certification was issued covering all workers of the firm separated on or after January 1, 1985.

TA-W-16,580; Hoechst Ceramtec North America, Inc., Providence, RI

A certification was issued covering all workers of the firm separated on or after October 10, 1984 and before January 31, 1986.

TA-W-16,481; Jampa Manufacturing Co., Lowell, MA

A certification was issued covering all workers of the firm separated on or after June 30, 1985 and before October 6, 1985.

TA-W-16,332; Efka Plastics, Bayone, NJ

A certification was issued covering all workers of the firm separated on or after August 7, 1984 and before August 31, 1985.

TA-W-16,379; Danskin Division of International Playtex, Inc., Plant #5, York, PA

A certification was issued covering all workers of the firm separated on or after December 1, 1984.

TA-W-16,542; Green River Steel Corp., Owensboro, KY

A certification was issued covering all workers of the firm separated on or after September 30, 1984.

TA-W-16,399; Cessna Aircraft Co., Witchita, KS (Including Wallace, Pawnee & Strothers Facilities)

A certification was issued covering all workers of the firm separated on or after August 20, 1984.

TA-W-16,387; Cooper Tire and Rubber Co., Findlay, OH

A certification was issued covering all workers of the firm separated on or after January 1, 1985.

TA-W-16,431; International Shoe Co., Batesville, AR

A certification was issued covering all workers of the firm separated on or after November 1, 1984.

TA-W-16,446; MI LI, Inc., Quincy, MA

A certification was issued covering all workers of the firm separated on or after September 19, 1984 and before December 31, 1985.

TA-W-16,588; Bridgeport Machines, Horsham, PA

A certification was issued covering all workers of the firm separated on or after January 1, 1985.

TA-W-16,588A; Bridgeport Machines, Bridgeport, CT

A certification was issued covering all workers of the firm separated on or after April 1, 1985.

I hereby certify that the aforementioned determinations were issued during the period March 24, 1986–March 28, 1986. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC during normal business hours or will be mailed to persons who write to the above address.

Dated: April 1, 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-7738 Filed 4-7-86; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Bellaire Garment Co. et al.

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Assistance, at the address shown below, not later than April 18, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 18, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 31st day of March 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers of former workers of—	Location	Date received	Dater of petition	Petition No.	Articles produced
Bellaire Garment Co	Bellaire, OH	3/26/86	3/21/86	TA-W-17-, 303	Ladies sportswear and swimwear.
Breier of Amsterdam, Inc. (company)	Amsterdam, NY	3/25/86	3/20/86	TA-W-17-, 304	Leather and suede apparel.
(The) Durron Co., Inc. Filtration System Div. (Co.)	Angola, NY	3/26/86	3/24/86	TA-W-17-, 305	Filter plates, filter presses and related equipment.
Ecusta Corporation (workers)	Watertown, SD	3/24/86	3/19/86	TA-W-17-, 306	Flax straw.
Interstyle, Inc. (ILGWU)	Sparta, IL	3/24/86	3/13/86	TA-W-17-, 307	Ladies sportwear.
Interstyle, Inc. (ILGWU)	Carbondale, IL	3/24/86	3/13/86	TA-W-17-, 308	Ladies sportswear.
Leckenby Company (workers)	Jewett, TX	3/14/86	3/11/86	TA-W-17-, 309	Fabricated structural steel.
OMC Evinrude (USWA)	Milwaukee, WI	3/6/86	3/3/86	TA-W-17-, 310	Outboard motors.
Samsonite Corporation (URW)	Denver, CO	3/21/86	3/17/86	TA-W-17-, 311	Suitcases.
Tonolli Corporation (workers)	Nesquehoning, PA	3/24/86	3/17/86	TA-W-17-, 312	Recycled lead from waste batteries and plastic from waste batteries.
Beau-Tex Cartage, Inc./Beau Tex Warehouse (company)	Beaumont, TX	3/28/86	3/25/86	TA-W-17-, 313	Cartage warehousing.
Great Northern Paper Co. (workers)	Millinocket, ME	3/27/86	3/10/86	TA-W-17-, 314	Groundwood sheets.
Robertson Transformer Co. (workers)	Valparaiso, IN	3/27/86	3/24/86	TA-W-17-, 315	Fluorescent light transformers.
BASF Corp., Fibers Div. (ACTWU)	Williamsburg, VA	3/27/86	3/24/86	TA-W-17-, 316	Man made fibers.

[FR Doc. 86-7737 Filed 4-7-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-16,255]

Kentucky Electric Steel Co.; Ashland, KY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 16, 1986, applicable to all workers at Kentucky Electric Steel Company, Ashland, Kentucky. The Notice of Certification was published in the **Federal Register** on January 28, 1986 (51 FR 3523).

Based on additional information furnished by a worker and confirmed by the company on worker separations prior to the October 1, 1984 impact date, the Department is amending the certification by establishing a new impact date of September 1, 1984.

The intent of the certification is to cover all workers at the Kentucky Electric Steel Company, Ashland, Kentucky whose separations were linked to increased imports of steel bars and bar-size light shapes.

The amended notice applicable to TA-W-16,225 is hereby issued as follows:

All workers of the Ashland, Kentucky facility of Kentucky Electric Steel Company who became totally or partially separated from employment on or after September 1, 1984 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 31st day of March 1986.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 86-7740 Filed 4-7-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-16,298]

Oneida, Ltd, Oneida, NY; Revised Determination on Reconsideration

On March 5, 1986 the Department made an Affirmative Determination Regarding Application for Reconsideration for workers and former workers in the Executive Offices at Oneida, Ltd., Oneida, New York. This determination was published in the **Federal Register** on March 14, 1986 (51 FR 8905).

The company claimed in its application for reconsideration that the Department did not take into consideration all the employment at the Executive Offices of Oneida, Ltd., Oneida, New York.

The reconsideration findings showed that employment at the Executive Offices of Oneida, Ltd., Oneida, New York declined in 1984 and in 1985. Average employment in the Executive Offices declined in the last half of 1984 and in the first half of 1985 compared to their respective periods in the previous year. The findings also showed that the Executive Offices provide administrative support to the two Oneida plants in Sherrill, New York whose workers were certified for trade adjustment assistance in January 1986 both with an impact date of July 26, 1984 (TA-W-16,296 and TA-W-16,297).

Conclusion

After careful review of the facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with stainless steel flatware produced by Oneida Ltd., contributed importantly to the decline in sales and to the total or partial separation of workers and former workers at the Executive Offices of Oneida, Ltd., Oneida, New York. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of the Executive Offices of Oneida, Ltd., Oneida, New York who became totally or partially separated from employment on or after July 26, 1984 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 28th day of March 1986.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 86-7739 Filed 4-7-86; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-86-20-C]

Badger Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Badger Coal Company, 145 Sago Road, Buckhannon, West Virginia 26201 has filed a petition to modify the application of 30 CFR 75.1403-5(g) (belt conveyors) to its Grand Badger No. 1 Mine (I.D. No. 46-04819) located in Upshur County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a clear travelway at least 24 inches wide be provided on both sides of all belt conveyors.

2. Petitioner states that the mine has experienced extensive rib sluffing and adverse roof conditions. Additional supports, such as cribs and posts, have been installed restricting the 24-inch clearance in certain areas of the mine.

3. As an alternate method, petitioner will post aluminum or reflective signs designating close clearance inby and outby affected areas. A belt shutoff switch will be placed in the affected areas and the belt conveyor will be de-energized while work is being

performed. A copy of these stipulations will be posted on the miner's bulletin board.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 8, 1986. Copies of the petition are available for inspection at that address.

Dated: April 1, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-7799 Filed 4-7-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-35-C]

Eastern Associated Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Eastern Associated Coal Corporation, One PPG Place, Pittsburgh, Pennsylvania 15222 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Federal No. 2 Mine (I.D. No. 46-01456) located in Monongalia County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that weekly examinations for hazardous conditions be made in the return and in at least one entry of each intake and return air course in its entirety.

2. The Federal No. 2 Mine was opened in 1968 in the Pittsburgh coal seam. During the period from 1976 to 1979 a tunnel was driven in the coal seam. The tunnel was constructed with a horizontal partition wall of precast concrete slabs to provide separate intake and return air courses, with the return on top. Due to rib rolls which have caused the large concrete slabs to collapse, approximately 800 feet of the tunnel immediately in by the Shriver Shaft is inaccessible and too dangerous to travel. No power is being maintained in the tunnel except to a proposed permissible submersible pump at the bottom of the shaft. Power to this pump would be provided through Shriver Shaft instead of through the tunnel from the mine. Rehabilitation of the tunnel in the area of the unstable slabs and ribs would expose workers to hazardous conditions. Although unsafe for travel, the tunnel allows sufficient air to pass to ventilate the affected areas of the mine.

3. As an alternate method, petitioner proposes to establish and maintain two special ventilation check points that would be examined daily by a certified person. Air quantity and methane readings would be recorded and a date board would be located at each check point for the date, time and initials of the person making each examination. All persons assigned the duties of running the check points would be familiar with the ventilation of the area, and any changes would be reported to the mine and ventilation foremen.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 8, 1986. Copies of the petition are available for inspection at that address.

Dated: April 1, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-7800 Filed 4-7-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-5-M]

Homestake Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Homestake Mining Company, P.O. Box 875, Lead, South Dakota 57754 has filed a petition to modify the application of 30 CFR 57.6195 (conductivity of hoses) to its Homestake Gold Mine (I.D. No. 39-090055) located in Lawrence County, South Dakota. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petititioner's statements follows:

1. The petition concerns the requirement that hoses used in connection with pneumatic loading machines be of the semi-conductive type, having a total resistance low enough to permit the dissipation of static electricity and high enough to limit the flow of stray electric currents to a safe level.

2. Semi-conductive hose if too flexible to reach high back blastholes which may be 12-20 feet above floor level.

3. As an alternate method, petitioner proposes to use an aluminum ammonium nitrate loading probe attached to semi-conductive hose which would extend back to the loading machine. The aluminum tubing would be restricted to areas where only non-electric blasting caps are inserted into blastholes. The semi-conductive hose would restrict stray current and the aluminum tubing would allow static electricity to flow from the aluminum tubing through the hose.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 8, 1986. Copies of the petition are available for inspection at that address.

Dated: April 1, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-7801 Filed 4-7-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-41-C]

Maple Meadow Mining Co., Petition for Modification of Application of Mandatory Safety Standard

Maple Meadow Mining Company, 1250 One Valley Square, Charleston, West Virginia 25301 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Maple Meadow Mine (I.D. No. 46-03374) located in Raleigh County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that the airway is unsafe to travel due to deteriorating roof conditions including four roof falls.

3. As an alternate method, petitioner proposes to establish monitoring stations at specific locations where a certified person will take air readings and make visual examinations on a weekly basis. The results of the examinations will be kept in an approved record book.

4. Petitioner states that the proposed alternate method will provide the same degree of safety to the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 8, 1986. Copies of the petition are available for inspection at that address.

Dated: April 1, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-7802 Filed 4-7-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-36-C]

Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Sandard

Peabody Coal Company, 301 North Memorial Drive, St. Louis, Missouri 63102 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Camp No. 11 Mine (I.D. No. 15-08357) located in Union County, West Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. Petitioner states that due to adverse roof conditions where a roof fall has made an area inaccessible, the seal cannot be safely examined at the standard location.

3. As an alternate method, petitioner has established three points where weekly examinations can be made of the seal and air courses.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 8, 1986. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-7803 Filed 4-7-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-34-C]

Pyro Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Pyro Mining Company, P.O. Box 267, Sturgis, Kentucky 42459 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Pyro #9 Wheatcroft Mine (I.D. No. 15-13920) located in Webster County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that weekly examinations for hazardous conditions be made at seals and return air courses in their entirety.

2. Petitioner states that the mine consists of four seals: one is being examined, another is visible, and two are unable to be examined due to roof falls. There is no danger of the seals crushing out.

3. As an alternate method, petitioner proposes to monitor the air passing by the seals at a specific location on a weekly basis. There are no power wires or sources of ignition in the area.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 8, 1986. Copies of the petition are available for inspection at that address.

Dated: April 1, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-7804 Filed 4-7-86; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

[Application No. D-5512 et al.]

Proposed Exemptions; Bill Kelley Chevrolet, Inc., et al.

AGENCY: Pension and Welfare Benefits Administration, 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 Pension and Welfare Benefits Administration, 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 Document 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.

Bill Kelley Chevrolet, Inc., Employees Retirement Plan (the Plan), Located in Hallandale, Florida

[Application No. D–5512]

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 of certain real property by the Plan to Mr. Stephen A. Kelley and Mr. William J. Kelley, parties in interest with respect to the Plan, provided the sales price is not less than the fair market value of the property on the date of the sale.

Summary of Facts and Representations

1. The plan is a money purchase pension plan with approximately 32 participants. The Plan had total assets of $375,000 as of December 31, 1983. Effective December 30, 1983, the Plan was terminated as an ongoing plan, and its trust is being maintained as a wasting trust (the Trust). The Plan has two trustees, namely, Stephen A. Kelley and William J. Kelley Jr. (the Kelleys). The Kelleys are shareholders, directors, officers and employees of Bill Kelley Chevrolet, Inc. (the Plan Sponsor). The Plan Sponsor is a Chevrolet dealer which sells and services new and used cars.

2. The Plan Sponsor would now like to terminate the Trust and distribute the assets to the Plan participants. The Trust can only be terminated if certain assets in the Trust can be liquidated.[1] The Trust owns a parcel of land, with improvements, located at N.E. 7th Street and 1st Avenue, Hallandale, Florida (the Property) which is leased from the Trust to the Plan Sponsor. On May 1, 1969, the Plan Sponsor entered into a written lease with the Plan (the Lease) for ten years with an option to renew for ten years. The option was renewed by the Plan Sponsor, but there is no written copy of the renewal. Rent has been paid to the Plan as required by the Lease.[2]

3. It is now proposed that the Property be sold to the Kelleys for the total cash amount of $275,000. An appraisal of the Property was performed by Fred E. Welker, S.R.E.A. and Florence Wipplinger of Fort Lauderdale, Florida (the Appraisers). The Appraisers established the fair market value of the Property at $275,000 as of March 9, 1984.

4. In summary, the applicant represents that the proposed transactions meet the statutory criteria of section 408(a) of the Act because:

(1) The Plan would be able to liquidate its assets for a value determined by an independent appraiser, thus providing liquidity for distribution to the Plan participants;

(2) The Plan will receive fair market value for its assets; and

(3) The Plan trustees have determined that the proposed transaction are in the interest of and protective of the Plan and its participants and beneficiaries.

For Further Information Contact: Ms. Linda M. Hamilton of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

[1] The Department notes that the original exemption application requested relief for the sale of the Property and certain other leasehold improvements, owned by the Plan and under lease to the Plan Sponsor. This notice of pendency, however, relates only to the proposed sale of the Property and no exemptive relief is being proposed at this time by the Department concerning the sale of the leasehold improvements.

[2] The applicant represents that the Lease was covered by section 414 of the Act. The Department expresses no opinion as to the applicability of section 414 in this instance. The applicant further represents that it will file an excise tax return and pay excise tax shown on such return in connection with the Lease beyond June 30, 1984 within 60 days of the final grant of the proposed exemption.

Profit Sharing Retirement Plan of Casard Furniture Corporation (the Plan), Located in High Point, North Carolina

[Application No. D–5893]

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 lease of certain real property by the Plan to Casard Furniture Corporation (the Employer) provided all of the terms of such lease are as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party on the date of the consummation of the transaction.

Effective Date: If granted, this proposed exemption will be effective September 10, 1984.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 223 participants. The Plan has total assets of $2,105,330 as of October 24, 1985. The Employer is a furniture manufacturing company. The trustees of the Plan are Arthur Cassell, William L. Cassell and Paul Saperstein (the Trustees). The Trustees are officers of the Employer.

2. The Plan owns certain real estate located in Orange County, North Carolina which it purchased in 1970. The real estate consists of approximately 34,000 square feet. On February 22, 1974 the Employer and Plan entered a lease for a three-year term commencing March 10, 1974 and ending on March 9, 1977 (Old Lease I). The Employer paid the Plan monthly installments of $1,200 as rental. Old Lease I involved 14,670 square feet of space. When the term of this lease expired, the Employer and the Plan continued the lease arrangement pursuant to a holdover provision of the Old Lease I. On January 20, 1978 the Plan and the Employer entered another lease for additional space for a five year term beginning February 1, 1978 and ending on January 31, 1983 (Old Lease II). Old Lease II involved a total of 33,248 square feet of space. The Plan paid monthly rental installments of $3,000. On July 14, 1980 the Plan and the Employer renewed Old Lease II reducing the space to 14,400 square feet (Old

Lease III). Old Lease III was for a three-year term beginning August 1, 1980 and ending July 31, 1983. The rental was payable in monthly installments of $1,500. After the expiration of this term, the Employer continued to lease 14,400 square feet of space (the Property) pursuant to a holdover provision in the Old Lease III.[3]

3. The applicant requests an exemption to permit the continued leasing of the Property by the Plan to the Employer pursuant to a lease agreement which became effective July 1, 1984 (the New Lease). The New Lease is for a five-year term ending on June 30, 1989. The New Lease may be renewed for an additional five-year period, such renewal option to be exercised only upon the approval of the Plan's independent fiduciary.

4. The rental payments under the terms of the New Lease are $1,775 for the first three years. Monthly installments of rent were paid in advance on the first day of each month beginning July 1, 1984. On July 1, 1987, the monthly rental will be adjusted based upon a valuation of the fair market rental value of the Property to be performed by an independent appraiser selected by the Plan's independent fiduciary. The valuation will be made not more than 60 days prior to the date for adjustment of the rental rate. In no event will the rental rate be decreased. If the renewal option is exercised, the rental rate will be again adjusted on July 1990 based upon a new valuation determined in the same manner as provided above. The Employer will be responsible for the payment of all assessments, charges, levies or licenses of any kind that may be assessed against the Property. The Employer also pays for all utilities and real estate taxes.

5. An appraisal of the Property was performed by Gerry Vince and Melvin Holt of Corbett Realty, Inc., independent appraisers, located in Mebane, North Carolina (the Appraisers). The Appraisers have determined that the fair market rental value of the portion of the Property occupied by the Employer is $1,760 per month as of September 10, 1984.

6. Mr. Ed Price has been appointed as the Plan's independent fiduciary (the Independent Fiduciary) with respect to the New Lease, effective May 29, 1985.[4] The Independent Fiduciary is a licensed realtor with the real estate firm of Chambers & Price Realtors, Inc., in High Point, North Carolina. He represents that he is independent of the Employer, his only relationship being his involvement in a few real estate transactions with the Trustees. The Independent Fiduciary represents that he is aware of the duties, responsibilities and liabilities imposed by the Act upon plan fiduciaries.

7. The Independent Fiduciary represents that he has reviewed the New Lease in its entirety, other leases of comparable property, and the appraisal of the Property. He has determined that the New Lease is appropriate and suitable for the Plan and in the best interests of the Plan because it generates income for the Plan equal to the fair market value of the Property. The Independent Fiduciary further represents that he will monitor and enforce the terms of the New Lease.

8. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) because:

(1) The Plan will receive the fair market rental value for the Property;

(2) The Independent Fiduciary will monitor and enforce the terms of the New Lease; and

(3) The 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 M. Hamilton of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Olmsted Medical Group, P.A. Profit Sharing Plan (the Plan) Located in Rochester, Minnesota

[Application No. D-6026]

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 (1) the past sale by the Plan of its interest in certain real property (the Property) to Olmsted Medical Properties (the Partnership), a party in interest with respect to the Plan; (2) the extension of credit by the Plan to the Partnership; (3) the guarantee of repayment to the Plan by Olmstead Medical Group, P.A., the sponsor of the Plan (the Employer) on behalf of the Partnership; and (4) the past assignment by the Plan of a ground lease with Lutheran Brotherhood, an unrelated party, to the Partnership, provided that the terms received by the Plan were not less favorable to the Plan than those obtainable in an arm's-length transaction with unrelated parties.

Effective Date: If the exemption is granted, the effective date will be May 21, 1985.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan with approximately 77 participants and assets of approximately $4,925,260 as of December 31, 1984. The trustees of the Plan (the Trustees) are Harold A. Wente, M.D., John Brodhun, M.D., and Frank Wilkus. Although the Plan permits individual direction of account investments, the applicant represents that there have been no such individually directed accounts. Investment decisions for the Plan are made by the Trustees. The Employer is a professional association organized under the laws of Minnesota which provides medical services. As of December 31, 1984, the Employer had assets of approximately $171,934. The Employer maintains its clinic facility at 210 Ninth Street S.E., Rochester, Minnesota, which is also the property involved in this proposed exemption. The Partnership is a Minnesota partnership comprised of physician employees of the Employer and members of the Employer's administrative staff. Its primary business is the leasing of the Property to the Employer.

2. The Trustees purchased the unimproved property (hereinafter referred to as the Land) on behalf of the Plan for $70,600 in 1968. On August 31, 1969 the Trust sold the Land to Lutheran Brotherhood, and unrelated Minnesota insurance company, for $100,000 and a commitment to provide financing for a new medical building (the Building) to be constructed on the Land. Lutheran Brotherhood then leased the Land to the Plan for $14,250 per year for a period of thirty-five years pursuant to a lease dated August 15, 1969. The Plan financed the construction of the Building

[3] The applicant represents that prior to June 30, 1984, the Old Leases were not prohibited transactions because they were within the purview of section 414 of the Act. The Department expresses no opinion as to the applicability of section 414 in this instance. The applicant represents that any excise tax which may be due as a result of the Old Leases will be paid within 60 days of the final grant of this proposed exemption.

[4] Mr. James Duggin was appointed as the independent fiduciary for the New Lease on July 1, 1984. Mr. Duggin was replaced by Mr. Ed Price as independent fiduciary on May 29, 1985. Mr. Duggin has previously made the same representations regarding the proposed transactions as Mr. Price has made.

using $366,201 in Plan assets and a loan of $725,000 from Lutheran Brotherhood, which loan has been paid off in full.

3. Upon completion of the Building, the Plan leased the Building, including a sub-lease of the Land (together referred to as the Property), pursuant to a thirty-five year lease beginning September 1, 1970, at a monthly rent of $10,000 net of all operating expenses. The Plan made additional improvements on the Building through December 31, 1975 at an additional cost of $249,966. On January 1, 1976, an addendum to the lease was effected which increased the monthly rent to $13,460 net of all operating expenses to reflect the additional improvements. Pursuant to the amended lease, the Plan received net rent of $147,270 per year ($161,520 from the Employer less $14,250 paid to Lutheran Brotherhood under the ground lease) until June 30, 1984. The applicant represents that the Plan's ownership of the Building and lease of the Property to the Employer were permitted under section 414(c)(2) of the Act through June 30, 1984.[5]

4. On June 30, 1984 the Plan and the Employer executed a new lease (the New Lease) for a period of twenty years at an annual rent of $266,000 net of all operating expenses. The annual rent was determined pursuant to an appraisal performed by Mr. Sampson R. Child, MAI, SRPA, of Johnson, Child Martin & Associates, Inc., who represents that he is unrelated to the Employer and the Partnership. Mr. Child had performed a complete appraisal of the Property in 1976, and subsequently undated that appraisal annually. On June 12, 1984, Mr. Child estimated an annual net income form the Property at $226,500. His appraisal dated September 28, 1984 established a fair market value for the Property of $2,231,000.[6]

5. The Plan sold the Property to the Partnership on May 21, 1985 for $2,231,000, of which the Partnership paid $1,784,000 in cash. The Employer and the Partnership obtained the cash by taking out a loan with Lutheran Brotherhood, secured by a first mortgage on the Property. The remainder of the purchase price was evidenced by a promissory note (the Note) to the Plan in the amount of $447,000, to be paid in monthly installments of principal and interest at the rate of 15% per annum over a period of ten years. The Note is secured by a recorded first lien on the accounts receivable of the Employer as guarantor of the Note, and by a recorded second mortgage on the Property. The applicant represents that the accounts receivable will always have a value of at least 200% of the outstanding balance of the Note. The applicant further represents that the accounts receivable totaled $2,485,000 as of December 31, 1984, and that 90% of the accounts are collected by the Employer.

6. Prior to the consumation of the sale and Note, they were approved on behalf of the Plan by First National Bank of Minneapolis acting as the independent fiduciary (the Independent Fiduciary) of the Plan. The Plan retained the Independent Fiduciary pursuant to a written agreement dated June 15, 1984. The Independent Fiduciary represents that it is unrelated to and has no business relationship with the Employer or the Partnership.

7. The Independent Fiduciary determined that the sale, including the Note, was in the best interests and protective of the Plan and its participants and beneficiaries for the following reasons:

(a) The Plan received the full appraised value of the Property;

(b) the sale released the Plan from any further liability under the ground lease with Lutheran Brotherhood;

(c) the large cash downpayment permitted immediate further diversification of the Plan's investments;

(d) the terms of the Note were negotiated on an arm's-length basis, and the Employer could have obtained the same financing from local financial institutions or other third party lenders at the same interest rate and with the same collateral;

(e) the Note, which makes up less than 10% of the Plan assets, fits within the overall investment scheme of the Plan; and

(f) the Employer's accounts receivable represent excellent security for the Note.

8. In addition to approving the sale and Note on behalf of the Plan, the Independent Fiduciary agreed to monitor the repayment of the Loan to ensure that payments are timely made, and to take all necessary steps to protect the interests of the Plan and its participants and beneficiaries if the payments are not made when due. The Independent Fiduciary will also ensure that the value of the security provided by the Partnership and the Employer remains at least 200% of the unpaid principal balance of the Note, and will obtain additional security or accelerate repayment of the Note if the security falls below that level.

9. In summary, the applicant represented that the transactions meet the statutory criteria of section 408(a) of the Act because:

(a) The Note is adequately secured by a promissory note and recorded first lien on the Employer's accounts receivable which will always have a value of at least 200% of the outstanding balance of the Note; as well as a recorded second lien on the Property;

(b) the Note has been and will continue to be monitored by an independent fiduciary;

(c) the Plan received fair market value for the Property;

(d) the Plan is receiving at least a fair market return under the Note; and

(e) the Independent Fiduciary determined that the sale of the Property and receipt of the Note were in the best interests of the Plan and its participants and beneficiaries prior to the date the transaction was consummated.

For Further Information Contact: Ms. Linda Shore of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

Englund Marine Supply Co., Inc. Employees' Profit Sharing Plan; and Englund Marine Supply Co., Inc. Employees' Pension Plan (the Plans) Located in Astoria, Oregon

[Application Nos. D-6265 & D-6266]

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 proposed provision of a line of credit by the Plans to the Englund Marine Supply Company (the Employer), the sponsor of the Plans, provided that the terms of such extension of credit are at least as favorable to the Plans as the Plans could obtain in dealing at arms' length with an unrelated party.

Temporary Nature of Exemption: This exemption, if granted, shall be effective only for a period of five years and shall apply only to loans which are originated and repaid within five years commencing on the date on which the

[5] The Department is expressing no opinion as to whether the Employer was entitled to rely on the statutory exemption provided by section 414(c)(2) of the Act through June 30, 1984.

[6] The applicant requested that the Department grant exemptive relief for the New Lease; however, the Department declined to do so because of the high percentage of Plan assets involved in holding and leasing the Property. The applicant represents that the Employer will file the required forms with the Internal Revenue Service and pay the excise tax applicable to the New Lease within 60 days of the date this exemption is granted.

final exemption, if granted, is published in the **Federal Register.**

Summary of Facts and Representations

1. The plans are a defined benefit plan and a defined contribution plan, each with 18 participants. The Plans' assets are commingled under one trust with total net assets of approximately $1,196,358 as of October 31, 1984. All investment decisions on behalf of the Plans are made by the Plan's sole trustee, Jon Englund (the Trustee), an officer, director and stockholder of the Employer. The Employer is an Oregon corporation engaged in sales of commercial and industrial marine products.

2. In the ordinary course of its business over the past five years, the Employer has regularly obtained operating funds by means of drawing on a line of credit, up to $500,000, from the United States National bank of Oregon (the Bank). For this line of credit, secured solely by the Employer's inventory, the Employer is charged a rate of interest of one percent above the time lending rate of the Bank. The Trustee views the Employer's ongoing need to borrow operating capital as a potential earning vehicle for the Plans and would like to offer funds from the Plans for loans of operating capital to the Employer. The Trustee and the Employer are requesting an exemption to permit the Plans to provide the Employer a line of credit (the Loans) against which the Employer may draw over a five-year period under the terms and conditions described herein.

3. The Loans will not exceed the lesser of $250,000 or twenty-five percent of the Plans' assets at any time. Each Loan must be approved individually by an independent fiduciary representing tht interests of the Plans, discussed below. All such Loans will be fully repaid within five years of the date this exemption, if granted, is published in the **Federal Register.** The Loans will bear initial interest at the rate of the Bank's prime lending rate plus one percent as of the date of each Loan. The interest rate will be adjusted annually to reflect the then current prime lending rate of the Bank plus one percent and in no event will the interest rate on the Loans be less than twelve percent per annum. Each Loan will be repaid in equal monthly payments of principal and interest, with outstanding principal amortized over twenty years and all outstanding principal and interest to be paid within five years of the date of grant of this proposed exemption. The Loans will be secured (the Collateral) by a first mortgage on the land and building which constitutes the Employer's principal place of business (the Property) in Astoria, Oregon, a first security interest in a boat (the Boat) owned by the Employer and by the Employer's accounts receivable (the Accounts). The Property was appraised by George Bushell, Jr. and David Pietka, MAI, professional and independent real estate appraisers in Portland, Oregon, who found that as of October 14, 1985 the Property had a fair market value of $54,000. The Boat had a fair market value of $222,000 as of October 16, 1985, according to Raymond O. Nulf, CMS, a professional marine surveryor and consultant in Coqueville, Oregon. The Employer represents that as of March 31, 1985 the Accounts totalled $508,000. The Employer represents that the value of the Collateral will remain at least two hundred percent of the outstanding balance of the Loans at all times during the five-year period of the Loans. The Property and the Boat are and will remain against loss, damage and destruction with the Plans named as the beneficiary of such insurance policies. The Employer represents that the Plans will have a first security interest in all of the Collateral and such interest will be perfected by the filing of a mortgage in Clatsop County, Oregon and the filing of financing statements with the UCC Division of the Corporation Commission of the State of Oregon.

4. The Trustee has appointed Edward R. Hall (Hall) to act as an independent fiduciary on behalf of the Plans with respect to the Loans. Hall is a tax attorney with substantial experience under the Act who represents that he is independent of and unrelated to the Employer. Hall has analyzed the Plans' proposed extension of credit to the Employer and as a result of such analysis has determined that it will be in the best interests of the Plans to proceed with the proposed arrangement. Hall represents that according to his investigation the risk factor involved is minimal, due to the financial vitality of the Employer and the Employer's successful record in repaying loans. Hall finds that the interest rate terms as proposed are more favorable to the Plans than those which the Plans could expect in dealing with an unrelated party and are appropriate in view of all surrounding circumstances. Hall has determined that the Loans will be adequately secured with the Collateral's mandatory security ratio of 200 percent. Hall represents that in order to establish the reliability of the Accounts as Collateral he has conducted an inspection of the Employer's records relevant to the Employer's experience with accounts receivable over the past five years. Hall finds that, based upon the Employer's consistently high rate of collection, resulting in only one to two percent of uncollectible accounts, the Accounts are valuable and reliable as Collateral. After an examination of the Plans' overall investment portfolio, Hall has determined that the Loans will leave the Plans appropriate liquid and well-diversified. Hall's approval will be required of each individual loan, and Hall represents that he will consider each Loan request from the Employer in the context of the Plans' financial condition at the time of each Loan request. Hall will represent the Plans for the duration of the Loans to monitor the Employer's compliance with all terms and conditions and to pursue appropriate remedies on behalf of the Plans in the event of default or deficiency of performance. Hall will periodically inspect and review the condition of the Collateral to ensure that the Plans' interests remain protected and to ensure that the value of the Collateral remains at least 200 percent of the oustanding balance of the Loans.

5. In summary, the applicants represent that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The interests of the Plans are and will remain represented by an independent fiduciary, Hall, who has determined that the Loans will be in the best interests of the Plans; (2) Hall's approval will be required of each individual Loan and he will consider each Loan request in the context of the Plans' financial condition at the time of each Loan request; (3) The Loans will remain secured by the Collateral with a value of at least 200 percent of the outstanding balance of the Loans; (4) The Loans will not exceed 25 percent of the assets of the Plans at any time and Hall has determined that in making the Loans the Plans will remain appropriately liquid and diversified; and (5) The Loans will be repaid within five years from the date of publication of this exemption, if granted.

For Further Information Contact: Mr. Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Profit-Sharing Plan & Trust Agreement of Zalutsky & Klarquist, P.C. (the Zalutsky Plan) and the Profit-Sharing Plan & Trust Agreement of Joel L. Seres, M.D., P.C. (the Seres Plan; Collectively, the Plans) located in Portland, Oregon

[Application Nos. D-6385 and D-6386]

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 lease of a certain parcel of real property (the Land) located at 4337-4371 S.W. Garden Home Road, Portland, Oregon, by the individually directed account of Morton H. Zalutsky (Mr. Zalutsky) in the Zalutsky Plan and the individually directed account of Joel L. Seres, M.D. (Dr. Seres) in the Seres Plan to Mr. Zalutsky, a party in interest with respect to the Zalutsky Plan and Dr. Seres, a disqualified person with respect to the Seres Plan,[7] provided that the terms of the transaction are at least as favorable to the Plans as those the Plans could obtain in a similar transaction with an unrelated party.

Effective Date: If the proposed exemption is granted the exemption will be effective December 31, 1985.

Summary of Facts and Representations

1. The Zalutsky Plan is a profit sharing plan with five participants and with net plan assets totaling $806,087, as of August 17, 1984. Mr. Zalutsky's individually directed account balance is approximately $680,915. The Seres Plan is a profit sharing plan of which Dr. Seres is the sole participant whose individually directed account totaled approximately $374,058 on June 30, 1984. Mr. Zalutsky is a party in interest and Dr. Seres is a disqualified person with respect to their plans. Each is a fifty percent or more shareholder, director, and/or officer of either Zalutsky & Klarquist, P.C. or Joel L. Seres, M.D., P.C., the sponsors of the Zalutsky Plan and the Seres Plan, respectively. Mr. Zalutsky and Mr. Kenneth S. Klarquist, Jr. (Mr. Klarquist) serve as trustees for the Zalutsky Plan, and Dr. Seres is trustee of the Seres Plan.

2. On November 21, 1973, Mr. Zalutsky and Dr. Seres acquired from unrelated third parties the Land and improvements, consisting of a multi-unit apartment complex (the Improvements), at a total cost of $233,000. On November 28, 1973, the Zalutsky Plan and the Seres Plan acquired the Land, as tenants in common, by deeds (the Deeds) from Mr. Zalutsky and Dr. Seres for cash in the amounts of $10,000 paid by each of the Plans. Each undivided one-half interest in the Land was allocated to the respective accounts of Mr. Zalutsky and Dr. Seres in the Plans.

3. On December 1, 1973, Mr. Zalutsky and Dr. Seres entered into two separate leases (the Old Leases) of the Land from their respective individually directed accounts in the Plans. The Old Leases each had an initial ten year term which would expire November 30, 1983, and an annual basic rent of $1,000 each from Mr. Zalutsky and Dr. Seres payable in equal semi-annual installments of $500. Additional ten year renewal periods were permitted under the terms of the Old Leases.[8] The Old Leases were triple net to the Plans in that Mr. Zalutsky and Dr. Seres, as lessees, agreed to pay all costs, expenses, and obligations of every kind relating to the Land, including but not limited to repairs and maintanance, taxes, sewer assessments, water charges, other governmental levies, and insurance. Mr. Klarquist, the attorney for Mr. Zalutsky and Dr. Seres, represents that the leasing of the Land before June 30, 1984, was not a prohibited transaction under the Act or the Code in that the Old Leases met the requirements of section 414(c)(2) of the Act and section 2003(c)(2)(B) of the Act.[9] After June 30, 1984, Mr. Zalutsky and Dr. Seres continued to use the Land.

4. Mr. Zalutsky and Dr. Seres have entered into one new lease (the New Lease) of the Land from their respective individually directed accounts in the Plans for an annual rental of $7,700 for a three year term commencing July 1, 1984, and ending June 30, 1987. The New Lease is subject to three additional three year renewal periods. The lessees under the terms of the New Lease are responsible for the payment of all property taxes, assessments, repairs, and insurance premiums. Kirk W. Shaeffer (Mr. Shaeffer), MAI, SRPA, of Real Estate Analysis Northwest located in Portland, Oregon submitted a limited appraisal report dated September 21, 1984. Mr. Shaeffer has determined that the market value of the Land without the improvements as of September 18, 1984, was $68,000 on a "cash out" basis and $77,000 on a "typical contract terms" basis. In addition, based on the terms of the Old Leases, Mr. Shaeffer estimated the annual rental rate for the Land at $6,800 on a "cash out" basis and $7,700 on a "typical contract terms" basis. Mr. Shaeffer represents that he is qualified in that he is a licensed real estate appraiser in the state of Oregon and is a member of the American Institute of Real Estate Appraisers and the Society of Real Estate Appraisers. Mr. Shaeffer further certifies that he has no present or contemplated future interest in the Land.

5. Gary H. Blanchard, Vice President and Senior Trust Office of the Pacific Western Bank of Portland, Oregon (the Bank) as representative of the Bank agreed to accept appointment as the independent fiduciary for the subject transaction. The Bank certifies its independnece in that Mr. Zalutsky's combined deposits and loans with the Bank represent less than one half of 1% of the Bank's assets or desposit base and that the Bank has no signifcant loan or deposit relationship with Dr. Seres. The Bank has assumed responsibility to assure that all negotiations, extensions, and renewals on the New Lease are carried out in an arm's-length manner and was responsible for the final form of the New Lease. Further, the Bank represents that it will determine that the terms of the New Lease are adhered to and will monitor the flow of the payments made under the terms of the New Lease. At the time of any renewal, extension, or renegotiation of the New Lease, the Bank asserts it will obtain a market rental survey to assure that rental rates under the New Lease will remain arm's-length. Finally, after careful consideration of the terms of the New Lease, the mix of assets in the Plan's portfolios and the fact that the investment is in the individually directed accounts of Mr. Zalutsky and Dr. Seres such that the other participants will not be affected, the Bank recommends to the Department that the exemption be granted.

6. Mr. Zalutsky and Dr. Seres represent that they paid a total of $1,000 on February 2, 1985, and a total of $1,000 on June 14, 1985, of the amount due for the first twelve months rental under the terms of the New Lease. It is represented that the balance of $5,700 due on the first year's rental and the

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[7] The Department notes that since Dr. Seres is the sole shareholder in Joel L. Seres, P.C. and is the only participant in the Seres Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act by reason of section 4975 of the Code. The exemption, if granted, with respect to the Seres Plan, would exempt only the sanctions resulting from the application of section 4975(c)(1) (A) through (E) of the Code.

[8] It is represented that at the end of the term of the Old Leases or at the end of any renewal period, Mr. Zalutsky and Dr. Seres have the right to remove the Improvements. In addition, under the terms of the Old Leases, Mr. Zalutsky and Dr. Seres retained the right to sell the Improvements and the entitlement to claim and receive in a condemnation proceeding an amount equal to the value of the Improvements. It is represented that pursuant to Oregon state law Mr. Zalutsky and Dr. Seres, as individual lessees, retained ownership of the Improvements on the Land under the terms of the Old Leases and under the terms of the Deeds.

[9] The Department is expressing no opinion herein as to whether the Old Leases have satisfied the conditions of section 414(c)(2) of the Act or 2003(c)(2)(B) of the Act.

current year's rent of $7,700 were paid on December 31, 1985. In addition, the applicants represent they have paid interest to their respective individually directed accounts in the Plans from July 1, 1984 to the date of such payment for all back rent. Further, the applicants represent that they will file Forms 5310 and 5330 with the Internal Revenue Service and will pay the applicable excise taxes due on the "amount involved" for their use of the Land after June 30, 1984, and before the effective date, December 31, 1985, of this exemption as determined under section 4941 of the Code within 60 days of the publication of the grant of an exemption in the **Federal Register.**

7. In summary, the applicants represent that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because: (a) The initial rent under the New Lease is no less than the fair market rental value on a "typical contract terms" basis as appraised by an independent qualified appraiser; (b) the individually directed accounts in the Plans will not be responsible for any costs or expenses under the terms of the New Lease; (c) an independent fiduciary, the Bank, has reviewed the final terms of the New Lease, will monitor the transaction to insure that Mr. Zalutsky and Dr. Seres comply with all such terms, and will negotiate any renewal of the New Lease in an arm's-length manner; (d) the individually directed accounts in the Plans will benefit from the income from and the future appreciation on the Land; and (e) the New Lease is from individually directed accounts in the Plans and will not affect other participants in the Plans.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Metropolitan Bank of Lima, Ohio Profit Sharing Trust (the Profit Sharing Plan) and Metropolitan Bank of Lima, Ohio Employees' Pension Plan (the Pension Plan; together, the Plans) Located in Lima, Ohio

[Application Nos. D-6547 & D-6548]

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), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to (1) a lease by the Plans (the Lease) of certain real property (the Property) to the Metropolitan Bank of Lima, Ohio (the Employer), the sponsor of the Plans; and (2) the Employer's potential cash purchase of the Property from the Plans pursuant to a provision in the Lease; provided that all terms of such transactions are at least as favorable to the Plans as the Plans could obtain in arm's-length transactions with unrelated parties.

Effective Date: This exemption, if granted, shall be effective as of December 1, 1985.

Summary of Facts and Representations

1. The Profit Sharing Plan is a defined contribution plan with 180 participants and total assets of $1,201,700 as of February 2, 1985. The Pension Plan is a defined benefit plan with 170 participants and total assets of $2,182,050 as of February 2, 1985. The Employer is a federally-chartered bank located in Lima, Ohio with total deposits of $181,092,062 as of June 30, 1985. The trustees of the Plan (the Trustees) are employees and/or officers of the Employer.

2. Among the assets of the Plans is the Property, a parcel of real property which serves as the parking lot for the employees of the Employer. The Property is a rectangular, asphalt-paved lot of 1.13 acres, accommodating 139 parking spaces, located at 400 West High Street in Lima, Ohio. The Property had a fair market value of $134,500 as of May 15, 1985, according to William F. Smith, ASA (Smith), an independent professional real estate appraiser in Lima, Ohio. The Profit Sharing Plan owns an undivided one-third interest in the Property and the Pension Plan owns the remaining undivided two-thirds interest in the Property. The Plans purchased the Property in February, 1974 from an unrelated party, the Lima City School District. Since the Plans' acquisition of the Property, the Employer has leased the Property from the plans continuously under the Lease which was originally effective February 1, 1974. The Employer represents that the Lease met the requirements of section 414(c)(2) of the Act and, therefore, was exempt until June 30, 1984 from the prohibitions of sections 406 and 407(a) of the Act.[10] The Employer and the Trustees are requesting an exemption for the continuation of the Plans' lease of the Property to the Employer after June 30, 1984 under the Lease through January 31, 1994. For reasons discussed below, the exemption, if granted, shall be effective as of December 1, 1985.

3. Since June 30, 1984, the Lease has been amended to provide additional safeguards and protections to the Plans pursuant to the Trustees' intent to secure an administrative exemption for the continuation of the Lease. Hereinafter, all references to the Lease are intended as references to the Lease as so amended. The interests of the Plans under the Lease were originally represented by the Trustees. Subsequently, during 1985, the Trustees delegated their authority with respect to the Plans' interests in the Property to the First National Bank of Toledo, Ohio (the Fiduciary). The Fiduciary represents that it is completely independent of and unrelated to the Employer and the Trustees and that it is qualified to act in this Fiduciary capacity by virtue of substantial Fiduciary experience under the Act, including the current management under trust of approximately $175 million in assets of customers' plans. Since its appointment, the Fiduciary has represented the interests of the Plans for all purposes under the Lease, and will continue to represent the interests of the Plans thereunder for the proposed duration of the Lease. The Lease is a triple net lease for a term of twenty years, expiring January 31, 1994, renewable for up to four additional terms of five years each with the approval of the Fiduciary. The Lease requires that rental, payable monthly, shall be the appraised fair market rental value of the Property as determined by a qualified real estate appraiser selected by the Fiduciary every five years on July 1, commencing July 1, 1984. Rental during any renewal terms shall be the appraised fair market rental value of the Property as of the commencement of each such renewal term as determined by a qualified real estate appraiser selected by the Fiduciary. Under the Lease the Employer assumes responsibility for all costs of the Property's maintenance and repair, utilities, taxes, and public liability and property damage insurance in an amount satisfactory to the Fiduciary with the Plans named as additional insured. The Lease requires the Employer to indemnify the Plans and hold the Plans harmless from all liabilities and claims arising from the Employer's use of the Property. Smith determined that as of May 15, 1985 the

[10] The Department expresses no opinion as to whether the Lease met the requirements of section 414(c)(2) of the Act.

Property's fair market rental value was $12.00 per space per month, or $1,668 per month, which is set as the current rental under the Lease until the next rental determination on July 1, 1989. The Employer and the Fiduciary agree that this rental rate must be applicable retroactively from July 1, 1984, and in December, 1985 the Employer paid the Plans in an amount sufficient to compensate the Plans at the rate of Smith's appraisal retroactively from July 1, 1984. Additionally, with respect to these additional retroactive rental amounts, the Employer has paid the Plans interest at a rate determined by the Fiduciary to be appropriate to compensate the Plans for lost interest on such amounts.

4. The Lease includes a provision (the Option) under which the Employer may propose to purchase the Property from the Plans, provided the Employer is not in default of any terms or conditions of the Lease. The Employer's purchase of the Property pursuant to the Option will require the approval of the Fiduciary. The Option provides that if the Fiduciary approves such purchase, the purchase price will be paid in cash in the amount of the Property's fair market value as determined by a professional real estate appraiser selected by the Fiduciary. The Option also provides that any such purchase will occur without any attendant sales costs to the Plans.

5. The Fiduciary represents that it has examined the Plans' proposed retention of the Property and its Lease to the Employer, including the Employer's potential purchase under the Option, and has determined that the past and proposed transactions are in the best interests of the Plans. The Fiduciary has determined that the Property provides the Plans with a return on the initial investment which is good under prevailing market conditions. The Fiduciary represents that retention of the Property by the Plans does not adversely affect the Plans' liquidity needs or the need for asset diversification. The Fiduciary notes that the Employer has proven to be a good tenant, displaying further good faith by agreeing to the protective amendments to the Lease and by agreeing to pay the appraised fair market rental rate under the Lease retroactively to June 30, 1984, with interest. The agreement under which the Fiduciary is appointed by the Trustees to represent the Plans in this matter authorizes the Fiduciary to manage the Property for the benefits of the Plans as if it were the original owner and lessor of the Property. The Fiduciary represents that by accepting the appointment as Fiduciary it accepts the duty to protect the Property and to hold it for the exclusive benefit of the Plans.

6. The Department is not proposing exemptive relief for any period prior to December 1, 1985 because that is the first date subsequent to the appointment of the Fiduciary that the Plans began to receive rental under the Lease in an amount no less than the appraised fair market rental value of the Property. The Employer recognizes that the Lease of the Property from the Plans for the period commencing June 30, 1984 to December 1, 1985 constituted a prohibited transaction under the Act and the Code for which no exemptive relief is proposed herein. Accordingly, the Employer represents that it will pay any excise taxes which are applicable under section 4975(a) of the Code by reason of such Lease of the Property within 60 days of the publication in the **Federal Register** of a notice granting the exemption proposed herein.

7. In summary, the applicant represents that the criteria of section 408(a) of the Act have been and will be satisfied in the past and proposed transactions for the following reasons: (1) The interests of the Plans are represented by the Fiduciary, which has determined that the past and proposed transactions are in the best interests of the Plans; (2) The Lease is a triple net lease requiring the Employer to pay all costs of maintenance, repair, taxes and insurance of the Property and requiring the approval of the Fiduciary for renewal; (3) The Plans have been paid the appraised fair market rental value of the Property in back rentals retroactively from July 1, 1984, with interest, and the Lease ensures the continued payment of the Property's fair market value in future rentals; and (4) Any potential purchase of the Property by the Employer pursuant to the Option will require the approval of the Fiduciary, will occur without costs to the Plans, and the Plans will receive the appraised fair market value of the Property in cash.

For Further Information Contact: Mr. Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 3rd day of April, 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86-7798 Filed 4-7-86; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 86-49; Exemption Application No. D-5608 et al.]

Grant of Individual Exemptions; Jim's Formal Wear Co. et al.

AGENCY: Pension and Welfare Benefits Administration, 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) and/or the

Internal Revenue Code of 1954 (the Code).

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.

Jim's Formal Wear Company Profit Sharing Retirement Plan (the Plan), Located in Trenton, Illinois

[Prohibited Transaction Exemption 86-49; Exemption Application No. D-5608]

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 continued leasing of certain real property by the Plan to 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.

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 January 17, 1986 at 51 FR 2599.

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Medford Radiological Group E. Doyle Profit Sharing Plan Trust (the Plan), Located in Medford, Oregon

[Prohibited Transaction Exemption 86-50; Exemption Application No. D-6443]

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 cash sale of certain works of art (the Artworks) by the Plan to Edward J. Doyle, M.D., a disqualified person with respect to the Plan, provided that the cash received by the Plan from the sale is the higher of either $5,350 or the fair market value of the Artworks 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 February 28, 1986 at 51 FR 7149.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Grove Hill Clinic, P.C. Pension Plan and Trust (the Plan), Located in New Britain, Connecticut

[Prohibited Transaction Exemption 86-51; Exemption Application No. D-6463]

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 (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.

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 January 17, 1986 at 51 FR 2610.

For Further Information Contact: Mr. Gary Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, andy 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 condition 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, DC, this 3rd day of April, 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86-7797 Filed 4-7-86; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Economics; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Economics.
Date & Time: April 17, 18, 19, 1986; Thursday and Friday, 9:00 A.M.–all day; Saturday, 9:00 A.M.–Noon.
Place: One Washington Circle NW., Washington, DC 20037.
Type of Meeting: Closed.
Contact Person: Daniel H. Newlon, Program Director for Economics, Room 312, National Science Foundation, Washington, DC, 20550. Telephone 202–357–9674.
Purpose of Subcommittee: To provide advice and recommendations concerning support for research in the Economics Program.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(b), Government in the Sunshine Act.
Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provision of section 10(d), of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, of July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

April 2, 1986.

[FR Doc. 86–7704 Filed 4–7–86; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Sensory Physiology and Perception; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Sensory Physiology and Perception Program.
Date and Time: April 21, 22, & 23, 1986, 9:00 a.m. to 5:00 p.m. each day.
Place: National Science Foundation, 1800 G St., NW., Room 523.
Type of Meeting: Part Open—Closed 4/21—9:00 a.m. to 5:00 p.m.; Closed 4/22—8:30 a.m. to 12:00 noon; Open 4/22—12:30 noon to 2:30 p.m.; Closed 4/22—2:30 p.m. to 5:00 p.m.; Closed 4/23—8:30 a.m. to 5:00 p.m.
Contact Person: Dr. Carol Welt, Program Director, Sensory Physiology and Perception, Room 320, National Science Foundation, Washington, DC 20550, telephone (202) 357–7428.
Summary Minutes: May be obtained from the Contact Person at the above address.
Purpose of Meeting: To provide advice and recommendations concerning support for research in sensory physiology and perception.
Agenda: Closed—To review and evaluate research proposals as part of the selection process for awards. Open—General discussion of the current status and future plans of the Sensory Physiology and Perception Program.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to Close Meeting: This determination was made by the Committee Management Oficer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, July 6, 1979.

April 2, 1986.

M. Rebecca Winkler,

Committee Mangement Officer.

[FR Doc. 86–7702 Filed 4–7–86; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel on Decision and Management Science Program; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel on Decision and Management Science.
Date/Time: April 24–25, 1986, 8:30 a.m. to 5:00 p.m.
Place: National Science Foundation, 1800 G St., NW., Washington, DC 20550, Room 628.
Contact Person: Dr. Vincent T. Covello, Program Director, National Science Foundation, Room 335, Phone (202) 357–7417.
Purpose of Advisory Panel: To provide advice and recommendations concerning research in Decision and Management Science.
Agenda: Closed: To review and evaluate research proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 522b(c), Government in the Sunshine Act.
Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determination by the Director, NSF on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

April 2, 1986.

[FR Doc. 86–7703 Filed 4–7–86; 8:45 am]

BILLING CODE 7555-01-M

Presidential Young Investigator Awards

The National Science Foundation announces the competition for Presidential Young Investigator Awards to be announced in February 1987.

These awards provide cooperative research support for the Nation's most outstanding and promising young[1] science and engineering faculty. With participation of the industrial sector, the awards are intended to improve the capability of universities to respond to the demand for highly qualified scientific and engineering personnel for academic and industrial research.

A maximum of 200 new Presidential Young Investigator Awards will be made in this competition. At least half of these awards will be made in engineering fields. Awards will be made for up to five years based on the annual determination of satisfactory performance and subject to the availability of funds.

In this competition there will be two types of nominations. The distinction between the two lies in the nomination procedure only and not in the nature of the award. Scientists and engineers who have received or are about to receive their doctoral degrees may be nominated for *faculty awards* by eligible institutions who have appointed or plan to appoint them to tenure track faculty positions. In addition, graduate students currently nearing their doctoral degrees, postdoctoral students, and other recent doctoral recipients without faculty affiliation may be nominated for *prefaculty awards* tenable at an appropriate eligible institution. Institutions offering tenure track positions to recipients of *prefaculty awards* are expected to assume the same commitments as those associated with *faculty awards*.

Because this program is aimed particularly at influencing young

[1] "Young" in this context refers to academic age as determined by time elapsed since receipt of the doctorate.

scientists and engineers in their decisions regarding academic careers, the Foundation strongly encourages the nomination for *prefaculty awards* of outstanding graduate students nearing completion of their graduate work.

Eligibility

U.S. institutions granting doctorates in at least one of the fields supported by the Foundation[2] are eligible to participate in this program. Nomiations may be submitted from any science or engineering department in an eligible institution.

Eligible institutions may nominate, for *faculty awards*, both current and prospective members of their faculty who are early in their careers, and who are holding or have been offered tenure track positions as of the time of nomination.

Eligible institutions may also nominate their promising graduate students and recent doctoral recipients for *prefaculty awards*.

In either case, nominees must have received their doctorates after January 1, 1983. However, scientists and engineers who received their doctoral degrees between January 1, 1983 and Jnauary 1, 1981 are eligible if they first entered into a tenure-track position at an eligible institution after July 1, 1985.

U.S. citizens or individuals who are permanent residents as of the time of nomination are eligible to receive these awards.

Those nominated may conduct research in any branch of science and engineering normally supported by NSF. Particular emphasis in the selection of awards will be given to the mathematical, physical and biological sciences and engineering where there are substantial needs for faculty development.

All PYI awards are tenable only in tenure-track positions at eligible institutions. Presidential Young Investigators who transfer to an ineligible institution at any time prior to or during the period of their grants must resign their awards.

Support and Commitments

Minimum Presidential Young Investigator Awards will consist of $25,000 of Federal funds per year. However, in accordance with the objective of developing improved links between the academic and industrial sectors, the Foundation will provide up to $37,500 of additional funds per year on a dollar-for-dollar matching basis to contributions from industrial sources (normally private, for-profit corporations), resulting in total possible annual support of up to $100,000.

Because industry matching in fields of interest to it is central to the program goals of leveraging Federal funds and fostering industry-university cooperation, NSF expects that matching funds will be obtained in most cases from private, for-profit corporation. However, because industrial funds may be difficult to obtain for some areas of research not in the mainstream of industrial interests, matching funds may be accepted from private non-profit foundations (other than foundations associated with particular universities or university systems). A grantee institution must certify in its budget submission that the matching funds have been specifically designated by the donor for the PYI award.

Matching funds may be either in cash or permanent research equipment. The equipment must be of a type and quality necessary to carry out the awardee's research program. The worth of equipment donations should be based on its fair market value.

Funds meeting the foregoing criteria which have been expended in support of a nominee's research effort after the closing date of this competition may be designated as matching funds.

Institutions are also expected to make a significant commitment to the support of their awardees. Institutions are responsible for arranging for the industrial support and guaranteeing full academic year salary for the awardee. None of the Presidential Young Investigator funds, whether provided by the Foundation or by industry, may be used to underwrite academic year salaries of awardees. However, up to 10 percent of the Foundation funds may be used to defray administrative expenses in lieu of indirect costs.

Application Procedures

Nominations for *faculty awards* originate from the departmental chairperson or analogous administrative officer of the sponsoring institution. Nominations for *prefaculty awards* originate from the departmental chairperson or analogous institutional officer of the academic department where the nominee's doctoral studies are being or were carried out.

Each nomination submission must include:

- The Nomination Form provided. For a *faculty award* nomination, the Form includes a statement signed by an official authorized to make an institutional commitment to guarantee the nominee's academic year salary and to seek matching industrial support. *Prefaculty* nominations need only be signed by the nominating official;
- A complete, up-to-date *curriculum vitae;* a list of prior, current and pending research grants, including sources and amounts; and a bibliography of the nominee's publications in refered journals, indicating by means of an asterisk those of which the nominee is senior author (a complete or partial list of other publications may be attached where it may materially strengthen the nomination);
- Recommendations from three referees who are familiar with the research interests and capability of the nominee. *Referees for faculty award nominations may not be from the nominating institution. For prefaculty awards, at least one reference must be from outside the nominating institution.*
- The Supplementary Information Form MRW, must be submitted before the nomination can be processed.

The nominee's *curriculum vitae* must include a one-page summary of the nominee's research accomplishments and interests consisting of, first, a concise and clear description of specific accomplishments of the nominee's research career and, second, a more detailed discussion of research interests at present. This summary should be separate and distinct from the research interest information requested in the Nomination Form.

After an awardee has been selected, the employing institution will be asked to prepare a first-year budget in support of the awardee's research activities. The budget should show both the amount requested from the Foundation and the sources and amounts of industrial support. This information will be used in determining the amount of the award and other terms and conditions. Except as otherwise provided in this announcement, the terms and conditions, as well as the expected institutional commitment, will be analogous to those stated in the publication, NSF 83–57, *Grants for Scientific and Engineering Research.* Similar submissions will be required annually for each successive year of support under this program.

Presidential Young Investigator Awardees will be expected to begin their tenure by October 1 of the year of their awards.

Evaluation and Selection

Selection will be based on an evaluation of the nominee's ability and potential for contributing to the future vitality of the Nation's scientific and engineering effort as evidenced by accomplishments, including

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[2] See NSF 83–57, *Grants for Scientific and Engineering Research*

contributions of original research and in the training of future scientists and engineers. Recommendations; suitability of the sponsoring institution for the implementation of the nominee's plans for his or her research and academic career (where applicable); probable impact of the award on the future career development of the nominee; scientific quality of the research likely to emerge; and the potential impact of the award on the research field in question will be considered. In the case of *prefaculty nomination,* particular attention will be paid to evidence of the nominee's ability to conduct independent quality research. The selection of individuals to receive Presidential Young Investigator Awards will be made by the National Science Foundation with the advice of panels of outstanding scientists and engineers.

Inquiries

Inquiries regarding the awards may be addressed to the Presidential Young Investigator Awards, Room 414, National Science Foundation, Washington, DC 20550, or telephone inquiries to (202) 357-9466.

W.F. Oettle,

Program Director, Presidential Young Investigator Award.

April 2, 1986.

[FR Doc. 7705 Filed 4-7-86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72-3 (50-261)]

Carolina Power and Light Co.; Issuance of Environmental Assessment and Finding of No Significant Impact for the H.B. Robinson Independent Spent Fuel Storage Installation at the H.B. Robinson Steam Electric Plant

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a materials license under the requirements of 10 CFR Part 72 to Carolina Power and Light Company (CP&L or the Applicant), authorizing receipt and storage of spent fuel in an Independent Spent Fuel Storage Installation (ISFSI) located onsite at its H.B. Robinson Steam Electric Plant, Darlington County, South Carolina.

The function of the ISFSI is to provide interim storage of 56 spent fuel assemblies from H.R. Robinson Steam Electric Plant Unit 2. Seven spent fuel assemblies are stored in an inert atmosphere inside a stainless steel canister which provides confinement, shielding, criticality control and heat removal. Spend fuel loading and canister preparation takes places within the H.B. Robinson Steam Electric Plant fuel handling building. The canister is then moved to the onsite ISFSI inside an IF 300 shipping cask where the canister is then placed inside a concrete horizontal storage module (HSM), which provides additional shielding. A total of eight concrete storage modules would be installed under the requested license.

The Commission's Office of Nuclear Material Safety and Safeguards, Division of Fuel Cycle and Material Safety, has completed its environmental review in support of the issuance of a materials license. The "Environmental Assessment (EA) Related to the Proposed Construction and Operation of The H.B. Robinson Independent Spent Fuel Storage Installation" has been issued in accordance with 10 CFR Part 51. As discussed in the EA, no significant construction impacts are anticipated. The activities will affect only about 0.15 acres of land area on the H.B. Robinson Unit 2 site. The potentials for fugitive dust, erosion and noise impacts, typical of the planned construction activities are minimal, and with good construction practices will be controlled to insignificant levels. The only resources committed irretrievably is the concrete used in the eight ISFSI HSM's. The radiological impacts from liquid and gaseous effluents arising from cask loading and preparation fall with the scope of impacts evaluated for licensed reactor operations and are controlled by the existing H.B. Robinson Reactor Technical Specifications. The primary exposure pathway associated with the ISFSI operation is direct irradiation of nearby residents and site workers. The dose commitment to the nearest resident is about 0.4 mrem/yr and when added to that from H.B. Robinson Steam Electric Plant operations is well within the 25 mrem/yr requirement of 10 CFR 72.67. The collective dose commitment to residents within one mile of the ISFSI is 9×10^{-3} man-rem/yr. The occupational dose to site workers due to construction and operations is a small fraction of the total occupational dose commitment at the H.B. Robinson Steam Electric Plant. The radiological impacts due to accidents at the H.B. Robinson ISFSI are only a small fraction of the 5 rem criteria specified in 10 CFR 72.68(b) and are less than the Environmental Protection Agency Protective Action Guides for individuals exposed to radiation as a result of accidents. No significant impacts are expected from ISFSI operations.

In summary, the ISFSI site has previously been cleared and is being used by the applicant in connection with operations of its H.B. Robinson Steam Electric Plant Unit 2, and therefore involves no new commitment of land resources. The proposed action involves no significant change in the type or increase in the amounts of any effluents that may be released offsite. There is no significant increase in the individual and collective radiation dose to both the public and occupational workers. Therefore, the proposed action will not significantly impact the quality of the human environment. Accordingly, pursuant to 10 CFR 51.31 and 10 CFR 51.32, the Commission has determined that a finding of no significant impact is appropriate and an environmental impact statement need not be prepared for the issuance of a materials license for the H.B. Robinson Independent Spent Fuel Storage Installation.

This licensing action is among the first of several anticipated onsite dry storage ISFSI and is similar to that for an ISFSI at a site not occupied by a nuclear power reactor, which in accordance with 10 CFR 51.20(b)(9) would require an EIS. However, in the NUREG-0575, "Final Generic Environmental Impact Statement on Handling and Storage of Spent Light Water Power Reactor Fuel," the impacts away from reactor spent fuel storage were generically assessed and found to be insignificant. Dry storage also appeared to be environmentally acceptable. Additionally, ISFSI impacts contribute little to the existing impacts from a site already dedicated to NRC licensed activities. Therefore, issuance of a draft finding of no significant impact is not necessary in furthering the purposes of NEPA.

The EA for the proposed action, on which this Finding of No Significant Impact is based, relied on three other environmental documents: (1) "H.B. Robinson Steam Electric Plant Dry Cask Independent Spent Fuel Storage Installation Environmental Report," dated July 15, 1985, and supplementary information provided in response to NRC questions; (2) "Final Environmental Statement Related to Operation of H.B. Robinson Steam Electric Plant" Docket No. 50-261, April 1975; (3) "Final Generic Environmental Impact Statement on Handling and Storage of Spent Light Water Power Reactor Fuel," NUREG-0575 Vols. 1-3, August 1979. The environmental assessment and other documents related to this proposed action are available for public inspection and for copying for a fee at the NRC Public Document Room, 1717 H

Street, NW., Washington, DC, and at the local Public Document Room at the Hartsville Memorial Library, 220 N. Fifth Street, Hartsville, South Carolina, 29550.

Dated at Silver Spring, Maryland, this 31st day of March 1986.

For the Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Advanced Fuel and Spent Fuel Licensing Branch, Division of Fuel Cycle and Material Safety.

[FR Doc. 86-7805 Filed 4-7-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-409]

Dairyland Power Coop; Denial of Amendment to Provisional Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Dairyland Power Cooperative (the licensee) for an amendment to Provisional Operating License No. DPR-45, issued to Dairyland Power Cooperative for operation of the La Crosse Boiling Water Reactor, located in Vernon County, Wisconsin.

The amendment, as proposed by the licensee in the application dated December 8, 1981, would change the Technical Specifications concerning inservice testing of pumps and valves. Notice of consideration of issuance of this amendment was published in the Federal Register on August 23, 1983 (48 FR 38399). All other items requested in this application have been completed by previous licensing actions.

The licensee was notified of the Commission's denial of the proposed Technical Specification changes by letter dated April 1, 1986.

By May 8, 1986 the licensee may demand a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intevene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room 1717 H Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Roy P. Lessy, Jr.; O. S. Heistand; Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036 attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated December 8, 1981 and the Commission's letter to the licensee dated April 1, 1986, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin.

Dated at Bethsda, Maryland, this 1st day of April 1986.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, BWR Project Directorate No. 1, Division of BWR Licensing.

[FR Doc. 86-7806 Filed 4-7-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-366]

Georgia Power Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Prior Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-5 issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia (the licensees), for operation of the Edwin I. Hatch Nuclear Plant, Unit No. 2, located in Appling County, Georgia.

In accordance with the licensees' application for amendment dated January 6, 1986, the amendment would modify the Technical Specifications (TS) for Hatch Unit 2 to delete the operability and surveillance requirements for primary containment hydrogen recombiner systems.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By May 8, 1986, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing and petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention:

Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union Operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: (petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to G.F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 6, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Dated at Bethesda, Maryland, this 31st day of March 1986.

For The Nuclear Regulatory Commission.

Vernon L. Rooney,

Acting Director, BWR Project Directorate #2, Division of BWR Licensing.

[FR Doc. 86-7807 Filed 4-7-86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 307-1]

Initiation of Investigation Under Section 307; Taiwan Export Performance Requirements in the Automotive Sector

AGENCY: Office of the United States Trade Representative, Executive Office of the President.

ACTION: Notice.

SUMMARY: At the direction of the President, the United States Trade Representative has deciced to initiate an investigation under the authority of section 307 of the Trade and Tariff Act of 1984 (19 U.S.C. 2114d), concerning Taiwan's imposition of export performance requirements on foreign direct investment in the automotive sector.

EFFECTIVE DATE: April 8, 1986.

FOR FURTHER INFORMATION CONTACT: Edward Rozynski, Director, Investment Policy, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506, (202) 395-6864.

SUPPLEMENTARY INFORMATION: On March 31, 1986, the President of the United States directed the United States Trade Representative to investigate Taiwan's imposition of export performance requirements on foreign direct investment in the automotive sector. The Taiwan authorities recently approved an automotive investment proposal by Toyota Motor Corporation calling for production in Taiwan of 40,000 units by 1992, 12.5 percent of which must be exported. After 1992, export requirements will be based on production levels and could reach 50 percent. Moreover, other Japanese automotive companies are exploring the possibility of similar agreements with Taiwan. In light of the export performance requirements and the scale of the Taiwan automotive market, we are concerned that these actions may adversely affect the economic interests of the United States.

Interested parties are invited to submit written comments concerning the issues in this investigation. Comments should be filed in accordance with the procedures set forth in 15 CFR 2006.8 for investigations under section 301 of the Trade Act of 1974, as amended, and should be submitted in 20 copies to the Chairman, Section 301 Committee, Office of the United States Trade Representative, Room 223, 600 17th St., NW., Washington, DC 20506, no later than May 8, 1986.

Any interested party may request a hearing concerning the issues in this investigation. Any request for a hearing should be submitted in accordance with the procedures set forth in 15 CFR 2006.7 to the Chairman of the Section 301 Committee at the above address, no later than May 23, 1986. The time and place of the hearing, if any, and filing deadlines for hearing briefs will be published in the **Federal Register.**

Judith Hippler Bello,

Chairman, Section 301 Committee.

[FR Doc. 86-7918 Filed 4-7-86; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-15033, File No. 812-3784]

CNA Bond Fund, Inc.; Application for an Order Declaring That Applicant Has Ceased To Be an Investment Company

April 2, 1986.

Notice is hereby given that CNA Bond Fund, Inc. ("Applicant"), CNA Plaza, Chicago, Illinois 60685, Registered under the Investment Company Act of 1940 ("Act) as an open-end, diversified management investment company, filed an application on March 4, 1986, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicant states that it is a Maryland corporation and that it filed a registration statement pursuant to section 8(b) of the Act on June 30, 1983. The registration never became effective and no public offerings were commenced. The applicant further states that there is just one security holder which will redeem its shares in exchange for cash. Applicant also states that it has not transferred any of its assets to a separate trust; it has no debt; it is not a party to any litigation or administrative proceeding; and it does not intend to engage in any business activities other than those necessary for the winding-up of its affairs.

Notice is further given that any interested party wishing to request a hearing on the application may, not later than April 28, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon the Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-7787 Filed 4-7-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC—15034; File No. 811-4053]

Strategic Israeli Fund, Inc.; Application for an Order Declaring That Applicant Has Ceased To Be an Investment Company

April 2, 1986.

Notice is hereby given that Strategic Israeli Fund, Inc. ("Applicant"), 2030 Royal Lane, Dallas, Texas 75229, registered under the Investment Company Act of 1940 ("Act") as an open-end, non-diversified management investment company, filed an application on January 29, 1986, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicant states that it is incorporated under the laws of the State of Texas and that it filed a registration statement pursuant to section 8(b) of the Act on June 8, 1984, which became effective on September 11, 1984. Applicant further states that on December 30, 1985 its Board of Directors voted to deregister Applicant and distribute all of its assets to shareholders of record on January 29, 1986. According to the application, as of January 27, 1986, Applicant had 50 shareholders and 15,904 shares outstanding with a net asset value per share of $3.89. The Applicant states that it has not transferred any of its assets to a separate trust; it will not retain any assets; it is not a party to any litigation or administrative proceeding; and it does not intend to engage in any business activities other than those necessary for the winding-up of its affairs.

Notice is further given that any interested party wishing to request a hearing on the application may, not later than April 28, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon the Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-7791 Filed 4-7-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23077; SR-AMEX-86-3]

Self-Regulatory Organizations; American Stock Exchange, Inc. Order Approving Proposed Rule Change

The American Stock Exchange, Inc. ("Amex") submitted on February 7, 1986, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4, to amend Article II, Section 1(e), of the Amex Constitution to permit public governors to be eligible for reelection to the Amex Board of Governors after an interval of one year from the end of their second consecutive term.[1]

Currently, Article II, section 1(e) of the Amex Constitution provides that both industry and public governors must retire from the Board after two consecutive terms and remain ineligible for reelection for two years. Amex asserts that the reason for the imposition of this two year ineligibility period on Board members was to prevent industry governors from serving indefinitely on the Board and possibly coming to dominate the Board. The Exchange believes that the problem of Board domination is unlikely to arise with public governors. Further, Amex believes that the modification of this restriction will enable the Exchange to select as public governors individuals who have had significant experience with the Board and that the ability to tap this pool of experienced former public governors will confer substantial benefits on the Exchange.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by issuance of a Commission release (Securities Exchange Act Release No. 22914, February 18, 1986) and by publication in the **Federal Register** (51 FR 6843, February 26, 1986). No written comments were received by the Commission on the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6, and the rules and the 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: March 31, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-7754 Filed 4-7-86; 8:45 am]

BILLING CODE 8010-01-M

[1] On February 18, 1986, Amex submitted Amendment No. 1 to the proposed rule change to reflect the fact that the proposed amendment to Article II, section 1(e) of the Constitution was approved by the Exchange membership at a special membership meeting held on February 14, 1986.

[Release No. 34-23086; File No. SR-MSE-86-3]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Stock Exchange Relating to Floor Equipment Maintenance Fees Which are Effective April 1, 1986

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 March 27, 1986, the Midwest Stock Exchange 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

Listed below are Floor Equipment Maintenance Fees effective April 1, 1986:

	Per month	Per quarter
4 Screen Rich Units	151.80	455.40
3 Screen Rich Units	113.85	341.55
2 Screen Rich Units	75.90	227.70
MAX Floor Broker:		
Terminals Specialist/Back Post MAX Terminals	37.95	113.85
Specialist Printer (If a printer is used by 2 Specialists, each Specialists will be billed ½ of the printer charge)	49.95	149.85
Floor Broker Printer	49.95	149.85

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. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed charges are to cover the cost of maintenance of both the equipment and the necessary cabling. These fees more accurately reflect the actual costs for maintenance of the equipment and lines.

The proposed rule change is consistent with Section 6 of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of reasonable dues, fees and other charges among MSE's members and other persons using its facilities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Stock Exchange, Incorporated does not believe that the proposed rule change will impose any burdens on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or others

Comments have been neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

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 [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 1, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-7789 Filed 4-7-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23094; File No. SR-NASD-86-6]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Proposed Amendments to the Filing Requirements of the Corporate Financing Interpretation; Order Approving Proposed Rule Change on an Accelerated Basis

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 March 24, 1986 the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons described below, the Commission also is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Set forth below is the text of a proposed rule change to the Filing Requirements section of the Interpretation of the Board of Governors—Review of Corporate Financing, Article III, Section 1 of the Rules of Fair Practice "(Corporate Financing Interpretation") of the National Association of Securities Dealers, Inc. ("NASD"). The proposed rule change is a complete revision of the Filing Requirements section of the Corporate Financing Interpretation. The current Filing Requirements section contained at pp. 2024 to 2026 of the NASD Manual (CCH) is proposed to be deleted.

Filing Requirements[1]

All documents and other information required hereby to be filed with the Association, or any communications or inquiries pertaining thereto, shall be submitted to the Director, Corporate Financing Department at the Executive Office of the Association, 1735 K Street, NW., Washington, DC 20006.

(Filing Fees Required—Schedule A to the By-Laws.)

The following documents relating to all proposed public offerings of securities shall be filed for review concurrent with the filing of any of such documents: (i) with the Securities and Exchange Commission; (ii) with the state securities commission (by whatever name known); (iii) with any other regulatory authority; or (iv) if not filed with any regulatory authority, at least fifteen (15) business days prior to the anticipated offering date:

(1) Five (5) copies of the registration statement, offering circular, offering memorandum, notification of filing, notice of intention, application for conversion and/or any other document used to offer securities to the public;

(2) Three (3) copies of any underwriting agreement, agreement among underwriters, selected dealers agreement, agency agreement, purchase agreement, letter of intent, consulting

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[1] The section on Filing Requirements is completely revised, except for the first paragraph.

agreement, warrant agreement, escrow agreement, and any other document which describes the underwriting or other arrangements in connection with or related to the distribution, and the terms and conditions relating thereto; and any other information or documents which may be material to or part of the said arrangements, terms and conditions and which may have a bearing on the Committee's review;

(3) Five (5) copies of each pre- and post-effective amendment to the registration statement or other offering document, one copy marked to show changes; and three (3) copies of any other amended document, one copy marked to show changes; and

(4) Three (3) copies of the final registration statement or other offering document and a list of the members of the underwriting syndicate, if not indicated therein; one (1) copy of the final underwriting documents and any other document submitted to the Association for review.

Documents related to the following public offerings need not be filed with the Association for review, unless subject to the provisions of Schedule E to the By-laws, provided, however, it shall be deemed a violation of Article III, Section 1 of the Rules of Fair Practice, or Appendix F to Article III, Section 34 of the Rules of Fair Practice if a direct participation program, for a member to participate in any way in such public offerings if the underwriting or other arrangements in connection with the offering are not in compliance with this Interpretation or Appendix F, as applicable:

(1) securities offered by a corporate, foreign government or foreign government agency issuer which has non-convertible debt with a term of issue of at least 4 years or non-convertible preferred securities rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories;

(2) securities registered with the Securities and Exchange Commission on registration statement Form S-3 and offered pursuant to Rule 415 adopted under the Securities Act of 1933, as amended;

(3) securities offered pursuant to a redemption standby "firm commitment" underwriting arrangement registered with the Securities and Exchange Commission on Form S-3; and

(4) direct participation program interests in a pool of financing instruments which are rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories.

The following offerings are exempt from this Interpretation and documents relating to such offerings need not be filed for review:

(1) securities exempt from registration with the Securities and Exchange Commission pursuant to the provisions of Sections 4(1), 4(2) and 4(6) of the Securities Act of 1933, as amended, and pursuant to Rule 504 (unless considered a public offering in the states where offered), Rule 505 and Rule 506 adopted under the Securities Act of 1933, as amended;

(2) securities which are defined as "exempt securities" in Section 3(a)(12) of the Securities Exchange Act of 1934, as amended;

(3) securities of investment companies registered under the Investment Company Act of 1940, as amended, except securities of a management company defined as "closed-end company" in Section 5(a)(2) of that Act;

(4) variable contracts as defined in Article III, Section 29(b)(1) of the Rules of Fair Practice;

(5) offerings of municipal securities as defined in Section 3(a)(29) of the Securities Exchange Act of 1934, as amended;

(6) tender offers made pursuant to Regulation 14D adopted under the Securities Exchange Act of 1934, as amended; and

(7) securities issued pursuant to a competitively bid underwriting arrangement meeting the requirements of the Public Utility Holding Company Act of 1935, as amended.

Documents relating to all other public offerings including, but not limited to the following must be filed with the Association for review:

(1) direct participation programs as defined in Article III, Section 34(d)(2) of the Rules of Fair Practice;

(2) securities offered pursuant to Regulation B adopted under the Securities Act of 1933, as amended;

(3) mortgage and real estate investment trusts;

(4) rights offerings;

(5) securities exempt from registration with the Securities and Exchange Commission pursuant to Section 3(a)(11) of the Securities Act of 1933, as amended, which is considered a public offering in the state where offered;

(6) securities exempt from registration with the Securities and Exchange Commission pursuant to Rule 504 adopted under the Securities Act of 1933, as amended, which is considered a public offering in the states where offered;

(7) securities offered by a bank, savings and loan association, church or other charitible institution, or common carrier even though such offering may be exempt from registration with the Securities and Exchange Commission;

(8) securities offered pursuant to Regulation A adopted under the Securities Act of 1933, as amended; and

(9) any offerings of a similar nature.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD is proposing to amend the Filing Requirements section of the Corporate Financing Interpretation in order to incorporate certain exemptions contained in previously published Notices to Members [2] and contained in the proposed Corporate Financing Rule filed with the Securities and Exchange Commission in 1983.[3] In addition, the proposed amendments modify the current exemption for debt and equity offerings of corporate issuers that have outstanding senior nonconvertible debt or nonconvertible preferred securities rated investment grade. The NASD is proposing to delete the term "senior" as unnecessary and instead provided that the investment grade rate debt would be required to have a term of at least 4 years to qualify for the exemption. The NASD believes that the exemption should only be available where the corporate issuer's debt and preferred securities have been rated as to the issuer's ability to pay principal and interest over a sufficient period of time.

Further, certain of the proposed amendments to the Filing Requirements are intended to clarify and simplify the provisions and to differentiate those offerings which are exempt from compliance with the Corporate Financing Interpretation from those

[2] Notice to Members 81-17 (April 15, 1981); Notice to Members 82-25 (April 29, 1982); and Notice to Members 83-12 (March 8, 1983). Also *see* File No. SR-NASD-83-3.

[3] File No. SR-NASD-83-27 and Notice to Members 83-24 (May 19, 1983).

which are exempt from filing. In the latter case, such offerings remain subject to the filing requirements of Schedule E to the NASD By-Laws, the NASD's self-underwriting rule and must be made in compliance with the Corporate Financing Interpretation or Appendix F to Article III, Section 34 of the Rules of Fair Practice.

The one substantive change is a new exemption to the Filing Requirements which would exempt mortgage pass-through securities which are rated investment grade. A mortgage pass-through security is an equity interest in a pool of securities which are backed by mortgages or other financing instruments. The equity interest is issued by a partnership or trust. Thus far, financing instruments of this type have been created for home mortgages and automobile loans. As the investment vehicle provides for flow-through tax treatment of all benefits of ownership, mortgage pass-through securities are reviewed pursuant to Appendix F to Article III, Section 34 of the NASD Rules of Fair Practice which apply to direct participation programs. Although equity interest, mortgage pass-through securities have been rated by Standard & Poor's and Moody's Rating Agency similar to debt instruments since the latter half of 1983. Such securities are generally sold to institutional investors. Offerings of mortgage pass-through securities, therefore do not contain regulatory issues with respect to suitability, due diligence or underwriting compensation which normally arise in the context of a direct participation program offering. Therefore, the NASD has concluded that a direct participation program interest in a pool of financing debt instruments rated investment grade should be exempt from filing with the NASD for review.

The proposed rule change is consistent with the provisions of Sections 15A(b)(2) and 15A(b)(6) of the Securities Act of 1934, as amended.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that the proposed rule change will not pose a burden on competition not necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934, as amended.

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 Proposed Rule Change and Timing For Commission Action

The NASD requests the Commission to find good cause for approving the proposed rule change prior to the 35th day after its publication in the **Federal Register**. The NASD believes that the amendment will clarify the member's obligation to file timely, thereby facilitating compliance by NASD members with their filing obligations under the Corporate Financing Interpretation. In addition, acceleration is requested to assist the NASD in meeting its contractual obligation that necessitates an amendment to require members to file multiple copies of any registration statement. The NASD states that the one substantive amendment will exempt mortgage pass-through securities that are rated investment grade and that it is liberlizing in nature because it relieves members from the obligation of filing such offerings for review by the NASD.The NASD states that it has traditionally exempted nonconvertible debt that has an investment grade rating and in the interest of consistency, the NASD is extending its prior policy to a new investment vehicle issued by a direct participation program rather than a corporate entity.

The Commission finds that the proposed rule change is consistent with the requirement of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A(b)(2) and (b)(6) and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtienth day after the date of publication of notice of filing thereof in that accelerated approval will enable the NASD to comply with the requirements of its contract for dissemination of information on new issues. Furthermore, the one substantive change is liberalizing in nature—it relieves NASD members from the obligation of filing certain offerings for review by the NASD. The remaining changes reformat and clarify the Filing Requirements section of the Interpretation of the Board of Governors—Review of Corporate Financing, Article III, Section 1 of the Rules of Fair Practice. The Commission believes that the benefits of accelerated approval of this rule change outweigh any potential adverse effects.

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 communication 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. 522, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. 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 be submitted by [insert date 21 days from date of publication].

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: April 2, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-7790 Filed 4-7-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM-8/958]

National Committee of the U.S. Organization for the International Radio Consultative Committee; Meeting

The Department of State announces that the National Committee of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on April 24, 1986, at 9:30 a.m. in Room 1912, Department of State, 2201 C Street, NW., Washington, DC.

The National Committee assists in the resolution of administrative/procedural problems pertaining to U.S. CCIR activities; provides advice on matters of policy and positions in preparation for CCIR Plenary Assemblies and meetings of the International Study Groups; and recommends the disposition of proposed U.S. contributions to the international CCIR which are submitted to the Committee for consideration.

The main purposes of the meeting will be to review the following:

1. Preparations for the CCIR Plenary Assembly in May, 1986;

2. Preparations for the Special Study Group 8 meeting on the Mobile World Administrative Radio Conference, June-July, 1986;

3. Preparations for the Joint Interim Working Party for the Second Session of the Space Services World Administrative Radio Conference, 1988.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled.

All persons wishing to attend the meeting should contact the office of Richard Shrum, Department of State, Washington, DC; telephone (202) 647-2592. All attendees must use the C Street entrance to the building.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

March 28, 1986.

[FR Doc. 86-7774 Filed 4-7-86; 8:45 am]

BILLING CODE 4701-07-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending March 28, 1986

Answers may be filed within 21 days from the date of filing.

Date filed	Docket No.	Parties	Subject	Proposed Effective Date
Mar. 25, 1986	43905, R-1 to R-6.	Members of International Air Transport Association	Amend UK-US Interior-Point Fares	May 1, 1986.
Mar. 25, 1986	43906	Members of International Air Transport Association	Postpones US-Europe SNATC-Agreement to April 16	Apr. 16, 1986.
Mar. 25, 1986	43907	Members of International Air Transport Association	Japan-Europe Adjustment Factor	Apr. 1, 1986.
Mar. 25, 1986	43908	Members of International Air Transport Association	TC3 Charges—Bulk Unitization	Apr. 1, 1986.
Mar. 27, 1986	43912, R-1 to R-2.	Members of International Air Transport Association	Japan to Hawaii Fares	Mar. 31, 1986.
Mar. 27, 1986	43913, R-1 to R-6.	Members of International Air Transport Association	1986 Mid Atlantic Rates Structure	Mar. 1, 1986, May 1, 1986, June 1, 1986.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-7763 Filed 4-7-86; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of Department of Transportation's Procedural Regulations, Week Ended March 28, 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 procedings. (See 14 CFR 302.1701 et seq.)

Date filed	Docket No.	Description
Mar. 24, 1986	43903	Scanair c/o Robert Reed Gray, Winthrop, Stimson, Putnam & Roberts, 1155 Connecticut Avenue, NW., Washington, DC 20036. Application of Scanair pursuant to Section 402 of the Act and Subpart Q of the Regulations requests renewal of a foreign air carrier permit so that it can resume passenger charter air transportation between Scandinavia and the United States. Answers may be filed by April 21, 1986.
Mar. 28, 1986	43917	Transbrasil S.A. Linhas Aereas, c/o Joanne W. Young, Barrett Smith Schapiro Simon & Armstrong, 1201 Pennsylvania Avenue, NW., Washington, DC 20004. Application of Transbrasil S.A. Linhas Aereas pursuant to Section 402 of the Act and Subpart Q of the Regulations seeks an amendment authorizing it to conduct scheduled combination transportation of passengers, cargo and mail on the following route: Between a point or points in the Federative Republic of Brazil, and the coterminal points Washington, DC (Dulles International Airport), Orlando, Florida, and Atlanta, Georgia. Answers may be filed by April 25, 1986.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-7762 Filed 4-7-86; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Senior Executive Service; Departmental Performance Review Board

Action: This notice lists the membership of the Departmental Performance Review Board (PRB), superseding the list published in 50 FR 31992, August 7, 1985, in accordance with 5 U.S.C. 4313(c)(4).

Scope: This notice applies to all components within the Department of the Treasury.

Purpose: The purpose of the Board is to review proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of non-delegated SES positions. These positions include SES bureau heads, deputy bureau heads, bureau chief inspectors, Associate Commissioners of the Internal Revenue Service, and certain other positions. The Board makes recommendations to the Secretary or his designee as Appointing Authority. The Board will perform PRB functions for other top bureau positions if requested. In addition, the Board will review proposed SES bonus distributions, SES incentive award requests, and Presidential Rank nominations from the bureaus upon request.

Composition of PRB: Three members constitute a quorum, at least two of whom must be career appointees. The names and titles of the PRB members are as follows:

Chairperson, John F. W. Rogers, Assistant Secretary of the Treasury (Management)
Paul W. Bateman, Deputy Treasurer of the United States
George N. Carlson, Director, Office of Tax Analysis
James W. Conrow, Deputy Assistant Secretary (Developing Nations)
Paul Cooksey, Deputy Assistant Secretary (Administration)
Roger M. Cooper, Deputy Assistant Secretary (Management) for Information Systems
Alfred R. DeAngelus, Deputy Commissioner, U.S. Customs Service
William E. Douglas, Commissioner, Financial Management Service
Don Fullerton, Deputy Assistant Secretary (Tax Analysis)
Richard L. Gregg, Deputy Commissioner, Bureau of the Public Debt
Michael F. Hill, Director, Office of Revenue Sharing
Francis A. Keating, II, Assistant Secretary (Enforcement and Operations)
Jill E. Kent, Deputy Assistant Secretary (Departmental Finance and Planning)
John A. Kilcoyne, Assistant Fiscal Assistant Secretary
Robert J. Leuver, Director, Bureau of Engraving and Printing
S. F. Timothy Mullen, Director, Office of Administrative Programs
Gerald Murphy, Fiscal Assistant Secretary
Thomas P. O'Malley, Director, Office of Procurement
Katherine D. Ortega, Treasurer of the United States
James I. Owens, Deputy Commissioner, Internal Revenue Service
Larry E. Rolufs, Director of Special Projects
John P. Simpson, Director, Office of Regulations and Rulings, U.S. Customs Service
Edward Stevenson, Deputy Assistant Secretary (Operations)
Margaret D. Tutwiler, Assistant Secretary (Public Affairs and Public Liaison)
D. Edward Wilson, Jr., Deputy General Counsel
Robert B. Zoellick, Deputy Assistant Secretary (Financial Institutions Policy)

For Further Information Contact: Philip E. Carolan, Director of Personnel, Room 7115, ICC Building, 1201 Constitution Avenue, NW., Washington, DC 20220, Telephone: (202) 566-2701.

This notice does not meet the Department's criteria for significant regulations.

Dated: March 27, 1986.

John F.W. Rogers,
Assistant Secretary of the Treasury (Management).

[FR Doc. 86-7727 Filed 4-7-86; 8:45 am]

BILLING CODE 4810-25-M

Customs Service

[T.D. 86-73]

Decision on Domestic Interested Party Petition Concerning Tariff Treatment of Hook and Eye Tabs Incorporated in Brassieres

AGENCY: Customs Service, Treasury.

ACTION: Final decision.

SUMMARY: By a previous **Federal Register** notice, the public was advised that Customs had received a petition submitted on behalf of several domestic interested parties with respect to the tariff treatment of hook and eye tabs incorporated in imported brassieres. The metal hooks and eyes are manufactured and attached to continuous textile strips in the Philippines, imported into the U.S. duty-free under the Generalized System of Preferences and further processed into individual hook and eye tabs which are then exported and assembled abroad into finished brassieres. The petitioners contended that when the finished brassieres are imported, Customs is incorrectly excluding the value of the hook and eye tabs, and that no allowances should be made for the value of the tabs in the duty assessed on the brassieres because the processing in the U.S. is not sufficient to transform the strips into products of the U.S.

After further review of the matter, and consideration of the comment received in response to the notice, Customs agrees with the petitioners that these operations are not sufficient to transform the imported hook and eye tabs into domestic products. Accordingly, when the finished brassieres are imported into the U.S., the value of the hook and eye tabs will not be excluded from the dutiable value of the brassieres into which they were assembled.

EFFECTIVE DATE: May 8, 1986.

FOR FURTHER INFORMATION CONTACT: Earl Martin, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-2938).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), and Part 175, Customs Regulations (19 CFR Part 175), a domestic interested party petition was filed with Customs concerning the tariff treatment of hook and eye tabs incorporated in imported brassieres. The petitioners are manufacturers and producers of metal hook and eye components which are sewn by machine onto textile strips. These strips are placed on reels and then fed into sealing machines which sever the strips into individual tab units. After heat-sealing, these tab units are ready for incorporation into brassieres.

The imported merchandise is produced using nearly identical methods. However, unlike the domestically-produced merchandise which is produced in one location, the U.S., the imported merchandise is completed in two locations. The textile strips with the hooks and eyes attached are manufactured and produced in the Philippines. These strips are then imported into the U.S. where they are currently classified under the dutiable provision for "Hooks and eyes," in item 745.60, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202). However, these strips are eligible for duty-free treatment under the Generalized System of Preferences (GSP) provided for in Title 5 of the Trade Act of 1974, as amended (19 U.S.C. 2461 et seq.). The GSP provides that when an eligible article is imported into the customs territory of the U.S. directly from a country, territory, or association of countries listed in General Headnote 3(c)(1), TSUS, it shall receive duty-free treatment, unless excluded. These strips of uncut hook and eye tabs are being imported from the Philippines which appears on the GSP list of designated beneficiary developing countries whose articles receive duty-free treatement from the U.S. Accordingly, no duty is paid on these articles when they are imported.

Once in the U.S., these strips of hook and eye tabs are then cut into individual tab units, heat-sealed, then exported and assembled abroad into finished brassieres. The finished brassieres are then imported into the U.S. under the provisions for "Articles assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape, or otherwise, and

(c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting . . .," in item 807.00, TSUS. The duty on these articles is based on the full value of the imported article, less the cost or value of any fabricated components which are products of the U.S. In Customs Ruling #053121 M, dated November 7, 1977, Customs determined that cutting and heat-sealing imported hooks and eye strips in the U.S. into individual hook and eye tab units substantially transforms the strips into products of the U.S. Since these completed tabs are considered to be products of the U.S. for purposes of item 807.00, TSUS, their value is excluded from the dutiable value of the imported brassieres.

The petitioners contended that this previous Customs ruling is erroneous. It is their view that hook and eye strips of foreign origin that are imported into the U.S. and merely cut and heat-sealed into individual tabs are not substantially transformed into products of the U.S. Accordingly, they claimed that the cost or value of the tabs should not be excluded from the dutiable value of the brassieres imported under item 807.00, TSUS.

Pursuant to § 175.21(a), Customs Regulations (19 CFR 175.21 (a)), before making a determination on this matter, Customs published a notice in the Federal Register on September 26, 1985 (50 FR 39067), inviting written comments from interested parties on the classification issue. In response, only one comment was received. The commenter agreed with the petitioners. Accordingly, after consideration of the petitioners' views and those of the commenter, and after further review of the matter, Customs has determined that hook and eye strips of foreign origin that are imported into the U.S. and merely cut and heat-sealed into individual tabs are not substantially transformed into products of the U.S. Therefore, after the effective date of this decision, the cost or value of the tabs will not be excluded from the dutiable value of the brassieres imported under item 807.00, TSUS, and Customs Ruling #053121 M, dated November 7, 1977, will be rescinded.

Authority

This notice is published in accordance with 516(b), Tariff Act of 1930, as amended (19 U.S.C. 1516(b)), and § 175.21(a), Customs Regulations (19 CFR 175.21(a)).

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved: March 26, 1986.

David D. Queen,

Acting Assistant Secretary of the Treasury.

[FR Doc. 86-7769 Filed 4-7-86; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

[Delegation Order No. 86-4]

Authority Delegation; Director of the Television and Film Service

Pursuant to the authority vested in me as Director of the United States Information Agency by Reorganization Plan No. 2 of 1977, the Act entitled "An Act to provide certain basic authority for the Department of State," approved August 1, 1956, as amended (22 U.S.C. 2697), hereinafter referred to as the "State Department Basic Authorities Act", Executive Order 12048 of March 27, 1978 and Executive Order 12388 of October 14, 1982, I hereby delegate to the Director of the Television and Film Service:

the authority to exercise the functions vested in the Director under section 25 of the State Department Basic Authorities Act, as amended, and under section 105(f) of the Mutual Educational and Cultural Exchange Act of 1961, and amended.

This authority may only be redelegated to one senior officer in the Office of the Television and Film Service. In the event of any vacancy in the Office of the Director of the Television and Film Service, or during the incapacity or absence of the Director, the authority delegated hereunder may be exercised by the Acting Director of the Television and Film Service.

Notwithstanding any provision of this Order, all prior delegations of gift receiving authority remain in effect and the Director of Agency may at any time exercise any authority delegated herein.

This Order is effective immediately.

Dated: April 1, 1986.

Charles Z. Wick,

Director.

[FR Doc. 86-7730 Filed 4-7-86; 8:45 am]

BILLING CODE 8230-01-M

Creation of the English Teaching Advisory Panel

The United States Information Agency announces the creation of the English Teaching Advisory Panel, effective March 25, 1986.

This committee will draw on the expertise of academics in the filed of English teaching and provide a link between USIA's English teaching office and the academic community, which is a principal source of materials, talent and ideas for the Agency's English teaching program.

USIA will seek a balanced membership of English teaching specialists with excellent academic and professional credentials, and understanding of the Agency's mission abroad. The membership will reflect a broad range of views.

Panel members agree to serve on the committee based on their belief in the importance of U.S. English teaching programs abroad. We believe that the creation of the English Teaching Advisory Panel is in the public interest.

Dated: April 2, 1986.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 86-7729 Filed 4-7-86; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 67
Tuesday, April 8, 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

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 9:00 a.m., Tuesday April 8, 1986.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW.

STATUS: Closed to public observation pursuant to 5 U.S.C. 552b(c)(7) (disclose investigatory records or information) and (c)(9)(B) (disclose information the premature disclosure of which would . . . be likely to significantly frustrate implementation of a proposed agency action. . .).

MATTERS TO BE CONSIDERED: Report of the President's Commission on Organized Crime.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, DC 20570, Telephone: (202) 254–9430.

Dated, Washington, DC, 3 April 1986.

By direction of the Board:

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 86–7867 Filed 4–4–86; 12:32 pm]

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Part II

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1, 3, 5f, 6a, 25, and 514

Income Taxes; Debt Instruments With Original Issue Discount; Imputed Interest on Deferred Payment Sales or Exchanges of Property; and Safe Haven Interest Rates for Commonly Controlled Taxpayers; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 3, 5f, 6a, 25, and 514

[LR-189-84]

Income Taxes; Debt Instruments With Original Issue Discount Imputed Interest on Deferred Payment Sales or Exchanges of Property; and Safe Haven Interest Rates for Commonly Controlled Taxpayers

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to: (1) The tax treatment of debt instruments issued after July 1, 1982, that contain original issue discount, (2) the imputation of and the accounting for interest with respect to sales and exchanges of property occurring after December 31, 1984, and (3) safe haven interest rates for loans or advances between commonly controlled taxpayers and safe haven leases between such taxpayers. Changes to the applicable law were made by the Tax Equity and Fiscal Responsibility Act of 1982 as amended by the Technical Corrections Act of 1982, and the Tax Reform Act of 1984 as amended by Pub. L. 98-612 and Pub. L. 99-121. The regulations would provide needed guidance to taxpayers who must comply with these provisions of the law.

DATES:

Proposed Effective Date: Generally, the regulations contained in this document are proposed to be effective as follows:

§ 1.163-7, §§ 1.1271-1 to 1.1273-2, §§ 1.1275-1 to 1.1275-5—Debt instruments issued after July 1, 1982

§§ 1.483-1 to 1.483-5, §§ 1.1274-1 to 1.1274-7—Sales or exchanges of property occurring after December 31, 1984

§ 1.1274A-1—Certain sales or exchanges of property occurring after June 30, 1985

§ 1.446-2—Lending transactions occurring after May 8, 1986 certain sales or exchanges of property occurring after December 31, 1984

§ 1.482-2—Term loans and advances entered into after and demand loans and advances after such date

Dates for Comments and Request for a Public Hearing: Written comments and request for a public hearing must be delivered or mailed by June 9, 1986.

ADDRESS: Send comments (preferably eight copies) and request for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T, (LR-189-84), 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Theresa E. Bearman (sections 163, 1271, 1272, 1273, 1275 and related matters), Ewan D. Purkiss (sections 446, 483, 1274 and related matters), Susan T. Baker (all matters other than those relating to sections 446, 482 and 483), or Joseph M. Rosenthal (section 482 and related matters) of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T LR-189-84). Telephone 202-566-3829 (Bearman), 202-566-3238 (Purkiss), 202-566-3294 (Baker), 202-566-3289 (Rosenthal) not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part I) under sections 163(e), 446, 482, 483 and 1271 through 1275 of the Internal Revenue Code of 1954. With the exception of the amendments to the regulations under section 446, these amendments are proposed to conform the regulations to section 231 of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 324, 496), as amended by section 306 of the Technical Corrections Act of 1982 (97 Stat. 448), and sections 41, 42 and 44 of the Tax Reform Act of 1984 (98 Stat. 494, 531) as amended by Pub. L. 98-612 (98 Stat. 3180) and Pub. L. 99-121 (99 Stat. 505). The amendments to the regulations under section 446 are proposed to provide rules to account for interest in transactions outside the scope of the original issue discount rules.

II. Introduction

The regulations under sections 163(e), 483, and 1271 through 1275 provide two principal sets of rules: The imputed interest rules and the original issue discount rules. The imputed interest rules are prescribed by sections 1274 and 483, and the original issue discount rules by sections 163(e), 1271, 1272, 1273 and 1275.

The imputed interest rules of sections 1274 and 483 relate to the measurement of interest and principal for tax purposes in a sale or exchange of property (other than publicly traded property) involving deferred payments. For transactions subject to the imputed interest rules, interest will be imputed to the transaction if a minimum amount of interest is not stated. If a transaction states at least the minimum amount of interest, it is said to provide for adequate stated interest. When interest is imputed to a transaction, a portion of the stated principal amount of the debt instrument is recharacterized as interest for tax purposes. The imputed interest rules do not require an increase in the total amount of payments agreed to by the parties to a transaction. These rules merely recharacterize as interest for Federal tax purposes a portion of the payments denominated as principal by the parties. In the case of transactions to which section 1274 applies, imputed interest is treated as original issue discount and is accounted for under those rules. In the case of transactions subject to section 483, imputed interest (and any stated interest) is subject to a new set of rules provided under section 446 and is accounted for under those rules.

In general, under the original issue discount rules, a portion of the original issue discount on a debt instrument is required to be included in income by the holder and deducted from income by the issuer annually without regard to their regular accounting methods. The total amount of original issue discount is defined as the difference between the debt instrument's stated redemption price at maturity and its issue price and arises in one of three ways. First, in the case of a debt instrument subject to section 1274 that does not provide for adequate stated interest, interest is imputed and is treated as original issue discount. Second, in the case of a debt instrument issued for cash or publicly traded property, original issue discount arises if the debt instrument is issued for less than its face amount. Third, in the case of all debt instruments, original issue discount arises if the debt instrument does not call for interest that is payable currently at a single constant rate over its entire term.

III. The Imputed Interest Rules

A. Applicability

1. Section 1274

Section 1274 applies to any debt instrument issued in exchange for property if neither the debt instrument nor the property is publicly traded and if one or more of the payments under the debt instrument are due more than 6 months after the date of the sale or exchange. Section 1274, however, does not apply to the following:

(a) Certain sales or exchanges by an individual, estate, testamentary trust, or small corporation or partnership of a farm if the sales price of the farm does not exceed $1,000,000;

(b) Any sale or exchange by an individual of the individual's principal residence, regardless of the amount of the sales price;

(c) Any sale or exchange of property if the sum of all the payments (including principal and interest) under any debt instrument and the value of any other consideration does not exceed $250,000;

(d) Any debt instrument issued in a qualified sale within the meaning of section 483(e) if the stated principal amount of the debt instrument does not exceed $500,000; and

(e) Any cash method debt instrument within the meaning of section 1274A(c).

2. Section 483

Section 483 applies to sales or exchanges of non-publicly traded property excepted from the provisions of section 1274. Thus, section 483 applies to: the sale or exchange of a farm if the sales price does not exceed $1,000,000, sales involving total payments of $250,000 or less, sales of principal residences, qualified sales of land, and cash method debt instruments. Unlike section 1274, however, section 483 applies only if the contract for the sale or exchange calls for payments due more than one year from the date of the sale or exchange. Section 483 does not apply to the following:

(a) Any sale or exchange of property if the sales price does not exceed $3,000; and

(b) In the case of a purchaser, any amount that is treated as containing interest under section 163(b).

3. Exceptions From Both Sections 1274 and 483

The imputed interest rules of sections 1274 and 483 do not apply to the following:

(a) Any transaction to the extent any amount is contingent upon the productivity, use, or disposition of property and entitled to capital gain treatment under section 1235, relating to sales or exchanges of patents.

(b) Any annuity under section 72 that is not a debt instrument within the meaning of section 1275(a).

(c) Any issuer (obligor) of a debt instrument issued for property that is personal use property in the hands of the issuer. The imputed interest rules, however, apply to any holder (obligee) of the debt instrument unless the loan incurred in the transaction is a below-market loan of the type described in section 7872(c)(1)(A)–(C). The treatment of the latter class of debt instruments is governed by the provisions of section 7872.

(d) Any debt instrument that evidences demand loan (within the meaning of section 7872(f)(5)) and is a below-market loan of the type described in section 7872(c)(1)(A)–(C). The treatment of these debt instruments is governed by the provisions of section 7872.

B. Stating Adequate Interest To Avoid the Imputation of Interest

1. In General

To prevent the imputation of interest, a debt instrument must provide for adequate stated interest. For this purpose, a debt instrument generally provides for adequate stated interest if it calls for interest over its entire term at a rate no lower than the test rate of interest applicable to the debt instrument. If a debt instrument does not provide for a fixed rate of interest at least equal to the test rate of interest, the adequacy of interest is determined by comparing the stated principal amount involved in the transaction with the sum of present values of all payments due under the debt instrument, determined by discounting the payments at a rate equal to the test rate of interest. A debt instrument generally has adequate stated interest if the stated principal amount of debt instrument is less than or equal to the sum of these present values. However, in the case of a potentially abusive situation as discussed below, the debt instrument does not have adequate stated interest unless the stated principal amount is less than or equal to the fair market value of the property sold or exchanged.

The test rate of interest applicable to a debt instrument generally depends on the amount of seller financing (based on stated principal) involved in the transaction. For sales or exchanges of property (other than new section 38 property) involving seller financing of $2,800,000 or less, the test rate of interest is the lower of the applicable Federal rate or 9 percent, compounded semiannually (or an equivalent rate based on an appropriate compounding period). If the sales price is contingent, the 9 percent rate is not available unless the sales price cannot exceed $2,800,000. For sales or exchanges of property with seller financing in excess of $2,800,000, and all sales or exchanges of new section 38 property, the test rate of interest is 100 percent of the applicable Federal rate. For sales or exchanges of property involved in sale-leaseback transactions, the test rate of interest is 110 percent of the applicable Federal rate. These rules also apply to transactions subject to section 483. Sales or exchanges that are qualified sales, however, are subject to a special lower test rate of interest as discussed below. For sales or exchanges occurring before July 1, 1985, special test rates of interest apply.

The applicable Federal rate is either the Federal short-term rate (for debt instruments with terms not over 3 years), the Federal mid-term rate (for debt instruments, with terms over 3 years but not over 9 years), or the Federal long-term rate (for debt instruments with terms over 9 years). The Federal rates are annual stated rates of interest based on semiannual compounding. The Federal rates are published monthly by the Commissioner in Revenue Rulings along with equivalent annual, quarterly and monthly rates. In general, the appropriate compounding period depends on the intervals between payments. In general, the applicable Federal rate is the lowest of the rates in effect for the first month in which there is a binding written contract or the two preceding two months.

The applicable Federal rates are determined monthly. The Federal rates are based on the yields to maturity of outstanding marketable obligations of the United States of similar maturities (for example, maturities up to 3 years for the Federal short-term rate) for the one-month period ending on the 14th day of the month preceding the month for which the rates are applicable. In certain cases, the applicable Federal rate may be a lower rate based on certain allowable Treasury index rates.

2. Special Rules

a. *Test Rate for Installment Obligations.* The proposed regulations provide special rules for determining whether an installment obligation provides for adequate stated interest. For self-amortizing installment and level-principal obligations, tables are provided under which the test rate of interest may be computed as a blended rate equal to a weighted average of the Federal rates. In general, the rules are designed to allow taxpayers to receive the benefit of the short-term and mid-term rates (which are generally lower than the long-term rate) without having to provide three separate debt instruments.

b. *Contingent Payments.* In general, contingent interest payments are not taken into account in applying the imputed interest rules. Thus, whether a debt instrument states adequate interest will be determined by ignoring any contingent interest payments.

Under a special rule proposed by the regulations, however, the stated principal amount of a debt instrument calling for contingent payments of interest will be respected in certain cases. To qualify for the special rule, the contingent payments of interest must be conditioned on a return from the use of the property. In addition, the debt instrument must call for fixed payments of interest equal to at least 80 percent of the test rate of interest applicable to the debt instrument, and it must be reasonable to expect that the payments of contingent interest will raise the yield on the debt instrument to at least the test rate of interest. If the property acquired for the debt instrument is depreciable or inventoriable property, then, in addition to the requirements noted above, the term of the debt instrument cannot exceed 4 years in the case of 3-year or 5-year property or inventoriable property, or 12 years in the case of any other depreciable property that is not inventoriable property.

The contingent payment rules do not affect whether rights to receive contingent payments constitute debt or equity for Federal tax purposes or whether an instrument evidences a valid indebtedness.

c. *Variable Rate Debt Instruments.* For purposes of determining whether a debt instrument calling for variable interest based on current values of an objective interest index provides for adequate stated interest, the proposed regulations generally treat the debt instrument as if it called for interest at a fixed rate equal to the rate established by the index on the date the test rate of interest is determined. Examples of objective indices include the prime rate, the applicable Federal rate, the average yield on Treasury securities, the LIBOR (London Interbank Offered Rate). If the rate of interest determined by the index is no lower than the test rate of interest, the debt instrument has adequate stated interest. Interest payments based on an index other than an objective interest index are generally treated as contingent payments.

Under the proposed regulations, the applicable Federal rate for a variable rate debt instrument that calls for variable interest payments based on current values of an objective interest index is the Federal rate corresponding to the adjustment interval of the debt instrument. Thus, for example, if the interest rate on a debt instrument is tied to a bank's prime rate and adjusted annually, the adequacy of interest is determined by testing the rate of interest as determined by the index against the Federal short-term rate.

d. *Qualified Sales of Land.* In the case of a debt instrument issued in a qualified sale of land and subject to the rules of section 483(e), the test rate of interest is 6 percent, compounded semiannually. A qualified sale is a sale or exchange of land by an individual to a member of the individual's family. A debt instrument issued in a qualified sale is subject to the rules of section 483(e) if the face amount (stated principal amount) of the debt instrument issued for the land does not exceed $500,000, regardless of the amount of the sales price, and if certain other conditions are satisfied. Thus, the parties are free to structure a sale with two debt instruments, the first having a face amount of $500,000 and a 6 percent interest rate, and the second subject to the rules of section 1274 or section 483, whichever is applicable. If, however, a single debt instrument is issued with a face amount in excess of $500,000, the 6 percent test rate does not apply.

The proposed regulations contain this rule because the Service is concerned with the complexity of rules that would be necessary to apply two different accounting rules to a single debt instrument. The Service invites comments on this proposed rule.

3. Potentially Abusive Transactions

Regardless of the amount of interest stated in a sale or exchange, if the transaction is a potentially abusive transaction, the adequacy of interest is determined by comparing the stated principal amount of the debt instrument with the fair market value of the property sold or exchanged as discussed above. A potentially abusive situation includes any transaction that is a tax shelter (within the meaning of section 6661(b)(2)(C)(ii)), and any situation involving recent sales transactions, nonrecourse financing, and financing with a term in excess of the economic life of the property. In addition, under regulatory authority, the proposed regulations categorize as potentially abusive situations transactions involving foreign currency. The potentially abusive situation rules also may apply to cash method debt instruments (which are described in greater detail below) subject to section 483.

4. Assumptions and Modifications

Sections 1274 and 483 do not apply to a debt instrument assumed or taken subject to in a sale or exchange occurring after June 30, 1985, or a debt instrument issued before October 16, 1985, assumed or taken subject to in a sale or exchange involving a sales price of $100,000,000 or less occurring after December 31, 1984, and before July 1, 1985, unless the debt instrument is modified. The proposed regulations provide special rules for a debt instrument issued after October 15, 1984, or any debt instrument involved in a transaction with a sales price in excess of $100,000,000 that is assumed or taken subject to in a sale or exchange occurring after December 31, 1984, and before July 1, 1985, and that is not modified as part of the sale or exchange.

If a debt instrument assumed or taken subject to is modified, the modification is treated as a separate transaction. In general, a modified debt instrument is treated as a new debt instrument given in exchange for the old debt instrument in a transaction to which section 1274 applies. If a modification is attributable to the seller the modification is treated as occurring immediately before the sale or exchange, and the buyer is treated as assuming the modified debt instrument. Modifications are attributable to the seller unless the seller neither consents to nor participates in the modification. If a modification is attributable to the buyer, the modification is treated as occurring immediately after the sale or exchange.

With certain exceptions, sections 1274 and 483 apply to a debt instrument issued after October 15, 1984, or a debt instrument involved in a transaction with a sales price in excess of $100,000,000 that is assumed or taken subject to and that is not modified as part of a sale or exchange occurring after December 31, 1984, and before July 1, 1985. In these cases, sections 1274 and 483 apply only for purposes of determining the tax consequences of the sale or exchange to the buyer.

C. Imputation of Interest

Under section 1274, if a debt instrument does not provide for adequate stated interest, the issue price of the debt instrument is its imputed principal amount. Except in the case of potentially abusive situations, the imputed principal amount of a debt instrument is the sum of the present values of all the payments due under the instrument determined by discounting the payments at the imputed rate of interest. Generally, for purposes of imputing interest, the imputed rate of interest is the same as the test rate of interest. For sales or exchanges occurring before July 1, 1985, special imputed rates of interest apply.

When interest is imputed, the imputed principal amount becomes the issue price. This issue price is lower than the stated principal amount of the debt instrument, since it reflects the fact that a portion of the stated principal is recharacterized as interest. Thus, the imputed interest is treated as original issue discount. In potentially abusive situations, the imputed principal amount of the debt instrument is the fair market value of the property sold or exchanged.

Under section 483, imputed interest is referred to as unstated interest. Unstated interest is defined as the excess of the deferred payments (all payments of the sales price due more than 6 months after the date of the sale or exchange) over the sum of the present values of the deferred payments and any stated interest. For this purpose, the present values are determined by discounting the payments at the imputed rate of interest. In the case of cash method debt instruments to which the potentially abusive rules apply, the fair market value of the property sold or exchanged is used in place of the present value of the deferred payments and any stated interest.

IV. Accounting for Original Issue Discount

A. In General

Original issue discount is defined as the excess of a debt instrument's stated redemption price at maturity over its issue price. A portion of the original issue discount on a debt instrument is accounted for on a current basis by both the issuer and the holder. The amount of original issue discount that is accounted for on a current basis is the amoaunt that accrues on a constant interest or economic accrual basis, regardless of whether the issuer or holder is an accrual basis taxpayer.

For purposes of determining the accrual of original issue discount, the term of a debt instrument generally is divided into accrual periods of equal length as discussed in greater detail below. Original issue discount is allocated to each accrual period according to a formula based upon the adjusted issue price of the debt instrument at the beginning of the accrual period, the yield of the debt instrument, and the actual interest payments (if any) for that period. To determine the holder's annual inclusion under section 1272, the original issue discount allocated to each accrual period is then apportioned ratably among the days within the accrual period to produce the daily portion of original issue discount for each day during that accrual period. The total amount of original issue discount includible for any taxable year is the sum of the daily portions of original issue discount for each day during the taxable year that the taxpayer held the debt instrument.

Debt instruments excepted from the current inclusion rule are debt instruments with a term of one year or less, tax-exempt obligations, debt instruments issued by a natural person before March 2, 1984, debt instruments purchased at a premium, U.S. savings bonds, certain loans made between natural persons, and debt instruments issued before January 1, 1985, which are not capital assets in the hands of the holder.

In general, the amount of original issue discount deductible by an issuer under section 163(e) is determined in the same manner as the amount includible by the holder under section 1272. The regulations contain several exceptions to this general rule.

B. Paying Interest Currently at Constant Rate To Avoid the Original Issue Discount Rules

In the case of any debt instrument subject to section 1274 that provides for adequate stated interest, or in the case of any debt instrument issued at par for cash or publicly traded property, the original issue discount rules do not apply if all interest is payable currently at a constant rate over the entire term of the debt instrument. For this purpose, interest is considered payable currently if the interest is payable unconditionally and at regular intervals of one year or less. Interest is not considered payable at a constant rate if the debt instrument involves deferred interest (if the debt instrument has a lower initial rate of interest or an interest holiday for an initial period) or prepaid interest (if it has a higher initial rate of interest).

C. Determining the Total Amount of Original Issue Discount

1. Stated Redemption Price at Maturity

Except in the case of installment obligations, the stated redemption price at maturity of a debt instrument is defined as the amount fixed by the last modification of the purchase agreement including interest and other amounts payable at that time. The stated redemption price at maturity does not include any interest based on a fixed or variable rate that is actually and unconditionally payable at intervals of one year or less over the entire term of the debt instrument. These amounts are referred to as qualified periodic interest payments. In the case of an installment obligation, the stated redemption price at maturity equals the sum of all payments under the debt instrument less any qualified periodic interest payments.

2. Determination of Issue Price

If a debt instrument subject to section 1274 states adequate interest, the issue price is the stated principal amount of the debt instrument. If the debt instrument does not state adequate interest as discussed above, the issue price is the imputed principal amount determined according to the provisions of section 1274.

The issue price of a debt instrument not subject to section 1274 is determined as follows:

(a) A debt instrument that is part of an issue of debt instruments publicly offered and issued for cash—the initial price at which a substantial portion of the issue is sold to the public;

(b) A debt instrument that is part of an issue of debt instruments not publicly offered and issued for cash—the price paid by the first buyer;

(c) A debt instrument that is issued for property and is part of an issue of debt instruments a portion of which is traded on an established securities market—the fair market value of that debt instrument determined as of the first trading date after the date of issue of the debt instrument;

(d) A nonpublicly traded debt instrument issued in exchange for publicly traded property—the fair market value of the property; and

(e) A debt instrument that does not fall within the first four categories set forth above and that is not governed by section 1274—its stated redemption price at maturity.

3. De Minimis Rules

In the case of the holder, a debt instrument having a *de minimis* amount of original issue discount is treated as if the original issue discount were zero. Except in the case of an installment obligation, discount is considered *de minimis* if it is less than one-quarter of one percent of the stated redemption price at maturity multiplied by the number of complete years to maturity.

Special rules are provided for installment obligations. To compute the *de minimis* amount of original issue discount allowable on installment obligations generally, taxpayers must utilize a weighted average maturity in lieu of the number of full years from the issue date to final maturity. For debt instruments which are self-amortizing obligations, the proposed regulations provide a safe harbor which allows taxpayers to treat one-sixth of one percent of the stated redemption price at maturity multiplied by the number of complete years to final maturity as *de minimis* original issue discount.

D. Allocation of Original Issue Discount to an Accrual Period

1. In General

The amount of original issue discount allocable to an accrual period generally is equal to the product of the adjusted issue price at the beginning of the accrual period and the yield of the debt instrument, less amounts of stated interest payable during the accrual period. Each of the terms used in this calculation is defined under section 1272 and the proposed regulations as described in the succeeding discussion.

2. Accrual Period

Generally, for debt instruments issued after December 31, 1984, the accrual period is the interval between payment or compounding dates provided by the debt instrument (but in no event longer than one year), with the final accrual period ending on the maturity date of the debt instrument. Rules are provided for debt instruments with irregular payment or compounding intervals. For debt instruments that provide for a single payment at maturity and that have no other payment or compounding dates, the accrual period is the six-month period ending on the date in each calendar year that corresponds to the maturity date of the debt instrument or the date that is six months prior to that date. For debt instruments issued after July 12, 1982, and before January 1, 1985, the accrual period is the one-year period beginning on the issue date and on the corresponding day in each calendar year throughout the term of the debt instrument.

3. Adjusted Issue Price

The adjusted issue price at the beginning of the first accrual period is the issue price. The adjusted issue price at the beginning of each succeeding accrual period is equal to the adjusted issue price at the beginning of the immediately preceding accrual period increased by the amount of original issue discount accrued during that period. In the case of an installment obligation, the adjusted issue price at the beginning of an accrual period is reduced by any payments of principal or interest that are included in the stated redemption price at maturity and that are made during the immediately preceding accrual period.

4. Yield

The yield of a debt instrument is that rate of interest that, when used to determine the present value of all payments of principal and interest to be made under the debt instrument, provides an amount equal to the issue price of the debt instrument. Yield is expressed as an annual interest rate and is determined by compounding at the end of the accrual period. Special rules are provided for certain debt instruments that provide a variable rate of interest with a resulting variable yield as discussed in greater detail below.

5. Acquisition Premium

In determining the amount a holder must include in income, the daily portion of original issue discount is reduced by an appropriate share of any acquisition premium paid by that holder. Acquisition premium arises when a person purchases a debt instrument at a price which is in excess of the revised issue price on the date of purchase, but which is less than the stated redemption price at maturity. For debt instruments issued after July 1, 1982, and purchased before July 19, 1984, the daily portion is reduced ratably by an amount equal to the total acquisition premium divided by the number of days from the date of purchase up to (but not including) the stated maturity date. For debt instruments issued after July 1, 1982, and purchased after July 18, 1984, the daily portion is reduced by a constant fraction equal to the total acquisition premium divided by the total unaccrued original issue discount on the date of purchase.

E. Special Rules

1. Serial Maturity and Installment Obligations

Under regulations published under section 1232 of prior law, single obligations that provided for payments prior to maturity (other than payments of interest at fixed, periodic intervals of one year or less over the entire term of the obligation) were treated as a serial issue with each installment payment representing a separate obligation with its own issue price and stated redemption price at maturity. Original issue discount with respect to a serial issue, where independent issue prices could not be established for each individual series, was apportioned among the series based upon a linear ("bond-years") formula.

Because the OID rules now apply to a much broader class of obligations, including mortgages involving as many as 360 separate payments of principal, the proposed regulations eliminate the prior law treatment of each payment of principal under an installment obligation as a separate debt instrument. Instead, the regulations treat all installment obligations and certain serial maturity obligations as a single installment obligation for all purposes under sections 1271 through 1275. For this purpose, an installment obligation is defined as a debt instrument that provides for payments prior to maturity other than qualified periodic interest payments. Stated redemption price at maturity of an installment obligation is defined as the sum of all payments to be made under the obligation other than qualified periodic interest payments. This rule is effective for installment obligations issued after December 31, 1984 and for debt instruments maturing serially issued after May 8, 1986; the issuer and holder may, however, elect jointly to change this treatment.

2. Variable Rate Debt Instruments

The proposed regulations provide rules for the determination of the amount of original issue discount on debt instruments that provide for a variable rate of interest based on current values of an objective interest rate index. Generally, original issue discount attributable to deferred payments of interest made under these debt instruments is accounted for based upon a variable yield equal to the variable rate fixed by the debt instrument. Any other original issue discount on these debt instruments is determined on the issue date by assuming that the interest rate in effect on that date remains constant over the entire term of the debt instrument and is accounted for on that basis, regardless of the actual interest rate under the debt instrument.

3. Contingent Payments

Under the proposed regulations, contingent payments are generally not taken into account in applying the original issue discount and imputed interest rules. Instead, contingent payments are segregated from noncontingent payments and are accounted for separately. In determining whether a payment is contingent, the Commissioner may disregard remote and incidental contingencies. The parties to a transaction are, however, bound by its form and must treat a payment subject to a stated contingency as contingent. The contingent payment rules do not affect whether rights to receive contingent payments constitute debt or equity for Federal tax purposes or whether an instrument evidences a valid indebtedness.

Under the separate accounting rules for contingent payments, contingent payments may be recharacterized in certain situations. First, any payment of principal made on account of a sale or exchange of nonpublicly traded property that is not accompanied by a payment of adequate stated interest will be recharacterized in part as interest. Second, in the case of a debt instrument that does not provide for adequate stated interest and that accordingly has imputed interest, certain contingent interest payments may be recharacterized in part as principal to restore to basis amounts previously recharacterized as imputed interest. In these cases, a payment subject to recharacterization is treated as a payment of principal in an amount equal to the present value of the payment and as a payment of interest to the extent of the difference between the amount of the payment and the present value of the payment. The amount of all payments characterized as principal, however, cannot exceed the amount of the fixed or maximum stated principal amount under a debt instrument.

Third, a contingent payment made under a debt instrument issued for cash or publicly traded property may be recharacterized in a case in which the issue price of the debt instrument exceeds the sum of all the noncontingent payments due under the debt instrument. In such a case, the noncontingent payments under the debt instrument are treated entirely as principal. Each contingent payment is treated as a payment of interest to the extent of the total interest deemed accrued and not allocated to prior payments, and a payment of principal to the extent of the excess of the amount of the payment over the portion of the payment treated as interest. The total interest deemed accrued for any accrual period is based on an assumed yield to maturity equal to the applicable Federal rate which would have applied had the debt instrument been issued for nonpublicly traded property. Once the sum of all the portions of the contingent payments that are treated as principal under this rule reaches the difference between the issue price of the debt instrument and the sum of all the noncontingent payments under the debt instrument, any additional contingent payments are treated as interest.

If a contingent payment is paid within six months of the date it becomes fixed, the portion of the payment recharacterized as interest is accounted for by both the issuer and the holder when the payment becomes fixed. The proposed regulations provide, however, that if a contingent payment is not paid within six months of the date it becomes fixed, the buyer is treated as having issued a separate debt instrument on the date the payment becomes fixed. The issue price of this deemed debt instrument is determined under section 1274 (regardless of whether the payment arose under a debt instrument that was issued for cash or publicly traded property). An amount equal to the issue price is characterized as principal and interest as discussed above.

In the case of a debt instrument subject to section 1274, special rules are provided for the treatment of payments contingent only with respect to due date but which are payable within a fixed period. Under these rules, the buyer's initial basis and the allocation of interest to accrual periods are determined by assuming that all payments under the debt instrument are made at the latest possible date and in the smallest amount permitted. When payments are made before the end of the fixed period, basis and interest accrual adjustments are made.

4. Put or Call Options

The proposed regulations provide a special rule for the determination of yield, maturity date, and stated redemption price at maturity of a debt instrument that provides for a put or call option or an option to extend the term of the debt instrument. Yield of such a debt instrument is determined as of the issue date by assuming that the holder of the particular option will act in accordance with his own economic interest (as viewed from the issue date) in deciding whether to exercise the option. For example, if the issuer of a debt instrument has a call right and if the yield to the call date (assuming exercise of the call option) would be less than the yield to maturity assuming no exercise of the call, it will be assumed as of the date of issue that the call option will be exercised. The maturity date and the stated redemption price at maturity are then determined according to the presumption of exercise. Special rules are provided for debt instruments issued in a transaction governed by section 1274 that contain such options.

5. Reorganizations

In the case of debt instruments issued after December 13, 1982, in exchange for other debt instruments in a reorganization (within the meaning of section 368(a)), a special rule limits the original issue discount created upon the exchange. If the issue price of the new debt instrument would be less than the adjusted issue price of the old debt instrument but for this rule, then the issue price of the new debt instrument is equal to the adjusted issue price of the old debt instrument.

F. Information Reporting Requirements

Section 1275(c)(1) requires an issuer of publicly offered debt instruments issued after the date of publication of these regulations in final form having original issue discount to set forth on the face of the debt instrument the amount of original issue discount and the issue date. In addition, the proposed regulations require the yield to maturity, the method selected to determine yield for a short accrual period, and the amount of original issue discount allocable to a short accrual period to be set forth on the face of the debt instrument. Similar requirements apply to the first holder of a nonpublicly offered debt instrument, if such holder disposes of the debt instrument before maturity.

Section 1275(c)(2) requires the issuer of a publicly offered debt instrument having original issue discount to furnish the Secretary with certain information. The temporary regulations issued under this section require certain additional items to be furnished to the Secretary and are proposed herein as a part of these regulations with the following amendment: Section 1275(c)(2) shall not apply to issuers of publicly offered debt instruments that are: (1) Certificates of deposit, or (2) stripped bonds and coupons within the meaning of section 1286.

G. Treatment of Amounts Received on Sale, Exchange or Redemption of Debt Instruments

Under the law in effect prior to the Tax Reform Act of 1984, amounts received upon retirement of certain debt instruments held as capital assets were considered to have been received in exchange therefor. Gain on sale, exchange, or retirement was treated as capital gain in the absence of an intention to call the bond before maturity. In the case of a short-term obligation, a portion of the gain was treated as ordinary interest income to the extent of accured discount in the hands of the holder.

The rules of prior law relating to the characterization of gain upon sale, exchange or retirement of a debt instrument issued at a discount have been retained, except that the requirement that the debt instrument be a capital asset in the hands of the holder has been repealed for debt instruments issued at a discount after July 18, 1984.

V. Accounting for Interest

Under the revised section 483, unstated interest is required to be accounted for on an economic accrual basis consistent with the allocation of original issue discount under section 1272(a) and Rev. Rul. 83-84, 1983-1 C.B. 97. Unlike original issue discount, however, unstated interest is not subject to annual periodic inclusion or deduction. The proposed regulations prescribe rules under section 446 governing the method of accounting for interest in lending and deferred payment transactions outside the scope of the original issue discount rules. Thus, these rules apply to the accounting for unstated interest (and any stated interest) in transactions to which section 483 applies. Under the proposed section 446 regulations, interest accrues in generally the same manner as original issue discount. For purposes of determining how accrued interest is allocated to payments under a debt instrument, a payment is treated: First, as a payment of interest to the extent interest has accrued and remains unpaid as of the date of the payment; second, as a prepayment of interest to the extent the parties have allocated more interest to payments than the amount of interest that has accrued as of the date of the payment; and third, as a payment of principal to the extent of the excess of the payment over the sum of the accrued and the prepaid interest. In certain small transactions, however, the allocation of the parties of less interest to a payment than the amount of accrued interest that remains unpaid as of the date of the payment will be respected.

VI. Cash Method Debt Instruments

As noted above, section 483 rather than section 1274 applies to cash method debt instruments. Interest on a cash method debt instrument is accounted for under the cash receipts and disbursements method of accounting. In general, a debt instrument is a cash method debt instrument if the stated principal amount of the debt instrument does not exceed $2,000,000, the lender is neither an accrual method taxpayer nor a dealer with respect to the property, and the borrower and the lender jointly elect the cash method treatment. However, a debt instrument issued in exchange for new section 38 property or a debt instrument issued in a sale-leaseback transaction does not qualify for the cash method treatment. The cash method election is generally binding on successors of the lender and the borrower. If, however, the lender (or a successor thereof) transfers the cash method debt instrument to an accrual method taxpayer, the election does not apply to the successor for any period after the transfer and section 1272 will apply to the successor.

VII. Amendments to Section 482 Regulations

1. In General

In section 44(b)(2) of the Tax Reform Act of 1984, Congress directed the Treasury to amend the safe haven interest rates under the section 482 regulations to provide floating rates consistent with the rates applicable under sections 483 and 1274. These proposed regulations are in response to that directive. In addition, these proposed regulations would make certain other changes to the section 482 regulations. The proposed regulations would reduce the interest-free period on certain intercompany balances between controlled taxpayers under existing § 1.482-2(a)(3) from six months to 60 days. The proposed regulations would also delete the formula method for determining a safe-haven rental charge for leases of tangible depreciable property between related taxpayers under § 1.482-2(c)(2)(ii).

2. Explanation of the Proposed Regulations

a. Safe Haven Interest Rates

Section 1.482-2(a)(2)(iii) of the proposed regulations provides generally that the range of safe haven interest rates on loans or advances between controlled entities will be between 100 percent and 130 percent of the applicable Federal rate (AFR) corresponding to the term of the loan, with adjustments for inadequate interest made at 100 percent of the AFR, compounded semiannually, and adjustments for excessive interest made at 130 percent of the AFR, compounded semiannually. The upper limit of 130 percent of the AFR approximates the interest yield on bonds with a Moody's rating of BAA. Consistent with section 1274(e), the lower limit is 110 percent of the AFR in the case of sale-leaseback transactions. The effective dates of the proposed regulations are described in § 1.482-2(a)(2)(iii)(A) of the proposed regulations.

The proposed regulations continue the rule of the existing regulations that controlled taxpayers may demonstrate that a rate outside the safe haven range is a more appropriate rate under all the facts and circumstances.

Section 1.482-2(a)(3) of the proposed regulations provides that where the interest rate on a loan or advance is subject to adjustment both under section 482 and some other Code section (for example, sections 467, 483, 1274, or 7872), the other Code section is to be applied first, and the provisions of section 482 may then be applied to the loan or advance, as adjusted by the other Code section. If the other Code section does not apply to the loan or advance because of an exception, limitation, or *de minimis* rule contained in the other Code section, the provisions of the section 482 regulations may still be applied to the loan or advance by the district director. Under this arrangement it would be unlikely that actual adjustments would be required under both section 482 and the other Code section. Under certain circumstances, however, both section 482 and the other Code section may apply. For example, if the AFR exceeds 9 percent, and if the related taxpayers use the special 9 percent rate prescribed in section 1274A(a), the transaction may be subject to further adjustment under section 482.

Under proposed § 1.482-2(a)(1)(iii), the interest-free period on certain intercompany balances (six months under the existing regulations) is reduced to 60 days. The proposed regulations continue the rule of the existing regulations that the taxpayer is permitted to use a longer interest-free period if it can demonstrate that it regularly grants uncontrolled parties a longer interest-free period on similar transactions in its trade or business.

b. Leases

Section 1.482-2(c) of the existing regulations provides a formula method for determining a safe haven rental charge for certain leases of tangible depreciable property between controlled entities. There is no minimum or maximum lease period for which the safe haven rental charge can be used. Under the existing regulation taxpayers are never required to use the safe haven formula rental if the taxpayer can establish a more appropriate rental charge. However, in cases where the taxpayer may use the safe haven rental amount, the IRS may not challenge the safe haven amount, even if the amount does not clearly reflect income. Because of these deficiencies in the operation of the safe haven formula, it would be deleted under the proposed regulations. The safe haven rule for subleases under § 1.482-2(c)(2)(iii) would be retained. The effective dates of the proposed regulations are described in § 1.482-2(c)(2)(ii).

VIII. Questions Reserved

The proposed regulations do not revise the definition of intention to call before maturity nor do they address the application of the intention to call rules in the case of debt instruments with indefinite maturities. The Internal Revenue Service is actively considering and welcomes comments specifically directed toward these reserved issues, as well as those directed to the following:

1. How the original issue discount rules should apply to foreign currency transactions, and

2. Whether a portion of the issue price of a debt instrument providing for a conversion feature should properly be

allocated to that conversion feature in a manner similar to the allocation of issue price for investment units under section 1273(c)(2).

Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Non-Application of Executive Order 12291

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Comments and Request for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**. The collection of information requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments to OMB also send copies of the comments to the Service.

Drafting Information

The principal author of the proposed regulations under sections 163, 1271, 1272, 1273, and 1275 is Theresa E. Bearman of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service; the principal author of the regulations under sections 446, 483 and 1274 is Ewan D. Purkiss of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service; and the principal author of the regulations under section 482 is Joseph M. Rosenthal 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 the 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 1.301-1—1.385-6

Income taxes, Corporations, Corporate distributions, Corporate adjustments, Reorganizations.

26 CFR 1.401-0—1.425-1

Income taxes, Employee benefit plan, Pensions, Stock options, Individual retirement accounts, Employee stock ownership plans.

26 CFR 1.441-1—1.483-2

Income taxes, Accounting, Deferred compensation plans.

26 CFR 1.581-1—1.601-1

Income taxes, Banks.

26 CFR 1.611-0—1.638-2

Income taxes, Natural resources, Deductions, Exclusions from income.

26 CFR 1.801-1—1.832-6

Income taxes, Insurance companies.

26 CFR 1.861-1—1.997-1

Income taxes, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, Sources of income, United States investments abroad.

26 CFR 1.1001-1—1.1102-3

Income taxes, Gain and loss, Basis, Nontaxable exchanges.

26 CFR 1.1271—1.1288

Income taxes, Capital gains and losses, Original issue discount, Applicable Federal rate, Market discount, Short-term obligations, Stripped bonds and stripped coupons, Tax-exempt obligations.

26 CFR 1.1501-1—1.1564-1

Income taxes, Controlled group of corporations, Consolidated returns.

26 CFR 1.6001-1—1.6109-2

Income taxes, Administration and procedure, Filing requirements.

26 CFR 1.9001—1.9101-1

Income taxes, Administration and procedure, Miscellaneous tax acts, Extensions of time for elections.

26 CFR Part 3

Income taxes, Maritime carriers.

26 CFR Part 5f

Income taxes, Tax Equity and Fiscal Responsibility Act of 1982.

26 CFR Part 6a

Bonds, Income taxes, Mortgages, Veterans.

26 CFR Part 25

Gift taxes.

26 CFR Part 514

France, Tax treaties.

Proposed Amendments to the Regulations

Accordingly, 26 CFR Part 1, Part 3, Part 5f, Part 6a, Part 25, and Part 514 are proposed to be amended as follows:

PART 1—INCOME TAX: TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for Part 1 is amended by adding the following citations: (citations before * * * indicate general rulemaking authoriy)

Authority: 26 U.S.C. 7805. * * * Sections 1.483-1 through 1.483-5 also issued under 26 U.S.C. 483(g). Sections 1.1271-1 through 1.1275-5 also issued under 26 U.S.C. 1275(d). Section 1.1274A-1 also issued under 26 U.S.C. 1274A(e).

Par. 2. Paragraph (c)(3) of § 1.61-6 is revised to read as follows:

§ 1.61-6 Gains derived from dealings in property.

* * * * *

(c) *Character of recognized gain.* * * *

(3) Amounts received on retirement or sale or exchange of debt instruments, section 1271;

* * * * *

§ 1.61-7 [Amended]

Par. 3. In paragraph (d) of § 1.61-7, the third sentence is amended by removing the phrase "section 1232" and adding in its place the phrase "section 1271".

§ 1.163-4 [Amended]

Par. 4. Section 1.163-4 is amended as follows:

1. The heading is revised by adding a comma and the phrase "and before July 2, 1982." after the word "1969".

2. In paragraph (a)(1), the second sentence is amended by removing the phrase "section 1232(b)(1)" and adding in its place the phrase "section 1273(a)(1)", and the second sentence is further amended by removing the phrase "the second sentence thereof" in the parenthetical and adding in its place the phrase "section 1273(a)(3)".

3. Paragraph (b) is amended by removing the phrase "section 1232(b)(1)" from each place that it appears in the paragraph and adding its place the phrase "section 1273(a)(1)", by removing the phrase "the second sentence thereof" from each place it appears in the paragraph and adding in its place the phrase "section 1273(a)(3)", and by removing the phrase "section 1232(a)(3)(A)" from *Example (4)* and adding in its place the phrase "section 1271(a)(3)(A)".

4. Paragraph (d) is amended by adding the phrase "and before July 2, 1982," after the word "1969," each place that it appears.

Par. 5. A new § 1.163-7 is inserted immediately following § 1.163-6T. New § 1.163-7 reads as follows:

§ 1.163-7 Deduction for original issue discount on certain debt instruments issued after July 1, 1982.

(a) *Applicability*. Section 163(e) and this section apply to debt instruments having original issue discount (determined without reference to section 1273(a)(3) and § 1.1273-1(a)(3)) issued after July 1, 1982, other than debt instruments issued by a natural person before March 2, 1984, described in section 1272(a)(2)(D), and debt instruments representing loans between natural persons described in section 1272(a)(2)(E). For purposes of this section, the term "debt instrument" shall have the same meaning as in section 1275(a)(1) and § 1.1275-1(b)(1). A debt instrument subject to this section at the time of issuance continues to be subject to this section notwithstanding an assumption of the debt instrument by a natural person before March 2, 1984.

(b) *General rule*. Except as provided in paragraphs (c) and (d) of this section and in § 1.1275-2(f)(2), an issuer or a transferee may deduct as interest the amount of original issue discount on a debt instrument equal to the sum of the daily portions of original issue discount for all days in the taxable year during which the issuer (or transferee) was primarily liable on the debt instrument. The daily portion shall be determined according to the rules stated in § 1.1272-1(c) except that the following are disregarded—

(1) Any reduction in the amount of original issue discount includible in gross income by subsequent holders by reason of section 1272(a)(6), and

(2) The *de minimis* rule of section 1273 (a)(3) and § 1.1273-(a)(3).

The transfer of a debt instrument by any holder to a subsequent purchaser shall not affect the accrual of deductions under this section.

(c) *Limitations*—(1) *Personal use property*. In the case of a debt instrument whose issue price is determined under section 1273(b) (1), (2), or (3), that is incurred in connection with the acquisition or carrying of personal use property, original issue discount is not deductible until paid, or, if later, when accured. See § 1.1275-2(f).

(2) *Short-term obligations*. In the case of a short-term obligation (as defined in section 1283(a)(1)), the issuer or transferee may deduct original issue discount only when paid, (or, if later, when accrued), if the issuer or transferee uses the cash receipts and disbursements method of accounting.

(3) *Other limitations*. Other sections of the Code may limit the deductibility of original issue discount otherwise allowable under section 163(e) and this section. See, for example, section 163(d) (relating to interest on investment indebtedness) and section 189 (relating to construction period interest).

(d) *De minimis discount deductible on straight-line basis in certain cases*. Notwithstanding paragraph (c)(1) of this section, in the case of an installment obligation which—

(1) Is a self-amortizing installment obligation (within the meaning of § 1.1273-1(b)(2) (iii)) or is a level principal obligation (within the meaning of § 1.1274-6(d)(2)(ii)(D)), and

(2) Has a *de minimis* amount of original issue discount (as determined under § 1.1273-1(a)(3)),

the amount of original issue discount (including points) that is allocated to each payment of principal under the debt instrument shall be the total amount of original issue discount divided by the total number of principal payments. For purposes of paragraph (d)(1) of this section, an obligation shall be considered to be a self-amortizing or level principal obligation if it would be so classified but for the fact that it calls for varying rates of interest over the term of the obligation.

(e) *Recovery or retention of amounts previously deducted*. In any taxable year in which an amount of original issue discount that was deducted as interest under this section is retained or recovered by the taxpayer, such as, for example, by reason of a fine, penalty, forfeiture, or other withdrawal fee, this amount shall be includible in the gross income of the taxpayer for the taxable year.

(f) *Deduction upon repurchase*—(1) Except as provided in paragraph (f)(2) of this section, if a debt instrument is issued and subsequently repurchased at a price in excess of the issue price plus any amount of original issue discount deductible prior to the date of repurchase, or minus any amount of premium returned as income prior to repurchase, the excess of the repurchase price over the issue price adjusted for amortized premium or deductible discount is deductible as interest for the taxable year. For purposes of section 163(e) and paragraph (f) of this section, the term "repurchase" is defined by reference to section 1272(d)(1) and § 1.1272-1(m).

(2) The provisions of paragraph (f)(1) of this section shall not apply to the extent a deduction is disallowed by section 249 (relating to the limitation on deduction of bond premium on repurchase of convertible obligation) and the regulations thereunder.

(g) *Effective date*. Section 1.163-7 applies to debt instruments issued with original issue discount (determined under section 1273 without regard to section 1273(a)(3)) after July 1, 1982. A debt instrument issued after July 1, 1982, pursuant to a written commitment that was binding on July 1, 1982, and at all times thereafter, shall be treated as issued on July 1, 1982, for purposes of this section and § 1.163-4. A written commitment is binding on July 1, 1982, and at all times thereafter if it contains an obligation to issue the debt instruments at a particular price and rate of interest and may be enforced against the issuer under applicable state law. Thus, for example, the rules of section 163(e) and this section do not apply to debt instruments issued pursuant to the exercise of warrants outstanding on July 1, 1982, that were exercisable against the issuer under state law and that prescribe the price and interest rate at which they may be exercised. For rules relating to debt instruments issued with original issue discount on or before July 1, 1982, see section 163(e) as in effect before its amendment by section 231 of the Tax Equity and Fiscal Responsibility Act of 1982 and § 1.163-4.

§ 1.249-1 [Amended]

Par. 6. Section 1.249-1 is amended as follows:

1. In paragraph (c)(2) by removing the phrase "section 1232(b)" and adding in its place the phrase "sections 1273(b) and 1274", and by removing the phrase "§§ 1.163-3 and 1.163-4." and adding in

its place the phrase "§§ 1.163–3, 1.163–4, and 1.163–7.".

2. In paragraph (d)(2), the first sentence, by removing the phrase "§§ 1.163–3, 1.163–4." and adding in its place the phrase "§§ 1.163–3 and 1.163–4, and 1.163–7.".

3. In paragraph (f)(2), the second sentence, by removing the phrase "§§ 1.163–3(c) and 1.163–4(c)." and adding in its place the phrase "§§ 1.163–3(c), 1.163–4(c), and 1.163–7(f).".

Par. 7. Paragraph (b)(1) of § 1.409–1 is amended by removing the word "1232" from the last sentence thereof and adding in its place the phrase "1271 through 1275".

Par. 8. A new § 1.446–2 is added immediately following § 1.446–1. New § 1.446–2 reads as follows:

§ 1.446–2 Method of accounting for interest.

(a) *Applicability*—(1) *In general.* This section prescribes the method of accounting for interest and applies to all interest and amounts treated as interest (whether stated or unstated) in any lending or deferred-payment transaction other than amounts that are taken into account under—

(i) Sections 1272 and 163(e) (relating to current inclusion in income of original issue discount and an allowable deduction for original issue discount),

(ii) Section 467(a)(2) (relating to certain payments for the use of property or services), or

(iii) Section 7872(a) (relating to the treatment of gift and demand loans with below-market interest rates).

Thus, the amounts to which this section applies include the stated and unstated interest in any sale or exchange of property for deferred payments to which section 1274 does not apply. For example, this section applies to interest under a debt instrument described in section 1274A(c)(2) and § 1.1274A–1(c)(2) (relating to debt instruments for which the issuer and holder have made an election to use the cash method of accounting). This section also applies to the interest in any agreement for the use of property or provision of services for deferred payments to the extent section 467(a)(2) does not apply to the agreement. In addition, this section applies to the interest in a lending transaction such as a loan described in section 1272(a)(2)(E) (relating to certain loans between natural persons) to which sections 1272 and 163(e) do not apply by reason of exceptions or safe harbors. Similarly, if section 1272 or 163(e) applies with respect to one party to a transaction but such sections do not apply with respect to the other party to the transaction, this section applies to the interest provided with respect to such other party.

(2) *Effect on other provisions.* Notwithstanding the provisions of this section, interest or an amount treated as interest is not deductible for any taxable year in which such deduction is not allowed by reason of any other provision of the Code. For purposes of such other provision, however, the rules of this section shall be taken into account in determining the taxable year in which such amount is otherwise allowable as a deduction. For circumstances in which interest is not allowable as a deduction for a taxable year, see, for example, section 189 (relating to real property construction period interest), section 163(d) (relating to interest on investment indebtedness) and section 267(a) (relating to losses, expenses, and interest with respect to transactions between related persons).

(b) *Accrual of interest*—(1) *In general.* For purposes of this section, the interest (including any unstated interest determined under section 483) in any lending or deferred-payment transaction (the loan) accrues at a single rate equal to the yield to maturity as defined in paragraph (c)(1) of this section regardless of any contrary formulas that may be stated by the parties to the transaction in any debt instrument or agreement. For this purpose, the interest under all debt instruments issued by a borrower to the same lender as part of a single transaction shall be aggregated and treated as interest in a single lending or deferred-payment transaction. For circumstances in which multiple sales or exchanges are treated as a single sale or exchange, see § 1.1274A–1(d).

(2) *Amount of interest that accrues for an accrual period*—(i) *In general.* The amount of interest that accures for any accrual period (other than a short first accrual period, or a final accrual period) is equal to the product of—

(A) The outstanding loan balance at the beginning of the accrual period, and

(B) The yield to maturity of the loan, divided by the number of accrual periods in a year.

(ii) *Short first accrual period*—(A) *In general.* (*1*) Except as otherwise provided in this paragraph (b)(2)(ii)(A), the amount of interest that accrues for a short first accrual period shall be determined under the exact method described in paragraph (b)(2)(ii)(B) of this section, and a convention that assumes that a year consists of 12 30-day months shall be used for purposes of determining the fraction (f) with respect to the short period.

(*2*) If section 483 does not apply to the loan (as, for example, in the case of a loan that provides for adequate stated interest within the meaning of § 1.483–2) and the loan provides that interest for the short first accrual period accrues under the approximate method described in paragraph (b)(2)(ii)(C) of this section or any other reasonable method, the amount of interest that accrues for such short period shall be determined under such method. In addition, for purposes of determining the fraction (f) with respect to a short period under paragraph (b)(2)(ii) (B) or (C) of this section, the use of the convention that assumes that a year consists of 12 30-day months is optional if section 483 does not apply to the loan.

(B) *Exact method.* The exact method assumes daily compounding of interest. Under this method, the amount of interest that accrues for the short accrual period is equal to the result of the following formula:

$$I = P \times [(1 + i/k)^f - 1]$$

In which:

I=The amount of interest that accrues for the short accrual period

P=The outstanding loan balance at the beginning of the short accrual period as determined under paragraph (c)(3)(i) of this section.

i=The yield to maturity of the loan expressed as a decimal

k=The number of accrual periods that are contained in a year

f=A fraction, the numerator of which is the length of the short accrual period, and the denominator of which is the length of a full accrual period.

(C) *Approximate method.* The approximate method assumes simple interest within an accrual period (that is, no compounding during the short accrual period). Under the approximate method, the amount of interest that accrues for the short period is determined by multiplying the amount that would constitute the proper accrual of interest for a full accrual period by a fraction, the numerator of which is the length of the short accrual period and the denominator of which is the length of a full accrual period. Thus, the amount of interest that accrues for the short accrual period is equal to the result of the following formula:

$$I = P \times (i/k) \times f$$

In which:

I=The amount of interest that accrues for the short accrual period

P=The outstanding loan balance at the beginning of the short accrual period as determined under paragraph (c)(3)(i) of this section

i=The yield to maturity of the loan expressed as a decimal

k=The number of accrual periods that are contained in a year f = A fraction, the numerator of which is the length of the short accrual period, and the denominator of which is the length of a full accrual period.

(iii) *Final accrual period.* The amount of interest that accrues for the final accrual period (including a short final accrual period) is equal to the excess of—

(A) The aggregate amount of interest due under the loan, over

(B) The aggregate amount of accrued interest allocated to all accrual periods preceding the final accrual period.

(c) *Definitions*—(1) *Yield to maturity*—(i) *In general.* The yield to maturity (yield) of a loan is the rate of interest (based on compounding at the end of each accrual period) at which the present value of all payments (including interest and principal) required to be made under the loan is equal to the amount lent. Paragraph (c)(1) (ii) and (iii) of this section provides special rules to allow a simple calculation of yield in certain circumstances. In the case of a loan that has a short first accrual period, the yield shall be computed in a manner consistent with the method used to determine the amount of interest that accrues for such short accural period under paragraph (b)(2) of this section. For rules relating to the determination of present value, see § 1.1274–5.

(ii) *Yield equals stated rate in certain cases.* Except as provided in paragraph (c)(1)(iii) of this section, the yield of a loan is the stated rate of interest provided in the loan if—

(A) The stated rate of interest remains constant over the entire term of the loan (including short periods),

(B) Interest is either paid or compounded at the end of each accrual period, and

(C) No interest other than the stated rate (for example, points or other forms of discount) is provided in the loan.

(iii) *Contracts to which section 483 applies.* Except in the case of a cash method debt instrument received in exchange for property in a potentially abusive situation (see § 1.483–3(a)), the yield of a loan to which section 483 applies (that is, a loan that does not provide for adequate stated interest and is otherwise subject to section 483) is the imputed rate of interest applicable to the loan as determined under § 1.483–4. In the case of a cash method debt instrument received in exchange for property in a potentially abusive situation, the yield shall be determined only as prescribed in paragraph (c)(1)(i) of this section.

(2) *Accrual period*—(i) *Regular payment or compounding at intervals of one year or less.* If a loan calls for more than one payment or compounding date (other that the date of the loan) and all dates on which an amount is either paid or compounded occur at regular intervals of one year or less, the accrual period is such interval. A loan shall not fail to qualify for this rule merely because the interval between the date of the loan and the first payment or compounding date after the date of the loan (the first payment or compounding date) or the interval between the maturity date and the preceding payment or compounding date differs from the interval between other payment or compounding dates.

(ii) *Irregular payment or compounding; intervals of more than one year.* If a loan calls for more than one payment or compounding date (other than the date of the loan) and all dates on which an amount is either paid or compounded do not occur at regular intervals of one year or less, the accrual period is the longest period of not more than one year such that all intervals consist of a whole number of accrual periods. The interval between the date of the loan and the first payment or compounding date and the interval between the maturity date and the preceding payment or compounding date are not taken into account in applying this paragraph (c)(2)(ii) unless the loan calls for only one payment or compounding date between the date of the loan and the maturity date.

(iii) *Loans calling for a single payment.* If a loan calls for a single payment at maturity and for no other payment or compounding dates (other than the date of the loan), the accrual periods are the six-month periods (or the shorter period from the date of the loan) that end on the day in the calendar year that corresponds either to the maturity date or to the date that is six months before the maturity date.

(iv) *Short accrual period.* (A) If the interval between the date of a loan for which the accrual period is determined under paragraph (c)(2) (i) or (ii) of this section and the first payment or compounding date does not consist of a whole number of accrual periods, the first accrual period shall be the short period such that the remainder, if any, of such interval consists of a whole number of accrual periods.

(B) If the interval between the last date before maturity on which an amount is paid or compounded and the maturity date of a loan for which the accrual period is determined under paragraph (c)(2) (i) or (ii) of this section does not consist of a whole number of accrual periods, the final accrual period shall be the short period such that the remainder, if any, of such interval consists of a whole number of accrual periods.

(v) *Date accrual period begins.* The first accrual period beings on the date of the loan and each subsequent accrual period begins on the date after the last day of the preceding accrual period.

(3) *Outstanding loan balance*—(i) *First accrual period.* The outstanding loan balance at the beginning of the first accrual period is equal to—

(A) In the case of a loan to which section 483 applies, the amount described in § 1.483–2(c)(2), or

(B) In any other case, the amount lent.

(ii) *Subsequent accrual periods.* The outstanding loan balance at the beginning of any accrual period other than the first accrual period is equal to—

(A) The sum of—

(*1*) The outstanding loan balance at the beginning of the preceding accrual period, and

(*2*) The amount of interest that accrued for the preceding accrual period,

reduced by

(B) The amount of any payment required to be made during the preceding accrual period.

(d) *Allocation of interest to payments*—(1) *In general.* Except as provided in paragraph (d)(3) of this section, each payment under a loan (other than payments of additional interest or similar charges provided with respect to amounts that are not paid when due) shall be treated—

(i) First, as a payment of interest to the extent of the accrued and unpaid interest (within the meaning of paragraph (d)(2) of this section) as of the date the payment becomes due;

(ii) Second, as a prepayment of interest to the extent (if any) the amount of interest allocated by the parties to the payment exceeds—

(A) The aggregate amount of accrued interest as of the date the payment becomes due, reduced (but not below zero) by

(B) The aggregate amount of interest allocated by the parties to prior payments; and

(iii) Third, as a payment of principal to the extent (if any) the amount of the payment exceeds the sum of the amounts described in paragraph (d)(1) (i) and (ii) of this section.

(2) *Accrued and unpaid interest.* The amount of accrued and unpaid interest as of the date any payment becomes due is the excess, if any, of—

(i) The aggregate amount of accrued interest as of the date the payment becomes due, over

(ii) The aggregate amount previously treated as a payment of interest under paragraph (d)(1) (i) or (ii) of this section.

(3) *Allocation respected in certain small transactions*—(i) *In general.* If the aggregate amount of interest and principal payable under a loan does not exceed $250,000 and section 483 does not apply to the loan (as, for example, in the case of a loan that provides for adequate stated interest within the meaning of § 1.483–2), the allocation of interest and principal shall be respected. Similarly, if section 483 applies to a loan under which the aggregate amount payable does not exceed $250,000, but does not apply to a party to the loan (as, for example, in the case of an obligor under a debt instrument given in consideration for the sale or exchange of personal use property), the allocation of the parties shall be respected for purposes of determining the tax liability of the party not subject to section 483.

(ii) *Prepaid interest.* The amount of interest allocated to any payment under this paragraph (d)(3) shall be treated as prepaid interest to the extent such amount exceeds—

(A) The aggregate amount of accrued interest as of the date the payment becomes due, reduced (but not below zero) by

(B) The aggregate amount of interest allocated to prior payments under this paragraph (d)(3).

(e) *Accounting for prepaid interest.* Prepaid interest must be included in income by a lender when received, regardless of the lender's method of accounting. Except as otherwise provided in section 461(g)(2), prepaid interest is not deductible before such interest accrues (determined under paragraph (b) of this section).

(f) *Special rules*—(1) *Variable rate debt instruments.* In the case of any loan that is a variable rate debt instrument (within the meaning of § 1.1275–5(a)) the amount of interest that accrues for an accrual period shall be determined in a manner consistent with the rules of § 1.1275–5.

(2) *Contingent payments*—(i) *In general.* In the case of a contingent payment (other than a contingent payment to which paragraph (b)(4) of § 1.483–5 (relating to payments contingent with respect to due date but payable within a fixed period) applies), interest does not accrue before the date the payment becomes fixed and the amount of interest that would otherwise have accrued (as determined under paragraph (b) of this section) on or before the date the payment becomes fixed accrues on such date. Any remaining interest with respect to the payment accrues in the manner described in paragraph (b) of this section.

(ii) *Certain contingent payments within a fixed period.* In the case of contingent payments to which paragraph (b)(4) of § 1.483–5 applies, the amount of interest that accrues for an accrual period shall be determined in a manner consistent with the rules of § 1.1275–4(d).

(g) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). (i) On July 1, 1986, A sells his personal residence to B for a stated purchase price of $1,297,143.66. The property is not personal use property (within the meaning of section 1275(b)(3) and § 1.1275–2(f)(3)) in the hands of B. Under the loan agreement, B is required to make two installment payments of $648,571.83, the first due on June 30, 1988, and the second due on June 30, 1990.

(ii) The agreement does not provide for adequate stated interest. Thus, section 483 applies to the loan and the yield is the imputed rate of interest determined under § 1.483–4. Assume that under § 1.483–4 the imputed rate of interest is 9.2 percent, compounded annually, and that under § 1.483–3 there is unstated interest of $297,143.66. Under paragraph (c)(2)(ii) of this section the accrual period is one year. Paragraph (c)(2)(iv) of this section does not apply because the first interval (July 1, 1986–June 30, 1988) consists of two annual accrual periods. Accordingly, the first accrual period is a full period.

(iii) Under paragraph (c)(3)(i) of this section, the outstanding loan balance at the beginning of the first accrual period is $1,000,000 (the amount described in § 1.483–2(c)(2) (sales price minus total unstated interest)). Under paragraph (b)(2) of this section, the amount of interest that accrues for the first accrual period is $92,000 ($1,000,000 × .092). At the beginning of the second accrual period the outstanding loan balance is $1,092,000 ($1,000,000 + $92,000). The amount of interest that accrues for the second annual accrual period is $100,464 ($1,092,000 × .092). Thus, as of the date the first payment becomes due, $192,464.00 of interest has accrued.

(iv) Under paragraph (d)(1) of this section, the $648,571.83 payment is treated first as a payment of interest to the extent of $192,464.00. Since the parties have not allocated interest to the payment in excess of the amount of interest that has accrued as of the date the payment becomes due, there is no prepayment of interest and the remainder of the payment ($456,107.83) is treated as a payment of principal.

(v) The outstanding loan balance at the beginning of the third annual accrual period is $543,892.17 (($1,092,000 + $100,464) less $648,571.83). The amount of interest that accrues for the third accrual period is $50,038.08 ($543,892.17 × .092). The amount of interest that accrues for the final accrual period is $54,641.58, the excess of the aggregate amount of interest due under the loan ($297,143.66), over the amount of interest that had accrued for all accrual periods preceding the final accrual period ($242,502.08). As of the date the second payment becomes due, $104,679.66 of interest has accrued. Thus, of the $648,571.83 payment, $104,679.66 is treated as interest and $543,892.17 is treated as principal.

Example (2). (i) The facts are the same as in example (1), except that the sales price is $1,000,000, and the loan agreement calls for adequate stated interest of $297,143.66. Further, the loan agreement provides that the entire payment of interest is allocated to the first installment payment.

(ii) Since the parties have allocated more interest to the first payment ($297,143.66) than the amount of interest that has accrued as of the date the first payment becomes due ($192,464.00), the excess of $104,679.66 is a prepayment of interest. The amount of the prepaid interest must be included in A's income when the first payment is received, but is deductible by B only as it accrues after the date of the prepayment. Thus, B may deduct $50,038.08 ($543,892.17 × .092) of the prepaid interest as it accrues during the third accrual period and the remainder ($54,641.58 ($104,679.66 minus $50,038.08)) as it accrues during the fourth accrual period if such amounts are allowable as deductions.

Example (3). The facts are the same as in example (1), except that the sales price is $100,000 and the loan agreement calls for two installment payments of $64,857.18, each consisting of $50,000 of principal and $14, 857.18 of interest. Since the loan provides for adequate stated interest and the total amount payable is less than $250,000, the allocation of principal and interest by A and B is respected even though A and B have allocated less interest to the first installment payment than the amount that has accrued as of the date the payment becomes due.

Example (4). The facts are the same as in example (3), except that the loan agreement provides that the first installment consists of $35,142.82 of principal and $29,714.36 of interest, and the second installment consists entirely of principal. Since the parties have allocated to the first payment more interest ($29,714.36) than the amount of interest that has accrued as of the date the first payment becomes due ($19,246.40 (($100,000 × .092) + ($109,200 × .092)), the excess of $10,467.96 is a prepayment of interest. The amount of the prepaid interest must be included in A's income when the first payment is received, but is deductible by B only as it accrues after the date of the prepayment.

Example (5). The facts are the same as in example (3), except that the sales price is $106,123.37 and the loan agreement provides that each installment consists of $53,055.60 of principal and $11,795.50 of interest. Thus, the loan does not provide for adequate stated interest. Since the loan does not provide for adequate stated interest, the allocation of interest by A and B will not be respected even though the total amount of payments due is less than $250,000. Thus, the first payment is treated as a payment of interest to the extent of $19,246.40.

Example (6). (i) Assume that on June 1, 1986, A sells personal property to B for $145,000. The contract calls for interest payable at 8 percent, compounded annually. Further, the contract calls for B to make annual payments of $36,316.19 beginning on December 31, 1987, and ending with a final payment on December 31, 1991. In addition, the contract calls for a payment of interest on December 31, 1986, of $6,657.95 for the period from June 1, 1986, to December 31, 1986. Thus, under paragraph (c)(2) (i) and (iv) of this section, the accrual period is one year and the first accrual period is a short period of 7 months. The allocation by the parties of interest and principal with respect to each $36,316.19 payment due under the contract is as follows:

Payment	Principal	Interest
1. $36,316.19	$24,716.19	$11,600.00
2. $36,316.19	26,693.49	9,622.70
3. $36,316.19	28,828.96	7,487.23
4. $36,316.19	31,135.28	5,180.91
5. $36,316.19	33,626.10	2,690.09

(ii) If the test and imputed rates of interest are 9.20 percent, compounded annually, the contract does not provide for adequate stated interest. At a rate of 9.20 percent, compounded annually, the present value of the 5 deferred payments and the 6 payments of stated interest is $139,819.50. Thus, if section 483 is otherwise applicable, the contract contains unstated interest equal to $5,180.50 (the excess of $145,000 (the sum of the deferred payments) over $139,819.50 (the sum of the present values of the deferred payments and stated interest)). Under paragraph (c)(3) of this section, the outstanding loan balance ("OLB") at the beginning of the first accrual period (the date of the sale or exchange) is $139,819.50.

(iii) Under § 1.483-3(b) and paragraph (b)(2)(ii) of this section, the exact method must be used to determine the amount of interest that accrues for the short first accrual period. In addition, for purposes of determining the fraction (f) with respect to the short period, a convention that assumes that a year consists of 12 30-day months must be used. Thus, the amount of interest that accrues for the short accrual period from June 1, 1986, through December 31, 1986, is $7,365.75 ($139,819.50 × [(1 + .092) 210/360 − 1]). Since the amount of the payment at the end of the short accrual period ($6,657.95) is less than the amount of accrued interest, the entire payment is treated as interest.

(iv) The amount of interest that accrues for each accrual period following the short period (determined under paragraph (b)(2) of this section) is set forth in the following schedule:

Accrual period	OLB at the beginning of accrual period	Accrued interest
1987	$140,527.30	$12,928.51
1988	117,139.62	10,776.85
1989	91,600.28	8,427.23
1990	63,711.32	5,861.44
1991	33,256.58	3,059.61

(The schedule reflects minor adjustments attributable to rounding.)

(v) A payment of $36,316.19 is due on December 31, 1987. As of the date this payment is due, interest of $20,294.26 will have accrued ($7,365.75 plus $12,928.51). The amount of this payment that is treated as interest is $13,636.31 (total interest accrued ($20,294.26) minus the amount previously treated as interest ($6,657.95)). The four subsequent payments of $36,316.19 are treated as payments of interest to the extent interest accrues during the year prior to the payment.

Example (7). (i) Assume that on January 1, 1986, A sells new section 38 property to B for $30,000 under a contract calling for 10 percent interest, compounded monthly. The contract calls for 24 monthly payments of $1,384.35 (each consisting of 10 percent interest on the unpaid principal balance of the debt under the contract, and partial payment of principal) beginning with a payment on January 31, 1986, and ending with a payment on December 31, 1987. The allocation by the parties of interest and principal with respect to each $1,384.35 payment due under the contract is as follows:

Payment	Principal	Interest
1. $1,384.35	$1,134.35	$250.00
2. 1,384.35	1,143.80	240.55
3. 1,384.35	1,153.33	231.02
4. 1,384.35	1,162.94	221.40
5. 1,384.35	1,172.63	211.71
6. 1,384.35	1,182.41	201.94
7. 1,384.35	1,192.36	192.09
8. 1,384.35	1,202.20	182.15
9. 1,384.35	1,212.21	172.13
10. 1,384.35	1,222.32	162.03
11. 1,384.35	1,232.50	151.85
12. 1,384.35	1,242.77	141.58
13. 1,384.35	1,253.13	131.22
14. 1,384.35	1,263.57	120.78
15. 1,384.35	1,274.10	110.25
16. 1,384.35	1,284.72	99.63
17. 1,384.35	1,295.42	88.92
18. 1,384.35	1,306.22	78.13
19. 1,384.35	1,317.11	67.24
20. 1,384.35	1,328.08	56.27
21. 1,384.35	1,339.15	45.20
22. 1,384.35	1,350.31	34.04
23. 1,384.35	1,361.56	22.79
24. 1,384.35	1,372.91	11.44

(The schedule reflects minor adjustments attributable to rounding.)

(ii) Assume that the contract does not provide for adequate stated interest and that the imputed rate of interest is 12 percent, compounded monthly. Under § 1.483-1(b) the first six payments of principal are not treated as deferred payments since they are not due later than six months from the date of the sale or exchange. At a rate of interest of 12 percent, compounded monthly, the present value of the 18 deferred payments (payments 7 through 24) and 24 stated interest payments is $22,697.31. Thus, if section 483 is otherwise applicable, the contract contains total unstated interest of $353.22 (the excess of $23,050.53 (the sum of the deferred payments) over $22,697.31 (the sum of the present values of the deferred payments and stated interest)). Under paragraph (c)(3) of this section, the outstanding loan balance (OLB) of the contract at the beginning of the first accrual period (the date of the sale or exchange) is $22,697.31. The amount of interest that accrues for each accrual period is set forth in the following schedule:

Accrual period	OLB at the beginning of accrual period	Accrued interest	Payment at end of period
January 1986	$22,697.31	$226.97	$250.00
February 1986	22,674.28	226.74	240.55
March 1986	22,660.48	226.60	231.02
April 1986	22,656.06	226.56	221.40
May 1986	22,661.22	226.61	211.71
June 1986	22,676.12	226.76	201.94
July 1986	22,700.94	227.01	1,384.35
August 1986	21,543.60	215.44	1,384.35
September 1986	20,374.69	203.75	1,384.35
October 1986	19,194.09	191.94	1,384.35
November 1986	18,001.68	180.02	1,384.35
December 1986	16,797.34	167.97	1,384.35
January	15,580.97	155.81	1,384.35
February 1987	14,352.43	143.52	1,384.35
March 1987	13,111.60	131.12	1,384.35
April 1987	11,858.37	118.58	1,384.35
May 1987	10,592.60	105.93	1,384.35
June 1987	9,314.18	93.14	1,384.35
July 1987	8,022.97	80.23	1,384.35
August 1987	6,718.85	67.19	1,384.35
September 1987	5,401.69	54.02	1,384.35
October 1987	4,071.35	40.71	1,384.35
November 1987	2,727.72	27.28	1,384.35
December 1987	1,370.65	13.71	1,384.35

(The schedule reflects minor adjustments attributable to rounding.)

(iii) The amount of the first six payments ($1,356.62, the amount allocated to interest by the parties with respect to the first six payments) is less than the aggregate amount of interest that accrues for the first six months ($1,360.24). Thus, the aggregate amount of the payments is treated as interest. (The fact that a portion of the first three payments represents a prepayment of interest is of no consequence if A and B are both calendar year taxpayers.) As of July 31, 1986, the amount of accrued and unpaid interest is $230.63 (the interest accruing for the seventh accrual period ($227.01) plus the accrued and unpaid interest from the six preceding accrual periods ($3.62)). Thus, the payment of $1,384.35 due on July 31, 1986, is treat as interest to the extent of the accrued and unpaid interest ($230.63), and the remainder of the payment is treated as principal. The seventeen subsequent payments are treated as interest to the extent interest accrues in the month preceding the payment and as principal to extent of any excess.

Example (8). (i) Assume that on January 1, 1987, A sells personal property (other than new section 38 property) to B for $100,000. The contract for sale calls for 10 annual payments of $14,902.95 (each representing a partial payment of the sales price and interest at 8 percent, compounded annually) beginning with a payment on January 1, 1988, and ending with a payment on January 1, 1997. The allocation by the parties of interest and principal with respect to each $14,902.95 payment follows the Rule of 78s. Thus, under the contract the amount of stated interest for each accural period is as follows:

Accrual period	Stated interest payment	Cumulative stated interest payment
1	$8,914.45	$8,914.45
2	8,023.00	16,937.45
3	7,131.56	24,069.01
4	6,240.12	30,309.13
5	5,348.67	35,657.80
6	4,457.23	40,115.03
7	3,565.78	43,680.81
8	2,674.34	46,355.15
9	1,782.89	48,138.04

Accrual period	Stated interest payment	Cumulative stated interest payment
10	891.45	49,029.49

(ii) Assume that the test and imputed rate of interest applicable to this contract is 9.2 percent, compounded annually, and section 483 is otherwise applicable. Thus, the contract contains unstated interest. The outstanding loan balance (OLB), the interest accrued for each annual period, and the cumulative interest at the end of each accrual period are as follows:

Accrual period	OLB at the beginning of accrual period	Accrued interest	Cumulative interest accrual
1	$94,805.80	$8,722.13	$8,722.13
2	88,624.98	8,153.50	16,875.63
3	81,875.53	7,532.55	24,408.18
4	74,505.13	6,854.47	31,262.65
5	66,456.65	6,114.02	37,376.66
6	57,667.71	5,305.43	42,682.09
7	48,070.19	4,422.46	47,104.55
8	37,589.70	3,458.25	50,562.80
9	26,145.00	2,405.34	52,968.14
10	13,647.38	1,255.56	54,223.70

(iii) The stated interest payment for the first annual accrual period ($8,914.45) exceeds the interest that accrues for the first accrual period ($8,722.13) by $192.32. Thus, the first payment is treated as a payment of accrued interest to the extent of $8,722.13, a prepayment of interest to the extent of $192.32, and a payment of principal to the extent of $5,988.50. A has interest income of $8,914.45 with respect to the payment, but B's interest deduction is limited to $8,722.13. B may deduct the prepayment of interest only as interest accrues during the second accrual period.

(iv) As of January 1, 1989, the total amount of accrued interest is $16,875.63. The amount previously treated as interest is $8,914.45. Thus, the second payment consists of accrued interest to the extent of $7,961.18 (the excess of $16,875.63 over $8,914.45). The amount of stated interest included in the second payment ($8,023.00) exceeds the total amount of accrued interest reduced by the amount of stated interest included in the first payment ($16,875.63 − $8,914.45 = $7,961.18). Accordingly, the second payment is treated as a prepayment of interest to the extent of $61.82 (the excess of $8,023.00 over $7,961.18). The balance of $6,879.95 is treated as a payment of principal.

(v) A has interest income of $8,023.00 with respect to the second payment. B may deduct $7,961.18 of accrued interest with respect to the second payment. The prepayment of interest with respect to the second payment ($61.82) is deductible only as interest accrues during the third accrual period.

(vi) As of January 1, 1990, the total amount of accrued interest is $24,408.18. The amount previously treated as interest is $16,937.45 ($8,914.45 plus $8,023.00). Thus, the third payment consists of accrued interest to the extent of $7,470.73 (the excess of $24,408.18 over $16,937.45). Since the amount of stated interest ($7,131.56) does not exceed the total amount of accrued interest reduced by the amount of stated interest included in the first two payments ($24,408.18 − $16,937.45 = $7,470.73) no portion of the third payment is treated as a prepayment of interest and the balance of the payment ($7,432.22) is treated as principal.

(vii) A has interest income of $7,470.73 with respect to the third payment and B may deduct this amount.

(viii) For the seven remaining payments, the accrued interest exceeds the stated interest. Thus, each payment is treated as interest to the extent of the accrued interest for the preceding accrual period and principal to the extent of the balance of the payment.

(h) *Effective date*—(1) *In general.* This section applies with respect to any lending or deferred payment transaction that occurs after May 8, 1986 and is not pursuant to a written contract that was binding on such date and at all times thereafter before the transaction.

(2) *Transactions subject to section 483.* In the case of deferred payment transactions that do not provide adequate stated interest and to which section 483 is otherwise applicable, this section applies with respect to any transaction to which the amendment made by section 41(b) of the Tax Reform Act of 1984 applies. For rules relating to the circumstances in which the amendment made by that section applies to a transaction, see § 1.483–1(e).

Par. 9. In paragraph (d) of § 1.451–1 the heading and text are revised to read as follows:

§ 1.451–1 General rule for taxable year of inclusion.

* * * * *

(d) *Special rule for inclusion of original issue discount.* For inclusion of original issue discount in respect of certain debt instruments issued after May 27, 1969, see section 1272.

* * * * *

Par. 10. Paragraph (b) of § 1.451–2 is amended by removing the eighth and ninth sentences and adding in their place new sentences to read as follows:

§ 1.451–2 Constructive receipt of income.

* * * * *

(b) *Examples of constructive receipt.* * * * However, in the case of certain deposits made after December 31, 1970, in banks, domestic building and loan associations, and similar financial institutions, the inclusion rules of section 1272 apply. See §§ 1.1232–3A and 1.1272–1. * * *

Par. 11. Paragraph (a)(1)(i) of § 1.454–1 is revised to read as follows:

§ 1.454–1 Obligations issued at discount.

(a) *Certain non-interest bearing obligations issued at discount*—(1) *Election to include increase in income currently.* If a taxpayer owns—

(i) A non-interest bearing obligation issued at a discount and redeemable for fixed amounts increasing at stated intervals (other than adebt instrument issued after May 27, 1969, as to which inclusion of original issue discount is required under section 1272), or

* * * * *

Par. 12. Paragraphs (a) and (c)(2) of § 1.482–2 are revised to read as follows:

§ 1.482–2 Determination of taxable income in specific situations.

(a) *Loans or advances*—(1) *Interest on bona fide indebtedness*—(i) *In general.* Where one member of a group of controlled entities makes a loan or advance directly or indirectly to, or otherwise becomes a creditor of, another member of such group and either charges no interest, or charges interest at a rate which is not equal to an arm's length rate of interest (as defined in paragraph (a)(2) of this section) with respect to such loan or advance, the district director may make appropriate allocations to reflect an arm's length rate of interest for the use of such loan or advance.

(ii) *Application of paragraph (a) of this section*—(A) *Interest on bona fide indebtedness.* Paragraph (a) of this section applies only to determine the appropriateness of the rate of interest charged on the principal amount of a bona fide indebtedness between members of a group of controlled entities, including—

(*1*) Loans or advances of money or other consideration (whether or not evidenced by a written instrument), and

(*2*) Indebtedness arising in the ordinary course of business from sales, leases, or the rendition of services by or between members of the group, or any other similar extension of credit.

(B) *Alleged indebtedness.* This paragraph (a) does not apply to so much of an alleged indebtedness which is not in fact a bona fide indebtedness, even if the stated rate of interest thereon would be within the safe haven rates prescribed in paragraph (a)(2)(iii) of this section. For example, paragraph (a) of this section does not apply to payments with respect to all or a portion of such alleged indebtedness where in fact all or a portion of an alleged indebtedness is a contribution to the capital of a corporation or a distribution by a corporation with respect to its shares. Similarly, this paragraph (a) does not apply to payments with respect to an alleged purchase-money debt instrument given in consideration for an alleged sale of property between two controlled entities where in fact the transaction constitutes a lease of the property. Payments made with respect to alleged indebtedness (including alleged stated interest thereon) shall be treated according to their substance. See § 1.482-2(a)(3)(i).

(iii) *Interest period.* The interest period with respect to a bona fide indebtedness between controlled entities commences on the date the indebtedness arises. However, with respect to indebtedness described in paragraph (a)(1)(ii)(A)(2) of this section that is not evidenced by a written instrument requiring payment of interest, the interest period is not required to commence until a date sixty days (six months in the case of such indebtedness arising before [Insert date after date this document is published in the **Federal Register** as a final rule]) after the date the indebtedness arises, or until a later date if the taxpayer is able to demonstrate that either it or others in its industry, as a regular trade practice, permit comparable balances in the case of similar transactions with unrelated parties to remain outstanding for a longer period without charging interest.

(iv) *Payment; book entries.* In determining the period of time for which a balance is outstanding, payments or credits shall be applied first against any accrued interest and then against the earliest balance outstanding; however, the taxpayer may apply such payments or credits in some other order on its books in accordance with an agreement or understanding of the parties if the taxpayer can demonstrate that either it or others in its industry, as a regular trade practice, enter into such agreements or understandings in the case of similar balances with unrelated parties.

(2) *Arm's length interest rate*—(i) *In general.* For purposes of section 482 and paragraph (a) of this section, an arm's length rate of interest shall be a rate of interest which was charged, or would have been charged, at the time the indebtedness arose, in independent transactions with or between unrelated parties under similar circumstances. All relevant factors shall be considered, including the principal amount and duration of the loan, the security involved, the credit standing of the borrower, and the interest rate prevailing at the situs of the lender or creditor for comparable loans between unrelated parties.

(ii) *Funds obtained at situs of borrower.* Notwithstanding the other provisions of paragraph (a)(2) of this section, if the loan or advance represents the proceeds of a loan obtained by the lender at the situs of the borrower, the arm's length rate for any taxable year shall be equal to the rate actually paid by the lender increased by an amount which reflects the costs or deductions incurred by the lender in borrowing such amounts and making such loans, unless the taxpayer establishes a more appropriate rate under the standards set forth in paragraph (a)(2)(i) of this section.

(iii) *Safe haven interest rates for certain loans and advances made after May 8, 1986*—(A) *Applicability*—(*1*) *General rule.* Except as otherwise provided in paragraph (a)(2) of this section, paragraph (a)(2)(iii)(B) applies with respect to the rate of interest charged and to the amount of interest paid or accrued in any taxable year—

(*i*) Under a term loan or advance between members of a group of controlled entities where (except as provided in paragraph (a)(2)(iii)(A)(*2*)(*ii*)) the loan or advance is entered into after May 8, 1986, and

(*ii*) After May 8, 1986 under a demand loan or advance between such controlled entities.

(*2*) *Grandfather rule for existing loans.* The safe haven rates prescribed in paragraph (a)(2)(iii)(B) of this section shall not apply, and the safe haven rates prescribed in 26 CFR § 1.482-2(a)(2)(iii) (revised as of April 1, 1985) shall apply to—

(i) Term loans or advances made before May 9, 1986 proposed rule, and

(ii) Term loans or advances made before August 7, 1986, pursuant to a binding written contract entered into before May 9, 1986.

(B) *Safe haven interest rate based on applicable Federal rate.* Except as otherwise provided in this paragraph (a)(2), in the case of a loan or advance between members of a group of controlled entities, an arm's length rate of interest referred to in paragraph (a)(2)(i) of this section shall be for purposes of Chapter 1 of the Code—

(*1*) The rate of interest actually charged if that rate is—

(i) Not less than 100 percent of the applicable Federal rate (the "lower limit"), and

(ii) Not greater than 130 percent of the applicable Federal rate (the "upper limit"), or

(*2*) If either no interest is charged or if the rate of interest charged is less than the lower limit, then an arm's length rate of interest shall be equal to the lower limit, compounded semiannually, or

(*3*) If the rate of interest charged is greater than the upper limit, then an arm's length rate of interest shall be equal to the upper limit, compounded semiannually,

unless the taxpayer establishes a more appropriate compound rate of interest under paragraph (a)(2)(i) of this section. However, if the compound rate of interest actually charged is greater than the upper limit and less than the rate determined under paragraph (a)(2)(i) of this section, or if the compound rate actually charged is less than the lower limit and greater than the rate determined under paragraph (a)(2)(i), then the compound rate actually charged shall be deemed to be an arm's length rate under paragraph (a)(2)(i). In the case of any sale-leaseback described in section 1274(e), the lower limit shall be 110 percent of the applicable Federal rate, compounded semiannually.

(C) *Applicable Federal rate.* For purposes of paragraph (a)(2)(iii)(B) of this section, the term "applicable Federal rate" means, in the case of a loan or advance to which this section applies and having a term of—

(*1*) Not over 3 years, the Federal short-term rate,

(*2*) Over 3 years but not over 9 years, the Federal mid-term rate, or

(*3*) Over 9 years, the Federal long-term rate,

as determined under section 1274(d) in effect on the date such loan or advance is made. In the case of any sale or exchange between controlled entities, the lower limit shall be the lowest of the applicable Federal rates in effect for any month in the 3-calendar-month period ending with the first calendar month in which there is a binding written contract in effect for such sale or exchange (the "lowest 3-month rate", as defined in section 1274(d)(2)). In the case of a demand loan or advance to which this section applies, the "applicable Federal rate" means the Federal short-term rate determined under section 1274(d) (determined without regard to the lowest 3-month short term rate determined under section 1274(d)(2)) in effect for each day on which any amount of such loan or advance (including unpaid accrued interest determined under paragraph (a)(2) of this section) is outstanding.

(D) *Lender in business of making loans.* If the lender in a loan or advance transaction to which paragraph (a)(2) of this section applies is regularly engaged in the trade or business or making loans or advances to unrelated parties, the safe haven rates prescribed in paragraph (a)(2)(iii)(B) shall not apply, and the arm's length interest rate to be used shall be determined under the standards described in paragraph (a)(2)(i), including reference to the interest rates charged in such trade or business by the lender on loans or advances of a similar type made to unrelated parties at and about the time the loan or advance to which paragraph (a)(2) of this section applies was made.

(E) *Foreign currency loans.* The safe haven interest rates prescribed in paragraph (a)(2)(iii)(B) of this section do not apply to any loan or advance the principal or interest of which is expressed in a currency other than U.S. dollars. A loan or advance the interest or principal of which may be repaid at the option of either the lender or the borrower in or by reference to a fixed amount of U.S. dollars is not a loan or advance described in the preceding sentence.

(3) *Coordination with interest adjustments required under certain other Code sections.* If the stated rate of interest on the stated principal amount of a loan or advance between controlled entities is subject to adjustment under section 482 and is also subject to adjustment under any other section of the Code (for example, section 467, 483, 1274 or 7872), section 482 and paragraph (a) of this section may be applied to such loan or advance in addition to such other Code section. After the enactment of the Tax Reform Act of 1984, Pub. L. 98-369, and the enactment of Pub. L. 99-121, such other Code sections include sections 467, 483, 1274 and 7872. The order in which the different provisions shall be applied is as follows:

(i) First, the substance of the transaction shall be determined; for this purpose, all the relevant facts and circumstances shall be considered and any law or rule of law (assignment of income, step transaction, etc.) may apply. Only the rate of interest with respect to the stated principal amount of the bona fide indebtedness (within the meaning of paragraph (a)(1) of this section), if any, shall be subject to adjustment under section 482, paragraph (a) of this section, and any other Code section.

(ii) Second, the other Code section shall be applied to the loan or advance to determine whether any amount other than stated interest is to be treated as interest, and if so, to determine such amount according to the provisions of such other Code section.

(iii) Third, whether or not the other Code section applies to adjust the amounts treated as interest under such loan or advance, section 482 and paragraph (a) of this section may then be applied by the district director to determine whether the rate of interest charged on the loan or advance, as adjusted by any other Code section, is greater or less than an arm's length rate of interest, and if so, to make appropriate allocations to reflect an arm's length rate of interest.

(iv) Fourth, section 482 and paragraphs (b) through (e) of this section, if applicable, may be applied by the district director to make any appropriate allocations, other than an interest rate adjustment, to reflect an arm's length transaction based upon the principal amount of the loan or advance and the interest rate as adjusted under paragraph (a)(3) (i), (ii) or (iii) of this section. For example, assume that two commonly controlled taxpayers enter into a deferred payment sale of tangible property and no interest is provided, and assume also that section 483 is applied to treat a portion of the stated sales price as interest, thereby reducing the stated sales price. If after this recharacterization of a portion of the stated sales price as interest, the recomputed sales price does not reflect an arm's length sales price under the principles of paragraph (e) of this section, the district director may make other appropriate allocations (other than an interest rate adjustment) to reflect an arm's length sales price.

(4) *Examples.* The principles of paragraph (a)(3) of this section may be illustrated by the following examples:

Example (1). An individual, A, transfers $20,000 to a corporation controlled by A in exchange for the corporation's note which bears adequate stated interest. The district director recharacterizes the transaction as a contribution to the capital of the corporation in exchange for preferred stock. Under paragraph (a)(3)(i) of this section, section 1.482-2(a) does not apply to the transaction because there is no bona fide indebtedness.

Example (2). B, an individual, is an employee of Z corporation, and is also the controlling shareholder of Z. Z makes a demand loan of $15,000 to B at a rate of interest that is less than the applicable Federal rate. In this instance the other operative Code section is section 7872. Under section 7872(b), the difference between the amount loaned and the present value of all payments due under the loan using a discount rate equal to 100 percent of the applicable Federal rate is treated as an amount of cash transferred from the corporation to B and such amount is treated as interest. Under paragraph (a)(3)(iii) of this section, section 482 and paragraph (a) of this section may also be applied by the district director to determine if the rate of interest charged on this $15,000 loan (100 percent of the AFR, compounded semiannually, as adjusted by section 7872) is an arm's length rate of interest. Because the rate of interest on the loan, as adjusted by section 7872, is within the safe haven range of 100-130 percent of the AFR, compounded semiannually, no further interest rate adjustments under section 482 and paragraph (a) of this section will be made to this loan.

Example (3). The facts are the same as in example (2) except that the amount lent by Z to B is 9,000, and that amount is the aggregate outstanding amount of loans between Z and B. Under the $10,000 *de minimis* exception of section 7872(c)(3), no adjustment for interest will be made to this $9,000 loan under section 7872. Under paragraph (a)(3)(iii) of this section, the district director may apply section 482 and paragraph (a) of this section to this $9,000 loan to determine whether the rate of interest charged is less than an arm's length rate of interest, and if so, to make appropriate allocations to reflect an arm's length rate of interest.

Example (4). X and Y are commonly controlled taxpayers. At a time when the applicable Federal rate is 12 percent, compounded semiannually, X sells property to Y in exchange for a note with a stated rate of interest of 18 percent, compounded semiannually. Assume that the other applicable Code section to the transaction is section 483. Section 483 does not apply to this transaction because, under section 483(d), there is no total unstated interest under the contract using the test rate of interest equal to 100 percent of the applicable Federal rate. Under paragraph (a)(3)(iii) of this section, section 482 and paragraph (a) of this section may be applied by the district director to determine whether the rate of interest under the note is excessive, that is, to determine whether the 18 percent stated interest rate under the note exceeds an arm's length rate of interest.

Example (5). Assume that A and B are commonly controlled taxpayers and that the applicable Federal rate is 10 percent, compounded semiannually. On June 30, 1986, A sells property to B and receives in exchange B's purchase-money note in the amount of $2,000,000. The stated interest rate on the note is 9%, compounded semiannually, and the stated redemption price at maturity on the note is $2,000,000. Assume that the other applicable Code section to this transaction is section 1274. Because the stated principal amount of B's note does not exceed $2,800,000, the discount rate used for purposes of section 1274 will be 9 percent, compounded semiannually, see section 1274A. Section 1274 does not apply to this transaction because there is adequate stated interest on the debt instrument using a discount rate equal to 9%, compounded semiannually, and the stated redemption price at maturity does not exceed the stated principal amount. Under paragraph (a)(3)(iii) of this section, the district director may apply section 482 and paragraph (a) of this section to this $2,000,000 note to determine whether the 9% rate of interest charged is less than an arm's length rate of interest, and if so, to make appropriate allocations to reflect an arm's length rate of interest.

* * * * *

(c) *Use of tangible property* * * *

(2) *Arm's length charge*—(i) *In general.* For purposes of paragraph (c) of this section, an arm's length rental charge shall be the amount of rent which was charged, or would have been charged for the use of the same or similar property, during the time it was in use, in independent transactions with or between unrelated parties under similar circumstances considering the

period and location of the use, the owner's investment in the property or rent paid for the property, expenses of maintaining the property, the type of property involved, its condition, and all other relevant facts.

(ii) *Safe haven rental charge.* See 26 CFR § 1.482-2(c)(2)(ii) (revised as of April 1, 1985), for the determination of safe haven rental charges in the case of certain leases entered into before May 9, 1986, and for leases entered into before August 7, 1986, pursuant to a binding written contract entered into before May 9, 1986.

(iii) *Subleases.* (A) Except as provided in paragraph (c)(2)(iii)(B) of this section, where possession, use, or occupancy of tangible property, which is leased by the owner (lessee) from an unrelated party is transferred by sublease or other arrangement to the user, an arm's length rental charge shall be considered to be equal to all the deductions claimed by the owner (lessee) which are attributable to the property for the period such property is used by the user. Where only a portion of such property was transferred, any allocations shall be made with reference to the portion transferred. The deductions to be considered include the rent paid or accrued by the owner (lessee) during the period of use and all other deductions directly and indirectly connected with the property paid or accrued by the owner (lessee) during such period. Such deductions include deductions for maintenance and repair, utilities, management and other similar deductions.

(B) The provisions of paragraph (c)(2)(iii)(A) of this section shall not apply if either—

(*1*) The taxpayer establishes a more appropriate rental charge under the general rule set forth in paragraph (c)(2)(i) of this section, or

(*2*) During the taxable year, the owner (lessee) or the user was regularly engaged in the trade or business of renting property of the same general type as the property in question to unrelated persons.

* * * * *

Par. 13. Sections 1.483-1 and 1.483-2 are revised and new §§ 1.483-3 through 1.483-5 are added immediately after § 1.483-2. The revised and added provisions read as follows:

§ 1.483-1 Interest on certain deferred payments.

(a) *Amount constituting interest in certain deferred payment transaction*—(1) *In general.* Section 483 applies, subject to the exceptions and limitations of paragraph (c) (2) and (3) of this section, to a contract for the sale or exchange of property if—

(i) The sale or exchange is described in paragraph (c)(1) of this section,

(ii) The contract provides for payments due more than one year after the date of the sale or exchange, and

(iii) The contract does not provide for adequate stated interest (within the meaning of § 1.483-2).

For purposes of section 483, the term sale or exchange includes any transaction treated as a sale or exchange for tax purposes. Section 483 may apply to a contract whether the contract is express (written or oral) or implied. In general, all payments made after the date of a sale or exchange are considered as made under a contract for that sale or exchange. For purposes of section 483, the term "property" includes debt instruments and investment units, but does not include money, services, or the right to use property. For the treatment of certain payments for use of property or services, see sections 404 and 467.

(2) *Treatment of contracts to which section 483 applies*—(i) *In general.* A contract that does not provide for adequate stated interest contains unstated interest. For rules relating to the treatment of unstated interest, see paragraph (a)(2)(ii) of this section. For rules relating to the determination of the total amount of unstated interest, see § 1.483-3. For rules relating to the method of accounting for interest (including unstated interest) under a contract to which section 483 applies, see § 1.446-2.

(ii) *Treatment of unstated interest.* If section 483 applies to a contract, unstated interest under the contract is treated as interest for tax purposes. Thus, for example, unstated interest is not treated as part of the amount realized from the sale or exchange of property (in the case of the seller) or as part of the cost of the property (in the case of the purchaser), and is generally not included in the basis to the purchaser of any property acquired in the sale or exchange.

(iii) *Certain transactions between related parties.* For rules relating to the determination of basis of property in certain transactions between related parties, see § 1.1012-2.

(b) *Deferred payments*—(1) *In general.* For purposes of section 483, a deferred payment means any payment on account of the sale or exchange that constitutes all or part of the sales price (as defined in paragraph (b)(2) of this section), and that is due more than 6 months after the date of the sale or exchange. A payment may be made in the form of cash, stock or securities, or other property (except as provided in paragraph (b)(3) of this section).

(2) *Meaning of sales price.* For purposes of section 483, the sales price with respect to any sale or exchange means the amount due under the contract (other than interest provided in the contract), and the amount of any liability included in the amount realized from the sale or exchange (see § 1.1001-2). Thus, the sales price with respect to any sale or exchange includes any amount of unstated interest under the contract.

(3) *Treatment of debt instruments.* For purposes of section 483, a debt instrument of a purchaser which is given in consideration for the sale or exchange of property is not a payment, and any payment due under the debt instrument is to be treated as due under the contract for the sale of exchange. For the meaning of the term "debt instrument," see section 1275(a)(1) and § 1.1275-1(b).

(c) *Transactions to which section 483 may apply*—(1) *In general.* Section 483 may apply only in the case of a sale or exchange of property to which section 1274 does not apply by reason of—

(i) Section 1274(c)(4)(A) and § 1.1274-1(b)(2), relating to certain sales or exchanges of farms for $1,000,000 or less;

(ii) Section 1274(c)(4)(B) and § 1.1274-1(b)(3), relating to certain sales or exchanges of principal residences;

(iii) Section 1274(c)(4)(C) and § 1.1274-1(b)(4), relating to sales or exchanges for which the total payments do not exceed $250,000;

(iv) Section 483(e) and § 1.483-4(b)(2), relating to qualified sales; or

(v) Section 1274A(c)(2) and § 1.1274A-1(c), relating to cash method debt instruments.

(2) *Exceptions to the application of section 483*—(i) *Publicly traded debt instruments or property.* Section 483 does not apply to any debt instrument to which section 1273(b)(3) applies. Thus, section 483 does not apply to any contract for the sale of property if the only deferred payments are required under a publicly traded debt instrument. Similarly, section 483 does not apply to any contract for the sale or exchange of publicly traded property.

(ii) *Sales price of $3,000 or less.* Section 483 does not apply to a contract for the sale or exchange of property if it can be determined at the time of the sale or exchange that the sales price (within the meaning of paragraph (b)(2) of this section) cannot exceed $3,000. If it cannot be determined at the time of the sale or exchange that the sales price cannot exceed $3,000, this exception does not apply even if the sales price eventually paid for the property is less than $3,000. For purposes of determining whether the sales price of property exceeds $3,000, all sales or exchanges which are part of the same transaction (or a series of related transactions) shall be aggregated in accordance with the rules in § 1.1274A–1(d).

(iii) *Certain transfers subject to section 1041.* Section 483 does not apply to any transfers of property subject to section 1041 (relating to transfers of property between spouses or incident to divorce).

(3) *Limitations on the application of section 483*—(i) *Carrying charges.* In the case of the purchaser, the tax treatment of amounts paid on account of the sale or exchange of property shall be determined without regard to section 483 if such amounts are treated under section 163(b) (relating to deduction for interest on certain installment purchases) as if they include interest. Thus, the purchaser computes interest deductions with respect to payments under a contract to which section 163(b) applies under that section and without regard to section 483, even though the amount treated as interest under section 163(b) differs from the amount treated as interest income by the seller under section 483.

(ii) *Certain sales of patents.* Section 483 does not apply to any amount payable with respect to a transfer by an individual seller (holder) described in section 1235 (relating to sales or exchanges or patents) that is contingent on the productivity, use, or disposition of the property transferred.

(iii) *Transactions involving personal use property*—(A) *Treatment of obligors.* Section 483 does not apply to an obligor (issuer) under a debt instrument given in consideration for the sale or exchange of property that is personal use property (within the meaning of section 1275(b)(3) and § 1.1275–2(f)(3)) in the hands of the issuer. Thus, in the case of the issuer, the tax treatment of any amount payable under such debt instrument is determined without regard to section 483 and the regulations thereunder.

(B) *Treatment of certain obligees.* Section 483 does not apply to an obligee (holder) under a debt instrument that (1) is given in consideration for the sale or exchange of property that is personal use property (within the meaning of section 1275(b)(3) and § 1.1275–2(f)(3)) in the hands of the issuer, and (2) evidences a loan described in section 7872(c)(1)(A) (relating to gift loans), 7872(c)(1)(B) (relating to compensation-related loans), or 7872(c)(1)(C) (relating to corporation-shareholder loans). For rules relating to the treatment of loans described in the preceding sentence, see section 7872 and the regulations thereunder.

(iv) *Transactions involving certain demand loans.* Section 483 does not apply to any payment under a debt instrument that evidences a demand loan (within the meaning of section 7872(f)(5)) described in section 7872(c)(1)(A) (relating to gift loans), 7872(c)(1)(B) (relating to compensation-related loans), or 7872(c)(1)(C) (relating to corporation-shareholder loans). For rules relating to the treatment of loans described in the preceding sentence, see section 7872 and the regulations thereunder.

(v) *Transactions involving certain annuity contracts.* Section 483 does not apply to any payment under an annuity contract described in section 1275(a)(1)(B) (relating to annuity contracts excluded from the definition of debt instrument).

(d) *Modifications and assumptions.* A modification of a debt instrument shall be treated as a sale or exchange of property for purposes of section 483 if the modified debt instrument would be treated under § 1.1274–1(c) as a new debt instrument given in consideration for the unmodified debt instrument. In addition, debt instruments assumed or taken subject to in connection with a sale or exchange shall be treated for purposes of section 483 in a manner consistent with the rules of § 1.1274–7. Thus, for example, if a debt instrument assumed in connection with a sale or exchange is not modified as part of the sale or exchange, section 483—

(1) Shall not apply to any payment under the debt instrument in the case of a sale or exchange occurring after June 30, 1985, or a debt instrument issued before October 16, 1984; and

(2) Shall apply to payments under the debt instrument (except as provided in § 1.1274–7(b)(3) and section 44(b)(7) of the Tax Reform Act of 1984 (as amended by Pub. L. 98–612)) solely for purposes of determining the tax consequences of the sale or exchange to the buyer in the case of a debt instrument issued after October 15, 1984, and assumed in connection with a sale or exchange occurring before July 1, 1985.

(e) *Effective date.* Sections 1.483–1 through 1.483–5 apply, except as otherwise provided in this paragraph (e), to any sale or exchange occurring after December 31, 1984, unless the sale or exchange is made pursuant to a written contract (including an irrevocable written option) which was binding on March 1, 1984. For this purpose, a sale or exchange is not made pursuant to a written contract which was binding on March 1, 1984, if a substantial modification (within the meaning of § 1.1274–6(e)(1)(iii)) in the terms of a contract occurs after March 1, 1984, and before the sale or exchange. Sections 1.483–1 through 1.483–5 shall not apply to any modification of a debt instrument arising from a sale or exchange unless the debt instrument arises from a sale or exchange to which such sections apply (within the meaning of this paragraph (e)) or the debt instrument is assumed or taken subject to in connection with, and the modification is part of, such a sale. For rules relating to sales or exchanges occurring before January 1, 1985, sales or exchanges pursuant to a written contract (including an irrevocable written option) which was binding on March 1, 1984, and modifications of debt instruments to which §§ 1.483–1 through 1.483–5 do not apply by reason of the preceding sentence, see section 44(b)(3) of the Tax Reform Act of 1984, section 483 as in effect before its amendment by section 41(b) of the Tax Reform Act of 1984, and 26 CFR 1.483–1 and 1.483–2 (revised as of April 1, 1985).

§ 1.483–2 Adequate stated interest.

(a) *In general.* This section prescribes rules for determining whether a contract for the sale or exchange of property provides for adequate stated interest. The rules prescribed by this section apply to any contract whether the contract calls for the payment of principal in a lump sum, the periodic payment of principal, or irregular payments of principal. A contract generally provides for adequate stated interest if it calls for interest on the outstanding principal balance at a rate (with an appropriate compounding period) at least equal to the test rate of interest. For rules relating to the determination of the test rate of interest and rules relating to the appropriate compounding period, see § 1.483–4. Paragraph (b) of this section provides rules for determining adequate stated interest (except with respect to certain cash method debt instruments) if the contract provides for a fixed rate of interest and compounding or payment of interest at regular intervals. Paragraph (c) of this section provides rules for determining adequate stated interest in the case of contracts that do not satisfy the requirements of paragraph (b) of this section. For special rules relating to contracts calling for variable rates of interest, see paragraph (d) of this section. For special rules relating to contracts calling for contingent payments of interest, see paragraph (e) of this section.

(b) *Certain contracts that provide for a stated rate of interest*—(1) *In general.* A contract provides for adequate stated interest if on the date of the sale or exchange—

(i) The contract provides for interest on the outstanding principal balance due under the contract (the stated rate of interest) at a fixed rate;

(ii) The stated rate of interest is no lower than the test rate of interest (based on the appropriate compounding period);

(iii) The contract requires interest to be paid or compounded at the end of each compounding period for the entire term of the contract; and

(iv) In the case of a cash method debt instrument (within the meaning of section 1274A (c)(2) and § 1.1274A–1(c)), such debt instrument is not received in exchange for property in a potentially abusive situation (as defined in § 1.1274–4(g)).

For rules relating to the determination of adequate stated interest in the case of contracts that do not satisfy the requirements of this paragraph (b)(1), see paragraph (c) of this section. For rules relating to the test rate of interest, see § 1.483–4. For rules relating to the appropriate compounding period, see § 1.483–4(c).

(2) *Interest payable for a short period*—(i) *In general.* The stated rate of interest is a fixed rate within the meaning of paragraph (b)(1) of this section only if it also applies for short periods (that is, any period shorter than the compounding period on which the test rate of interest is based). For this purpose, the stated rate of interest applies for short periods if the interest payable for a short period is determined by either of the two alternative methods prescribed by this paragraph (b)(2), or by any other reasonable method.

The methods prescribed by this paragraph (b)(2) are the exact method and the approximate method. An example of another reasonable method is monthly compounding which reflects compounding of interest at the end of each month, with simple interest within a month. For this purpose and for purposes of determining the fraction (f) with respect to a short period under paragraph (b)(2) (ii) and (iii) of this section, a convention that assumes that a year consists of 12 30-day months may be adopted.

(ii) *Exact method.* The exact method assumes daily compounding of interest. Under this method, the amount of interest payable on an outstanding principal amount (P) for any short period is equal to the result of the following formula:

$$I = P \times [(1 + i/k)^f - 1]$$

In which:

I = Interest payable for the short period
i = The stated rate of interest expressed as a decimal
k = The number of compounding periods on which the stated rate of interest is based that are contained in a year
f = A fraction, the numerator of which is the length of the short period, and the denominator of which is the length of the full compounding period on which the stated rate of interest is based.

For illustrations of the application of the formula for the exact method, see paragraph (b)(3) of this section, examples (4), (6) and (8).

(iii) *Approximate method.* The approximate method is also provided for the convenience of taxpayers who do not desire to use the exact method. The approximate method assumes simple interest within any compounding period and always produces an amount of interest for the short period that is slightly higher than the amount of interest produced under the exact method. Under this method, the amount of interest payable on an outstanding principal amount for a short period is determined by multiplying the amount of stated interest for a full period by a fraction, the numerator of which is equal to the length of the short period and the denominator of which is the length of the full period. Thus, the amount of interest payable on an outstanding principal amount (P) for a short period is equal to the result of the following formula:

$$I = P \times (i/k) \times f$$

In which:

I = Interest payable for the short period
i = The stated rate of interest expressed as a decimal
k = The number of compounding periods on which the stated rate of interest is based that are contained in a year
f = A fraction, the numerator of which is the length of the short period, and the denominator of which is the length of the full compounding period on which the stated rate of interest is based.

For illustrations of the application of the formula for the appropriate method, see paragraph (b)(3) of this section, examples (5) and (7).

(3) *Examples.* The provisions of paragraph (b) of this section may be illustrated by the following examples:

Example (1). Assume that a contract for the sale of nonpublicly traded personal property calls for a $100,000 payment of principal at the end of a 10–year term and 20 semiannual payments of interest of $4,500 on the outstanding balance of the principal. The appropriate compounding period is semiannual. The test rate of interest is 9 percent based on semiannual compounding. The contract provides for adequate stated interest because it provides for interest equal to the 9 percent test rate of interest payable semiannually, the compounding period for the test rate.

Example (2). The facts are the same as in example (1), except that the debt instrument calls for 10 annual interest payments of $9,000. The appropriate compounding period is annual. The test rate of interest is 9.20 percent based on annual compounding. The contract does not provide for adequate stated interest because it does not provide for interest equal to 9.20 percent compounded annually, the rate of interest equivalent to 9 percent compounded semiannually.

Example (3). On May 1, 1986, A sells B nonpublicly traded personal property under a contract that calls for B to make a principal payment of $200,000 and 9.00 percent interest, $9,000 payable on June 30 and December 31 of each year beginning on December 31, 1986. The compounding period is semiannual. Assume that the debt instrument is a cash method debt instrument that is not received in exchange for property in a potentially abusive situation. The test rate of interest is 9 percent, compounded semiannually. Even though the contract calls for a stated rate of interest no lower than the test rate of interest, the contract does not provide for adequate stated interest because the stated rate of interest does not apply for the short period from May 1, 1986, through June 30, 1986.

Example (4). The facts are the same as in example (3), except that the contract calls for a payment of interest on June 30, 1986, for the period from May 1, 1986, through June 30, 1986 (one-third of a full compounding period). Under the exact method, the contract provides for adequate stated interest (that is, interest of 9 percent compounded semiannually) if the amount of interest payable on the outstanding principal balance for the short period is $2,956.09 determined as follows:

$$\$200{,}000 \times (1 + .09/2)^{1/3} - 1] = \$2{,}956.09$$

Example (5). The facts are the same as in example (4), except that the amount payable on the outstanding principal balance for the short period is determined under the approximate method. Under the approximate method, the amount of stated interest payable for the short period is $3,000 determined as follows:

$$\$200{,}000 \times (.09/2) \times 1/3) = \$3{,}000$$

Example (6). The facts are the same as in example (4), except that the sale occurs on May 20, 1986. Assume that a convention that assumes that a year consists of 12 30–day months is adopted for purposes of determining the fraction (f) with respect to the short period. Thus, f is 42/180 of the semiannual period. Under the exact method, the interest payable on June 30, 1986, for the short period is $2,064.71 determined as follows:

$$\$200{,}000 \times [(1 + .09/2)42/180 - 1] = \$2{,}064.71$$

Example (7). The facts are the same as in example (6), except that interest payable for the short period is determined under the approximate method. Under this method, the amount of interest payable on June 30, 1986, for the short period is $2,100.00 determined as follows:

$200,000 × (.09/2) × (42/180) = $2,100.00

Example (8). Assume that on July 4, 1986, personal property is sold for $88,000. The contract calls for an $8,000 down payment and monthly payments of $634.51 (consisting of 8.84 percent interest on the unpaid balance of the principal and a partial payment of principal) due on the first of each month for a period of 30 years beginning on September 1, 1986. In addition, the contract calls for an advance interest payment of $549.91 for the period from July 4, 1986, through July 31, 1986. The compounding period is monthly and the test rate of interest based on monthly compounding is 8.84 percent. The contract provides for adequate stated interest because it calls for interest payable at the stated rate of interest (8.84 percent) for the short period calculated under the exact method ($80,000 × [(+.0884/12)28/30−1] = $549.91), and interest for the remaining term of the contract at a rate of 8.84 percent payable monthly, the compounding period for the test rate.

(c) *Contracts that do not meet the requirements of paragraph (b)(1) of this section*—(1) *In general.* This paragraph (c)(1) applies to contracts and cash method debt instruments that do not meet the requirements of paragraph (b)(1) of this section.

A contract or cash method debt instrument to which this paragraph (c)(1) applies provides for adequate stated interest only if the sum of the deferred payments due under the contract or debt instrument does not exceed the amount described in paragraph (c)(2) of this section.

(2) *Amount described in paragraph (c)(2) of this section.* The amount described in this paragraph (c)(2) is—

(i) The sum of the present value of the deferred payments and any stated interest payments due under the contract; or

(ii) In the case of a cash method debt instrument (within the meaning of section 1274A(c)(2) and § 1.1274A–1(c)) received in exchange for property in a potentially abusive situation (as defined in § 1.1274–4(g)), the fair market value of such property reduced by the fair market value of any consideration other than the debt instrument.

(3) *Determination of present values.* For purposes of paragraph (c)(2) of this section, the present value of any payment is determined in accordance with the rules of § 1.483–3(b) except that the payment is discounted at the test rate of interest (as defined in § 1.483–4), and the approximate method as prescribed in § 1.1274–5(d)(2)(iii) or any other reasonable method may be used to determine the amount of discount for a short period. In addition, for purposes of determining the fraction (f) with respect to a short period, the use of the convention that assumes that a year consists of 12 30-day months is optional.

(4) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples:

Example (1). Assume that A sells B nonpublicly traded personal property for $60,000. The contract for sale calls for a lump sum payment of $150,000 (consisting of the $60,000 sales price and a $90,000 payment of interest) due in 10 years. The contract does not call for the compounding of interest at the end of each compounding period over the entire term of the contract. Accordingly, the contract provides for adequate stated interest only if the deferred payment does not exceed the present value of the deferred payment and the interest payment. Based on annual compounding (an appropriate compounding period), the test rate of interest is 9.20 percent. At a discount rate of 9.20 percent, the present value of the deferred payment and the interest payment is $62,210.67. Since the deferred payment of $60,000 does not exceed $62,210.67, the contract provides for adequate stated interest.

Example (2). Assume that in a potentially abusive situation, a contract for the sale of nonpublicly traded personal property calls for the issue of a cash method debt instrument with a stated principal amount of $700,000. No other consideration is given. The debt instrument calls for annual compounding of interest over its entire term at a rate of 9.20 percent (the test rate of interest applicable to the debt instrument). Thus, the present value of the deferred payment and the interest payments is $700,000. The fair market value of the property is $500,000. A cash debt method debt instrument received in exchange for property in a potentially abusive situation provides for adequate stated interest only if the deferred payment does not exceed the fair market value of the property. Since the deferred payment ($700,000) exceeds the fair market value of the property ($500,000), the debt instrument does not provide for adequate stated interest.

(d) *Treatment of contracts calling for variable rates of interest based on an interest index*—(1) *In general.* Except as provided in paragraphs (d) (2) and (3) of this section, a contract that calls for deferred payments under a variable rate debt instrument (within the meaning of § 1.1275–5) shall be treated for purposes of determining whether the contract provides for adequate stated interest as if the rate of interest determined under the index were a fixed rate equal to the rate of interest determined under the index as of the date when the test rate of interest is determined (see § 1.483–4). Thus, for any period in which interest is payable at a rate determined under the index, the rate of interest fixed by the index as of the date the test rate of interest is determined is treated for purposes of paragraph (b) of this section as the stated rate of interest, and is used to determine the amount of any stated interest payment for purposes of paragraph (c) of this section.

(2) *Limitation on increases in rate.* In the case of a contract that limits the number of percentage or basis points by which the rate of interest can vary from one period to the next—

(i) Paragraph (d)(1) of this section shall apply only if, for each period, the limitation permits the rate of interest to increase by at least as many percentage of basis points as such rate is permitted to decrease; and

(ii) Paragraph (a)(2) of § 1.1274–6 shall not apply if, by reason of such limitation, the number of percentage points by which the rate (based on annual compounding) can increase for any period is less than ½ of the number of months in the adjustment interval preceding such period.

For illustrations of the application of this paragraph (d)(2), see § 1.1274–3(d)(1)(v), examples (2), (3), (4) and (5).

(3) *Ceiling on variable rate of interest.* Paragraph (d)(1) of this section shall not apply to any contract that places a ceiling on the maximum rate of interest payable under the debt instrument unless—

(i) The excess of the rate initially fixed by the index over the test rate of interest plus the excess of the maximum rate permitted by the ceiling over the test rate is at least equal to 5 percentage points, and

(ii) In the case of a debt instrument with a term that exceeds 3 years, the maximum rate permitted by the ceiling is at least equal to the test rate of interest determined without regard to § 1.1274–6(a)(2) plus the difference between such rate and the actual test rate of interest.

For illustrations of the application of this paragraph (d)(3), see § 1.1274–3(d)(1)(v), examples (6), (7) and (8).

(4) *Treatment of payment if variable rate of interest rules do not apply.* If paragraph (d)(1) of this section does not apply to a contract, variable payments of interest under the contract are contingent payments of interest subject to the rules of § 1.483–5, but only to the extent such variable payments exceed the minimum payments of interest permitted under the contract. For this purpose, the minimum payment of interest permitted under the contract for any period shall be determined by taking into account any floor on the minimum rate of interest payable under the contract and, in the case of a contract described in paragraph (d)(2) of this section, the maximum permissible decrease in the interest rate for each period during the term of the contract.

(5) *Examples.* The provisions of this paragraph (d) may be illustrated by the following examples:

Example (1). Assume that a contract for the sale of nonpublicly traded property calls for the issue of a debt instrument in the principal amount of $75,000 due in ten years. The debt instrument calls for interest payable semiannually at a rate of 3 percentage points above the yield on 6-month Treasury bills for the mid-point of the semiannual period of the interest payment. The debt instrument is a variable rate debt instrument within the meaning of § 1.1275-5. The test rate of interest applicable to the debt instrument is 9 percent, compounded semiannually. Assume that the yield on 6-month Treasury bills on the date of the binding written contract for the sale is 8.89 percent. Thus, the debt instrument is tested for adequate stated interest as if it provided for a stated rate of interest of 11.89 percent (3 percent plus 8.89 percent), compounded semiannually, payable over its entire term. Since the test rate of interest is 9 percent, compounded semiannually, and the debt instrument is treated as providing for stated interest of 11.89 percent payable semiannually, the debt instrument provides for adequate stated interest.

Example (2). The facts are the same as in example (1), except that the interest payable at a rate equal to 3 percentage points above the yield on 6-month Treasury bills begins in the fourth year of the debt instrument. In the first, second, and third years of the debt instrument interest is payable semiannually at annual rates of 7, 8 and 9 percent, respectively. Thus, the debt instrument is treated as providing interest payable as follows:

Semiannual period	Interest rate [1]	Interest amount per period
1-2	7	$2,625.00
3-4	8	3,000.00
5-6	9	3,375.00
7-20	11.89	4,458.75

[1] Percent.

Since the debt instrument does not provide for interest payable at a rate at least equal to the test rate of 9 percent, compounded semiannually, over its entire term, it has adequate stated interest only if the deferred payment ($75,000) does not exceed the present value of the deferred payment and the interest treated as payable under the debt instrument. The present value of the deferred payment and the stated interest payments, using a discount rate of 9 percent, is $81,459.93. Since the deferred payment does not exceed the present value of the payments, the debt instrument provides for adequate stated interest.

(e) *Contingent interest*—(1) *In general.* Except as provided in this paragraph (e), contingent payments of interest are not taken into account in determining whether a contract provides for adequate stated interest. For additional rules relating to the treatment of contingent payments of interest, see § 1.483-5.

(2) *Special rule.* A contract provides for adequate stated interest if the contract provides for contingent payments of interest described in paragraph (e)(3) of this section, and the contract meets the requirements of paragraph (e)(4) of this section.

(3) *Nature of contingent interest taken into account in determining adequate stated interest.* A contingent payment of interest is described in this paragraph (e)(3) only if it is conditioned on a return from the exploitation of the property acquired under the contract. Such contingent interest payments include payments conditioned on profits, sales, rents, production, or royalties from the property.

(4) *Contingent interest as adequate stated interest*—(i) *In general.* A contract for the sale or exchange of property that does not include any recovery property (within the meaning of section 168(c)(1)) or any property described in section 1221(1) (relating to stock in trade, inventories, and other property held for sale to customers) provides for adequate stated interest if—

(A) The contract would satisfy paragraph (b) or (c) of this section (taking into account the provisions of paragraph (d) of this section) at a test rate equal to 80 percent of the test rate of interest applicable to the contract, and

(B) It is reasonable to expect (as of the date the test rate is determined) that contingent payments of interest described in paragraph (e)(3) of this section will raise the total yield on the contract to at least the test rate of interest applicable to the contract.

For an illustration of circumstances in which it is reasonable to expect that contingent interest will raise the total yield on a contract to at least the test rate of interest, see § 1.1274-3(d)(2)(v), example (1).

(ii) *Depreciable or inventoriable property.* A contract for the sale or exchange of property that includes any recovery property or any property described in section 1221(1) provides for adequate stated interest if—

(A) The contract satisfies the requirements of pararaph (e)(4)(i) of this section, and

(b) The term of the contract does not exceed 12 years (4 years in the case of a contract for the sale or exchange of property that includes any 3-year or 5-year property (within the meaning of section 168(c)) or any property described in section 1221(1)).

(iii) *Entity look-through rule.* For purposes of this paragraph (e)(4), the purchase of an interest in an entity shall be treated as a purchase of the underlying assets of the entity if the bases of the assets are determined, in whole or in part, by reference to the amount paid for such interest. If the entity owns any recovery property or property described in section 1221(1), paragrah (e)(4)(ii) of this section shall apply even with respect to that portion of the purchase price attributable to nonrecovery property that is not described in section 1221(1). For example, if one corporation purchases stock of another corporation owning nonrecovery property that is not described in section 1221(1) and at least one item of 3-year or 5-year property and makes an election under section 338 (relating to certain stock purchases treated as asset acquisitions), the stock purchase shall be treated as a purchase of 3-year or 5-year property for purposes of paragraph (e)(4)(ii) of this section.

(5) *Examples.* The provisions of this paragraph (e) may be illustrated by the following examples.

Example (1). Assume that a contract for the sale of 3-year property held for rent calls for the issue of a debt instrument due in 4 years. The debt instrument calls for interest at 7.5 percent payable annually and contingent interest equal to 5 percent of the gross rents from the property. Assume that the test rate of interest is 9.20 percent, compounded annually, and that it is reasonable to expect that the gross rents will be at least $68,000 per year. Rents of this amount would produce contingent interest payments of $3,400 per year which would raise the yield on the debt instrument to at least the test rate. The contract provides for adequate stated interest because the stated rate of interest is not lower than 80 percent of the test rate, the term of the debt instrument does not exceed 4 years, and it is reasonable to expect that the contingent interest payments will raise the yield to the test rate of interest.

Example (2). The facts are the same as in example (1), except that the debt instrument has a term of 5 years. Since the term of the contract exceeds 4 years and the stated rate of interest (7.5 percent, compounded annually) is lower than the test rate of interest (9.20 percent, compounded annually), the contract does not provide for adequate stated interest.

Example (3). The facts are the same as in example (1), except that the rental property is 19-year property and the term of the debt instrument is 10 years. The contract provides for adequate stated interest because the term of the debt instrument does not exceed 12 years.

§ 1.483-3 Unstated interest.

(a) *In general.* For purposes of section 483, the term "unstated interest" means an amount equal to the excess of—

(1) The sum of the deferred payments due under the contract, over

(2)(i) The sum of the present values of the deferred payments and the present values of any interest payments due under the contract, or

(ii) In the case of a cash method debt instrument (within the meaning of section 1274A(c)(2) and § 1.1274A-1(c)) received in exchange for property in a potentially abusive situation (as defined in § 1.1275-4(g)), the fair market value of such property (reduced by the fair market value of any consideration other than the debt instrument).

(b) *Determination of present values.* The present value of any deferred payment or interest payment is to be determined by discounting the payment from the time it becomes due to the date of the sale or exchange at the imputed rate of interest applicable to the contract in accordance with the provisions of § 1.1274-5. For rules relating to the imputed rate of interest, see § 1.483-4. For purposes of determining the amount of unstated interest when there is a short period (that is, a period shorter than a full compounding period) the exact method as prescribed in § 1.1274-5(d)(2)(ii) shall be used. In addition, for purposes of determining the fraction (f) with respect to a short period, a convention that assumes that a year consists of 12 30-day months shall be used. The exact method and 12 30-day month convention shall also be used for purposes of determining the amount of interest (including unstated interest) that accrues for a short first accrual period. See § 1.446-2.

(c) *Treatment of variable rate of interest in determining total unstated interest.* If paragraph (d)(1) of § 1.483-2 (relating to payments of interest based on an objective interest rate index) applies to a contract, the rate of interest fixed by the index as of the date the imputed rate of interest is determined is treated for purposes of determining the amount of unstated interest as the stated rate of interest for any period in which interest is payable at a rate determined under the index. If paragraph (d)(1) of § 1.483-2 does not apply to a contract (either because it does not call payments under a variable rate debt instrument (within the meaning of § 1.1275-5) or because, for example, the variable rate debt instrument places a nonqualifying ceiling on the variable rate), variable payments of interest under the contract shall be treated as contingent payments to the extent provided in § 1.483-2(d)(4) and shall be subject to the provisions of § 1.483-5.

(d) *Treatment of contingent payments in determining total unstated interest.* In the case of a contract calling for any contingent payment, total unstated interest shall be determined solely by reference to the noncontingent payments. For additional rules relating to the treatment of contingent payments, see § 1.483-5.

(e) *Examples.* The provisions of this section may be illustrated by examples (1), (6), (7) and (8) of § 1.446-2(h) and by the following examples:

Example (1). On January 1, 1986, A sells property to B for $100,000 under a contract for sale that calls for B to make a $100,000 deferred payment on January 1, 1986. The contract does not provide for any interest. The imputed rate of interest based on semiannual compounding is 9 percent. The contract contains unstated interest of $58,535.71 ($100,000 (the deferred payment) minus the present value of the deferred payment ($41,464.29)).

Example (2). The facts are the same as in example (1), except that, in lieu of the $100,000 lump sum payment, the contract calls for B to make a $10,000 payment on January 1 of each year beginning with a payment on January 1, 1987, and ending with a payment on January 1, 1996. The imputed rate of interest based on annual compounding is 9.20 percent. The contract contains unstated interest of $36,384.54 ($100,000 (the sum of the deferred payments) minus the present value of the stream of $10,000 deferred payments ($63,615.46)).

Example (3). The facts are the same as in example (1), except that the contract calls for B to make a payment of interest of $79,084.77 (6 percent interest compounded annually) together with the $100,000 deferred payment due on January 1, 1996. The contract contains unstated interest of $25,726.77 ($100,000 (the deferred payment) minus $74,273.23 (the sum of the present values of the deferred payment ($41,454.29) and the stated interest ($32,791.94))).

Example (4). The facts are the same as in example (1), except that the contract calls for 10 annual installment payments of $13,586.80 (each representing a partial payment of the sales price ($100,000) and interest at 6 percent, compounded annually) beginning with a payment on January 1, 1987, and ending with a payment on January 1, 1996. The contract contains unstated interest of $13,566.95 ($100,000 (the sum of the deferred payments) minus $86,433.05 (the present value of the stream of $13,586.80 payments consisting of deferred payments and stated interest)).

Example (5). On May 31, 1986, A sells property to B for $100,000. The contract calls for 5 annual installment payments of $23,739.64 (each representing a partial payment of the sales price and 6 percent interest, compounded annually) beginning with a payment on December 31, 1987, and ending with a payment on December 31, 1991. In addition, the contract calls for a payment of interest of $3,457.45 on December 31, 1986, for the period from May 31, 1986, to December 31, 1986. Assume the contract does not provide for adequate stated interest and that the imputed rate of interest is 9.20 percent, compounded annually. Since the compounding period for the imputed rate is one year, there is a short period from May 31, 1986, to December 31, 1986. Thus, the fraction (f) with respect to the short period is equal to 210 days/360 days. The present value of the stream of $23,739.64 payments is $87,264.60. The present value of the stated interest payment of $3,457.45 on December 31, 1986, is $3,284.43. Thus, the contract contains unstated interest of $9,450.97 ($100,000 (the sum of the deferred payments) minus $90,549.03 ($87,264.60+$3,284.43)).

Example (6). The facts are the same as in example (5), except that the $3,457.45 payment of interest for the short period is made on May 31, 1986. The contract contains unstated interest of $9,277.95 (the excess of $100,000 (the sum of the deferred payments) over $90,722.05 (the sum of the present value of the stream of $23,739.64 payments ($87,264.60) and the amount of the stated interest payment of $3,457.45 on May 31, 1986)).

§ 1.483-4 Test and imputed rates of interest applicable to a contract.

(a) *General rule.* Except as provided in paragraph (b) of this section, the test rate and imputed rate of interest for purposes of section 483 shall each be the lower of—

(1) The applicable Federal rate (based on the appropriate compounding period), or

(2) Nine percent, compounded semiannually, or an equivalent rate based on an appropriate compounding period.

The rates equivalent to 9 percent, compounded semiannually, for annual, quarterly and monthly compounding periods are as follows:

Appropriate compounding period	Test and imputed rate (percent)
Annual	9.20
Quarterly	8.90
Monthly	8.84

For rules relating to the determination of the applicable Federal rate, see paragraph (d) of this section. For rules relating to the appropriate compounding period on which the test and imputed rates of interest are to be based, see paragraph (c) of this section.

(b) *Special rates of interest applicable to certain sales*—(i) *Higher rates in certain cases*—(1) *Sales of new section 38 property after June 30, 1985.* In the case of a sale or exchange of new section 38 property (within the meaning of section 48(b) and the regulations thereunder), occurring after June 30, 1985, the test and imputed interest rates shall be equal to 100 percent of the applicable Federal rate.

(ii) *Sale-leaseback transactions occurring after June 30, 1985.* In the case of a debt instrument given in consideration for the sale or exchange of property occurring after June 30, 1985, all or a portion of which, pursuant to a plan, is leased by the transferor of the property or a person related to the transferor (within the meaning of section 168(e)(4)(D)) after the sale or exchange, the test and imputed interest rates shall be equal to 110 percent of the applicable Federal rate.

(iii) *Certain sales of principal residences.* This paragraph (b)(1)(iii) applies to a sale or exchange by an individual of the individual's principal residence (within the meaning of section 1034) if the stated principal amount of the debt instrument given in consideration for the sale or exchange exceeds the qualified amount. For this purpose, the qualified amount is the amount described in § 1.1274A–1(b)(2) in the case of a sale or exchange occurring after June 30, 1985, and $2,000,000 in the case of a sale or exchange occurring before July 1, 1985. In the case of a sale or exchange to which this paragraph (b)(1)(iii) applies, the test and imputed rates of interest shall be equal to—

(A) The applicable Federal rate for sales or exchanges occurring after June 30, 1985; and

(B) The rates determined under §§ 1.1274–3(e)(2)(i)(A)(2) and 1.1274–4(b)(2)(i)(B) for sales or exchanges occurring before July 1, 1985.

(iv) *Sales and exchanges occurring before July 1, 1985.* Except as otherwise provided in this paragraph (b), the imputed rate of interest in the case of a sale or exchange occurring before July 1, 1985, shall be 10 percent, compounded semiannually, or an equivalent rate based on an appropriate compounding period. The rates equivalent to 10 percent, compounded semiannually, for annual, quarterly and monthly compounding periods are as follows:

Appropriate compounding period	Imputed rate (percent)
Annual	10.25
Quarterly	9.88
Monthly	9.80

In the case of a sale or exchange of new section 38 property (within the meaning of section 48(b) and the regulations thereunder) occurring before July 1, 1985, the test rate shall be 110 percent of the applicable Federal rate and the imputed interest rate shall be 120 percent of the applicable Federal rate.

(2) *Lower rate for certain sales of land between related parties*—(1) *In general.* This paragraph (b)(2) applies to a debt instrument issued in a sale or exchange of land by an individual to a member of such individual's family (a qualified sale) if—

(A) Such individuals are the only parties to the debt instrument;

(B) The debt instrument is not given in consideration for any property other than land; and

(C) The stated principal amount of the debt instrument, when added to the aggregate stated principal amount of any other debt instruments to which this paragraph (b)(2) applies that were issued in prior qualified sales between such individuals during the same calendar year, does not exceed $500,000. The rules of section 1274 and the regulations thereunder do not apply to any debt instrument to which this paragraph (b)(2) applies. Such rules apply, however, to any other debt instrument given in consideration for a qualified sale, unless section 1274 is otherwise inapplicable.

(ii) *Rate applicable to qualified sales.* In the case of a debt instrument to which this paragraph (b)(2) applies, the test and imputed rates of interest shall not exceed the semiannual rates prescribed by this paragraph (b)(2)(ii) or equivalent rates based on an appropriate compounding period. The semiannual rates prescribed by this paragraph (b)(2)(ii) and the equivalent rates for annual, quarterly and monthly compounding periods are as follows:

Appropriate compounding period	Test rate; imputed rate for sales or exchanges occurring after June 30, 1985 (percent)	Imputed rate for sales or exchanges occurring before July 1, 1985 (percent)
Annual	6.09	7.12
Semiannual	6.00	7.00
Quarterly	5.96	6.94
Monthly	5.93	6.90

(iii) *Special rules.* The following rules and definitions are applied in determining whether a sale or exchange is a qualified sale:

(A) *Land.* The term "land" does not include any structure (whether or not subject to depreciation or cost recovery allowances), or any permanent improvement or cultivation under, upon, or over real property if such improvement or cultivation is of a nature subject to cost recovery allowances, amortization or allowances for depreciation.

(B) *Definition of family members.* The members of an individual's family include only the individual's brother and sister (whether by the whole or half blood), spouse, ancestors, and lineal descendants. In determining any of these relationships full effect shall be given to a legal adoption. The term "ancestor" includes parents and grandparents, and "lineal descendants" includes children and grandchildren. The members of an individual's family are determined as of the date of the sale or exchange.

(C) *Nonresident aliens.* A sale or exchange is not a qualified sale if any party to the sale or exchange is a nonresident alien individual.

(iv) *Examples.* The provisions of this paragraph (b)(2) may be illustrated by the following examples:

Example (1). Assume that on January 1, 1987, A sells land to B, A's child, for $650,000. The contract for sale calls for B to make a $250,000 down payment and issue a debt instrument with a stated principal amount of $400,000. The sale is a qualified sale and this paragraph (b)(2) applies to the debt instrument.

Example (2). The facts are the same as in example (1), except that on June 1, 1987, A sells additional land to B under a contract that calls for B to issue a debt instrument with a stated principal amount of $100,000. The stated principal amount of this debt instrument ($100,000) when added to the stated principal amount of the prior debt instrument ($400,000) does not exceed $500,000. Thus, this paragraph (b)(2) applies to both debt instruments.

Example (3). The facts are the same as in example (1), except that on June 1, 1987, A sells additional land to B under a contract that calls for B to issue a debt instrument with a stated principal amount of $150,000. Since the stated principal amount of this debt instrument when added to the stated principal amount of the prior debt instrument exceeds $500,000, this paragraph (b)(2) does not apply to the debt instrument issued in the sale of June 1, 1987. Section 1274, if otherwise applicable, applies to the $150,000 debt instrument.

(c) *Appropriate compounding period; conversion of test and imputed rates of interest to an appropriate compounding period.* The test and imputed rates of interest must be based on an appropriate compounding period. The appropriate compounding period for the test rate is determined in accordance with the rules of § 1.1274–3(e)(3), and the appropriate compounding period for the imputed rate of interest is determined in accordance with the rules of § 1.1274–4(c). Test and imputed rates of interest based on the appropriate compounding period shall be determined in accordance with the rules of § 1.1274–3(e)(4) if such rates are not otherwise provided or if rates accurate to more than two decimal places are desired by both parties to the transaction.

(d) *Determination of applicable Federal rate.* For purposes of determining the test and imputed rates of interest, the applicable Federal rate with respect to a contract is the rate that would be determined under § 1.1274–6 if the contract were a debt instrument subject to section 1274.

(e) *Treatment of certain options.* Whether an option described in § 1.1272-1(f)(4) (ii) or (v) (relating to certain put and call options and options to extend) is presumed exercised for purposes of section 483 shall be determined in a manner consistent with the rules of § 1.1274-6(f) (relating to treatment of certain options). Thus, for example, the holder of a debt instrument shall be presumed to exercise a put option or an option to extend for all purposes of section 483 if the amount described in § 1.483-2(c)(2)(i), assuming exercise of the option, exceeds the amount described in § 1.483-2(c)(2)(i), assuming nonexercise of the option.

§ 1.483-5 Contingent payments.

(a) *In general.* This section provides rules for applying section 483 to any contract for the sale or exchange of property (the overall contract) that provides for any contingent payment. This section does not provide guidance concerning whether a contract is properly treated as debt or equity, or whether a contract evidences a valid indebtedness for Federal tax purposes, and no inference may be drawn with respect to these issues from anything in this section.

(b) *General rules*—(1) *Separation of noncontingent and contingent payments.* Except as otherwise provided in section 483 and the regulations thereunder, the noncontingent payments under an overall contract described in paragraph (a) of this section must be separated from the contingent payments under the contract. In such cases, noncontingent payments are subject to the rules of paragraph (b)(2) of this section, and contingent payments are subject to the rules of paragraph (b)(3) of this section. In addition, see paragraph (b)(4) of this section for special rules applicable to an overall contract that provides for certain contingent payments within a fixed period.

(2) *Noncontingent payments treated as separate contract.* The noncontingent payments under an overall contract to which paragraph (b)(1) of this section applies shall be treated for purposes of section 483 as if they were made under a separate contract. The amount of unstated interest with respect to such separate contract shall be determined solely by reference to the noncontingent payments of principal and interest.

(3) *Recharacterization of certain contingent payments*—(i) *In general.* Except as otherwise provided in paragraph (b)(4) of this section, a contingent payment to which this paragraph (b)(3)(i) applies, whether denominated as principal, interest, or both, shall be treated as consisting of—

(A) A payment of principal in an amount equal to the present value of the payment determined by discounting the payment at the test rate of interest applicable to the payment from the date the payment becomes due to the date of the sale or exchange, and

(B) A payment of interest in an amount equal to the excess of the total amount of the payment over the amount treated as principal.

For purposes of this paragraph (b)(3)(i), the present value of a payment is determined in accordance with the rules of § 1.483-3(b) except that the payment is discounted at the test rate of interest applicable to the payment. The test rate of interest applicable to a payment is the text rate of interest applicable to the overall contract under which the payment is made as determined under § 1.483-4. If, however, the test rate of interest applicable to the overall contract is determined by reference to the applicable Federal rate, the test rate of interest applicable to the payment shall be determined by reference to the appropriate Federal rate (for example, the Federal mid-term rate) for the period from the date of the sale or exchange to the date the payment is made.

(ii) *Payments to which paragraph (b)(3)(i) of this section applies.* Paragraph (b)(3)(i) of this section shall apply to—

(A) Any contingent payment of principal for which the contract does not provide adequate stated interest, or

(B) Any contingent payment of interest (other than adequate stated interest provided with respect to a contingent payment of principal) that is made under an overall contract that does not provide for adequate stated interest within the meaning of § 1.483-2 (that is, the contract contains unstated interest within the meaning of § 1.483-3) or that is provided with respect to a contingent payment of principal.

For purposes of this paragraph (b)(3)(ii), adequate stated interest with respect to a contingent payment of principal shall be determined in accordance with § 1.483-2 as if the contingent payment were the only payment of principal due under a contract. Thus, a contract provides for adequate stated interest with respect to a contingent payment of principal if the stated rate of interest is no lower than the test rate of interest applicable to the payment and interest at the stated rate is paid for the period from the date of the sale or exchange to the date the payment is due.

(iii) *Limitation on the characterization of amounts as principal.* If an overall contract calls for a fixed or stated maximum amount of principal, then notwithstanding paragraph (b)(3) (i) and (ii) of this section, the total amount of payments treated as principal (including amounts treatd as principal under this paragraph (b)) shall not exceed the fixed or stated maximum amount of principal.

(iv) *Taxable year of inclusion, deduction, and adjustment to basis.* For rules relating to the method of accounting for the portion of a contingent payment characterized as interest under this paragraph (b)(3), see § 1.446-2(f)(2)(i). In addition, the adjusted basis of the property sold or exchanged shall be increased on the date the payment becomes fixed by the portion of a contingent payment treated as principal.

(4) *Certain contingent payments within a fixed period.* If an overall contract described in paragraph (a) of this section provides for contingent payments described in § 1.1275-4(d) (relating to certain contingent payments within a fixed period), the buyer's basis in the property, and the amount of and the accrual of interest (including unstated interest) attributable to such payments shall be determined in a manner consistent with § 1.1275-4(d). For rules relating to the allocation of such interest to payments, see § 1.446.-2(d).

(c) *Definition of contingent payment.* In determining whether a payment called for under a contract is contingent, remote and incidental contingencies may be disregarded by the Commissioner. The parties to a transaction, however, are bound by its form. Thus, neither party may treat any amount under a debt instrument whose payment is subject to a stated contingency as noncontingent. A payment shall not be considered contingent merely because the amount of or the liability for the payment may be impaired by insolvency or default. Variable payments of interest, if made under a contract to which § 1.483-2(d)(1) applies, shall not be treated as contingent, and if made under a contract to which § 1.483-2(d)(1) does not apply, shall be treated as contingent to the extent provided in § 1.483-2(d)(4). In addition, payments of fixed or minimum principal contingent as to due date that call for fixed or (in the case of a contract to which § 1.483-2(d)(1) applies) variable interest at a rate that constitutes adequate stated interest shall not be treated as contingent. Any payment of principal in excess of the minimum amount of principal shall be treated as contingent and, if not accompanied by adequate stated interest or if described in § 1.1275–4(d), shall be subject to the rules of paragraph (b) (3) or (4) of this section.

(d) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). (i) On March 1, 1986, A sells rental personal property to B for $100,000. The contract for sale calls for B to make a $20,000 down payment and a single payment of $100,000 due on March 1, 1991. In addition, the contract calls for annual payments, beginning with a payment on March 1, 1987, of noncontingent interest at a rate of 6 percent, compounded annually, and contingent interest equal to a specified percentage of the gross rents from the property for the calendar year preceding the payment.

(ii) Assume that the test rate of interest for this contract is 9.20 percent, compounded annually. Thus, the special rule of § 1.483–2(e) does not apply and the contract does not provide for adequate stated interest. At a test rate of interest of 9.20 percent, compounded annually, the contract contains unstated interest of $12,382.56 (the excess of $100,000 (deferred payments) over $87,617.44 (the sum of the present values of the deferred payments and the noncontingent interest payments)). Thus, B's initial basis in the property is $107,617.44 ($87,617.44 plus the $20,000 down payment).

(iii) Assume that a contingent payment of interest of $3,000 becomes due on March 1, 1987. Since the payment of interest is being made under a contract that does not provide for adequate stated interest (and is not adequate stated interest with respect to a contingent payment of principal), it is subject to recharacterization. Because the test rate was not based on the applicable Federal rate, all payments must be recharacterized based on a discount rate of 9.20 percent, compounded annually. The payment is recharacterized as principal in the amount of $2,747.25 (the present value of the payment) and as interest in the amount of $252.75 (the excess of the payment ($3,000) over the amount of the payment treated as principal ($2,747.25)). On the date the payment becomes fixed, B increases the basis of the property by $2,747.25, the amount of the payment recharacterized as principal.

(iv) Assume that contingent payments of interest for years 1988, 1989, 1990 and 1991 and the amounts recharacterized as interest or principal are as follows:

Year	Payment	Principal	Interest
1988	$2,500	$2,096.50	$403.50
1989	3,200	2,457.44	742.56
1990	3,200	2,250.40	949.60
1991	4,200	2,704.81	1,495.19

B will increase the basis of the property over the remaining 4 years by an additional $9,509.15.

Example (2). The facts are the same as in example (1), except that the amount of the final contingent payment of interest is $5,000. If subject to unlimited recharacterization, the $5,000 payment would be treated as principal in the amount of $3,220.01 and as interest in the amount of $1,779.99. If the payment is treated as a $3,220.01 payment of principal (when taken together with all other contingent and noncontingent payments treated as principal), principal payments due under the contract would exceed the fixed stated principal amount due under the contract of $100,000. Thus, the amount of the payment treated as principal is limited to $2,830.97 (the excess of the stated principal amount ($100,000) over the sum of noncontingent payment of principal ($87,617.44) and the prior contingent payments treated as principal ($9,551.59)), and the amount of the payment treated as interest is $2,169.03 (the excess of the payment ($5,000) over the amount of the payment treated as principal ($2,830.97)).

Example (3). (i) On March 1, 1986, A sells rental personal property to B under a contract that calls for a $30,000 down payment, and six annual payments equal to 10 percent of the gross rents from the property. The contract further specifies that the maximum of payments under the contract (exclusive of the down payment) cannot exceed $200,000. The contract does not call for the contingent payments to bear any interest. Since it is not certain that any payment other than the $30,000 down payment will be made, B's basis in the property is initially limited to $30,000.

(ii) Since the contract does not provide for adequate stated interest with respect to the contingent payments, each payment is subject to recharacterization. The test rate of interest applicable to the payments is 9.20 percent, compounded annually. Assume that the contingent payments for the years 1987 through 1992 are set forth in column (1) of the following table. The characterization of principal and interest for each payment is set forth in columns (2) and (3) of the table.

Year	Payment (1)	Principal (2)	Interest (3)
1987	$37,000	$33,882.78	$3,117.22
1988	42,000	35,221.19	6,778.81
1989	33,000	25,342.30	7,657.70
1990	29,000	20,394.24	8,605.76
1991	39,000	25,116.05	13,883.95
1992	20,000	11,794.90	8,205.10

§ 1.582-1 [Amended]

Par. 14. In §1.582–1, paragraphs (d) and (e)(3)(i) are amended by removing the phrase "section 1232" from each place that it appears and adding in its place the phrase "sections 1271 through 1275".

§ 1.636-1 [Amended]

Par. 15. In §1.636–1, paragraph (a)(1)(ii) is amended by removing the phrase "section 1232" and adding in its place the phrase "section 1271".

§ 1.818-3 [Amended]

Par. 16. In § 1.818–3, paragraph (f) is amended by removing the phrase "section 1232(a) (relating to the taxation of bonds and other evidences of indebtedness)" and adding in its place the phrase "section 1271 (relating to the treatment of amounts received on retirement or sale or exchange of debt instruments)", and by removing the phrase "section 1232(a)(2)(C)" and adding in its place the phrase "section 1271(d)".

§ 1.861-2 [Amended]

Par. 17. In § 1.861–2, paragraph (a)(4) is amended by removing the phrase "section 1232(b)(1)" and adding in its place the phrase "section 1273(a)(1)".

§ 1.993-1 [Amended]

Par. 18. In § 1.993–1, paragraph (g) is amended by removing the phrase "section 1232" and adding in its place the phrase "section 1272".

§ 1.1001-1 [Amended]

Par. 19. In § 1.1001–1, paragraph (g) is amended by removing the phrase "section 1232(b)" and adding in its place the phrase "section 1273", and by removing the phrase "paragraph (b)(2)(iii)(b) of § 1.1232–3." and adding in its place the phrase "§ 1.1273–2."

§ 1.1012-1 [Amended]

Par. 20. In § 1.1012–1, paragraph (f) is amended by removing the phrase "section 1232(b)" and adding in its place the phrase "section 1273" and by removing the phrase "paragraph (b)(2)(iii)(b) of § 1.1232–3." and adding in its place the phrase "§ 1.1273–2."

Par. 21. Section 1.1012–2 is revised to read as follows:

§ 1.1012-2 Certain sales or exchanges between related parties.

(a) *In general.* In the case of a sale or exchange of property in which the relationship between the seller and the buyer is such that the sale or exchange is not necessarily an arm's-length transaction, the transaction shall be examined to determine whether the value of the consideration provided by the buyer is greater than or less than the value of the property. If the value of the consideration exceeds the value of the property, this excess shall not be treated as relating to the sale or exchange and will be recharacterized according to the relationship between the parties. If the value of the property exceeds the value of the consideration, this excess generally shall be treated as transferred from the seller to the buyer based on the relationship between the parties and not as transferred in exchange for the debt instrument. The preceding sentence shall not apply to any transaction that would be characterized as in part a gift and in part a sale under § 1.170A–4(c)(2) and § 1.1011–2(b) or under § 1.1015–4.

(b) *Value*. In applying this section to any sale or exchange where all or a part of the consideration furnished by the buyer consists of one or more debt instruments issued by the buyer to the seller, then, for purposes of this section—

(1) The value of any such debt instrument to which section 1274 applies or which has adequate stated interest within the meaning of section 1274(c)(2) or § 1.483–2 shall be its issue price;

(2) The value of any such debt instrument issued under a contract to which section 483 applies shall be the amount described in § 1.483–3(a)(2)(i); and

(3) In determining whether the value of the consideration furnished by the buyer exceeds the value of the property, the value of the property shall be determined by reference to the price that an unrelated buyer (having the same creditworthiness as the actual buyer) would be willing to pay for the property in an arm's-length transaction if seller financing (taken into account at its issue price) were offered on the same terms as those offered to the actual buyer.

(c) *Examples*. The provisions of this section may be illustrated by the following examples:

Example (1). (i) On January 1, 1986, Corporation X sells nonpublicly traded property to A, the sole shareholder of X. In consideration for the sale, A makes a down payment of $200,000 and issues a debt instrument calling for a single payment of $1,000,000 due in five years. No interest is provided for in the debt instrument. Because A is the sole shareholder of X, the transaction must be examined to determine whether the value of the property exceeds the value of the consideration furnished by A. For this purpose, the value of the property is its fair market value (determined without regard to any seller financing).

(ii) Assume that the fair market value of the property is $900,000 and that the issue price of the debt instrument under § 1.1274–4 is $643,928. Thus, the value of the consideration furnished by A is $843,928 (the sum of $200,000 (the portion of the consideration attributable to the down payment) and $643,928 (the portion of the consideration attributable to the debt instrument)). Since the value of the property ($900,000) exceeds the valve of the consideration ($843,928), X Corporation is treated as having made a distribution to shareholder A to which section 301 applies. The amount of the distribution is $56,072 (the difference between $900,000 and $843,928). The basis of the property in the hands of A is $900,000 ($843,928 (consideration actually furnished by A) increased by $56,072 (the amount of the section 301 distribution)).

Example (2). The facts are the same as in Example (1) except that the fair market value of the property is $800,000. X is not treated as having made a section 301 distribution to A and A's basis in the property is $800,000. The transaction need not be examined for excessive consideration since a sale from a corporation to a shareholder ordinarily would not be used to disguise a contribution to capital from the shareholder to the corporation.

Example (3). (i) C sells nonpublicly traded property to his employer D for $300,000 in cash and D's debt instrument having a face amount of $1,000,000, payable in 5 years with interest payable semiannually at a rate of 9 percent. Because D is C's employer, the transaction must be examined to determine if a portion of the amount designated as consideration for the property is in fact disguised compensation.

(ii) Assume that the fair market value of the property (assuming no seller financing), is $1,000,000 and that the issue price of D's debt instrument is $1,000,000. Assume further that a buyer unrelated to D and having the same creditworthiness as C would be willing to pay $1,200,000 for the property if allowed to pay $300,000 in cash and $900,000 in the form of a 5-year debt instrument calling for semiannual payments of interest at a rate of 9 percent. The value of the consideration furnished by D is $1,300,000 (cash of $300,000 plus a debt instrument having an issue price of $1,000,000). Since this amount exceeds the value of the property by $100,000, only $200,000 of the $300,000 transferred from D to C is treated as consideration furnished for the property. The remaining $100,000 is treated as compensation. D's basis in the property is $1,200,000 (cash consideration of $200,000 plus a debt instrument with an issue price of $1,000,000).

Example (4). The facts are the same as in Example (3) except that the property could be sold to the unrelated buyer for $1,400,000 (assuming a down payment of $300,000 and 5-year seller financing at 9 percent for the balance of the purchase price). Because the value of the consideration furnished by D ($1,300,000) does not exceed the value of the property ($1,400,000), D is not treated as having paid compensation to C. D's basis in the property is $1,300,000. The transaction need not be examined for insufficient consideration since employees ordinarily do not make bargain sales to their employers.

Par. 22. In § 1.1016–5, paragraph (s) is revised to read as follows:

§ 1.1016–5 Miscellaneous adjustments to basis.

* * * * *

(s) *Original issue discount*. In the case of certain debt instruments issued at a discount after May 27, 1969, the basis shall be increased under section 1272(d)(2) by the amount of original issue discount included in the holder's gross income pursuant to section 1272.

* * * * *

§ 1.1037–1 [Amended]

Par. 23. Section 1.1037–1 is amended as follows:

1. In paragraph (a) by removing the phrase "the first sentence of section 1232(a)(2)(B)." and adding in its place "section 1271(c)(2)(A)", by removing the phrase "section 1232(b)(2)" each place that it appears in *Example* (6) and *Example* (7) and adding in its place the phrase "section 1273(b)(1)", by removing the phrase "section 1232(a)(2)(B)" each place it appears in *Example* (7) and adding in its place the phrase "section 1271(c)(2)(A)", and by removing the phrase "section 1232(a)(2)(B)(ii)" each place it appears in *Example* (6) and *Example* (7) and adding in its place the phrase "section 1271(c)(2)(A)(ii)".

2. In paragraph (b) by removing the phrase "section 1232" from the heading and adding in its place the phrase "section 1271", by removing the phrase "section 1232(a)(2)(B)" each place that it appears and adding in its place the phrase "section 1271(c)(2)(A)", and by removing the phrase "section 1232" from the heading of paragraph (b)(6) and adding in its place the phrase "section 1271".

§ 1.1232–1 [Amended]

Par. 24. Section 1.1232–1 is amended as follows:

1. In paragraph (a) by revising the heading to read "Bonds and other evidences of indebtedness issued before July 2, 1982; scope of section"; by removing the first sentence and adding the following new sentence as the first sentence of the paragraph, and by removing the phrase "after May 27, 1969," from the fourth sentence and adding in its place the phrase "after May 27, 1969, and before July 2, 1982,". The added sentence reads as follows: "Section 1232 as in effect before its repeal by section 42(a) of the Tax Reform Act of 1984 applies to any bond, debenture, note, or certificate of indebtedness (referred to in this section and §§ 1.1232–2 through 1.1232–4 as an obligation) (1) which is a capital asset in the hand of the taxpayer, and (2) which is issued by any corporation, or by any government or political subdivision thereof."

2. In paragraph (c)(3) by removing the phrase "December 31, 1975." from the heading and adding in its place the phrase "December 31, 1975, and before July 2, 1982"; and by adding the phrase "and before July 2, 1982" immediately after the first parenthetical in the first sentence thereof.

§ 1.1232–2 [Amended]

Par. 25. The heading of § 1.1232–2 is revised to read "Retirement of an obligation issued before July 2, 1982."

§ 1.1232–3 [Amended]

Par. 26. Section 1.1232–3 is amended as follows:

1. The heading is amended by adding the phrase "and before July 2, 1982." immediately following the phrase "December 31, 1954."

2. Paragraph (a) is amended by removing the phrase "after May 27, 1969" from the heading and from each place that it appears and adding in its place the phrase "after May 27, 1969, and before July 2, 1982".

3. Paragraph (f), the first sentence, is amended by removing the phrase "after December 31, 1954," and inserting the phrase "after December 31, 1954, and before August 17, 1984," in its place.

§ 1.1232-3A [Amended]

Par. 27. Section 1.1232-3A is amended as follows:

1. The heading and paragraph (a) are amended by removing the phrase "after May 27, 1969." and adding in its place the phrase "after May 27, 1969, and before July 2, 1982."

2. Paragraph (f) is amended by removing the phrase "after December 31, 1975" and by adding in its place the phrase "after December 31, 1975, and before July 2, 1982,".

Par. 28. Sections 1.1271-1 through 1.1275-5 are added in the appropriate place. The new sections read as follows:

§ 1.1271-1 Treatment of amounts received on retirement or sale or exchange of debt instruments.

(a) *Applicability.* Section 1271 and this section provide for the treatment of amounts received on retirement or sale or exchange of a debt instrument (as defined in section 1275(a) and § 1.1275-1(b)) issued after July 1, 1982, other than a debt instrument issued by a natural person as described in § 1.1275-1(g). Section 1271 and this section do not apply to a debt instrument acquired before July 18, 1984, which was not a capital asset in the hands of the holder on July 17, 1984. To determine whether a debt instrument was a capital asset in the hands of the holder, see § 1.1232-1(b). For rules relating to debt instruments issued before July 2, 1982, see § 1.1232-1.

(b) *General rules*—(1) *Retirement.* Amounts received on retirement of a debt instrument to which section 1271 applies are considered as received in exchange for the debt instrument.

(2) *Sale or exchange.* Gain realized upon the sale or exchange of a debt instrument to which section 1271 applies is either capital gain or ordinary income, depending on the character of the debt instrument in the hands of the holder. If the debt instrument is a capital asset in the hands of the holder, gain realized is capital gain unless—

(i) There was an intention to call the debt instrument before maturity, (in which case, all or a portion of the gain realized is treated as ordinary income under section 1271(a)(2)(A)); or

(ii) The debt instrument is a short-term obligation (as defined in section 1283(a)(1)) issued at a discount (in which case, all or a portion of the gain realized may be treated as ordinary income under § 1.1271-3).

(3) *Example.* The rules stated in paragraph (b) of this section may be illustrated as follows:

Example. On November 1, 1985, B, a calendar-year taxpayer, purchases at original issue for cash of $86,235.17, N Corporation's 15-year bond, maturing on October 31, 2000, at a stated redemption price of $100,000. Assume that the bond is a capital asset in B's hands. The bond provides for semiannual payments of interest at 10%. The bond has $13,764.83 of original issue discount (stated redemption price at maturity, $100,000, less issue price, $86,235.17). There is no intention to call the bond before maturity. On November 1, 1988, B sells the bond to C, a calendar-year taxpayer, for cash of $90,000. B has included $1,214.48 of original issue discount in gross income and has increased his basis by that amount to $87,449.65 (see § 1.1272-1(k), Example (4) for the computation of daily portion of original issue discount). B has realized a gain of $2,550.35 (amount realized, $90,000, less adjusted basis, $87,449.65). Since there was no intention to call the bond before maturity at the date of issue, under paragraph (b)(2)(i) of this section all of B's gain, $2,550.35, is capital gain.

(c) *Amounts previously includible in income.* Nothing in section 1271, this section, or §§ 1.1271-2 and 1.1271-3 shall require the inclusion of any amount previously includible in gross income. Thus, if an amount was previously includible in a taxpayer's income on account of a debt instrument issued at a discount and redeemable for fixed amounts increasing at stated intervals, or under section 811(b) (or corresponding provisions of prior law) relating to accrual of discount on bonds or other evidences of indebtedness held by life insurance companies, this amount is not again includible in the taxpayer's gross income. For example, amounts includible in income by a cash receipts and disbursements method taxpayer who has made an election under section 454 (a) or (c) (relating to accounting rules for certain debt instruments issued at a discount to which section 1272 does not apply) are not also includible in gross income upon sale or exchange of the obligation. In the case of a gain which under section 1271(a)(2) would include an amount considered to be ordinary income and a further amount considered to be long-term capital gain, any amount to which this paragraph applies is first used to offset the amount considered to be ordinary income to the extent such previously included income constituted ordinary income.

§ 1.1271-2 Intention to call before maturity [Reserved]

§ 1.1271-3 Gain on disposition of certain short-term obligations.

(a) *Short-term government obligations*—(1) *General rule.* Any gain realized on the sale or exchange of a short-term government obligation issued at a discount which does not exceed an amount equal to the ratable share of the acquisition discount (as defined in paragraph (a)(3) of this section) shall constitute ordinary interest income.

(2) *Short-term government obligation.* For purposes of this section, the term "short-term government obligation" is any obligation of the United States or any of its possessions, or of a State or any political subdivision thereof, or of the District of Columbia, which is payable at a fixed maturity date not more than 1 year from the issue date. This term does not include short-term tax-exempt obligations.

(3) *Ratable share of acquisition discount.* For purposes of this section, the term "ratable share of acquisition discount" means an amount which bears the same ratio to the total acquisition discount (as defined in section 1271(a)(3)(C)) as—

(i) The number of days which the taxpayer holds the obligation, bears to

(ii) The number of days after the date the taxpayer acquired the obligation and up to (and including) the date of maturity of the obligation.

(4) *Election of computation on constant interest rate basis.* In lieu of computing the ratable share of acquisition discount as described in paragraph (a)(3) of this section, the taxpayer may elect to compute acquisition discount with respect to a short-term government obligation (as defined in paragraph (a)(2) of this section) on the basis of daily compounding. The election shall be made by filing a return for the year of the sale or exchange by reporting the transaction on the basis of daily compounding. This election shall be irrevocable and shall be made on an obligation by obligation basis.

(b) *Short-Term nongovernmental obligations issued or or after July 18, 1984*—(1) *In general.* Gain realized on the sale or exchange of a short-term nongovernmental obligation (as defined in paragraph (b)(2) of this section) issued on or after July 18, 1984, which does not exceed an amount equal to the ratable share of original issue discount described in paragraph (b)(3) of this section shall be treated as ordinary interest income.

(2) *Short-term nongovernmental obligations.* For purposes of this section, the term "short-term nongovernmental obligation" means an obligation other than a short-term government obligation described in paragraph (a)(2) of this section, which has a fixed maturity date not more than 1 year from the issue date. This term does not include short-term tax-exempt obligations.

(3) *Ratable share of original issue discount.* For purposes of this section, the ratable share of original issue discount is an amount which bears the same ratio to the total original issue discount (as defined in section 1273(a)(1)) as—

(i) The number of days which the taxpayer holds the obligation, bears to

(ii) The number of days after the issue date and up to (and including) the date of maturity of the obligation.

(4) *Election of computation on constant interest rate basis.* In lieu of computing the ratable share of original issue discount as described in paragraph (b)(3) of this section, the taxpayer may elect to compute original issue discount with respect to a short-term nongovernmental obligation (as defined in paragraph (b)(2) of this section) on the basis of daily compounding. The election shall be made by filing a return for the year of the sale or exchange reporting the transaction on the basis of daily compounding. This election shall be irrevocable and shall be made on an obligation by obligation basis.

(c) *Examples.* The rules stated in paragraphs (a) and (b) of this section may be illustrated as follows:

Example (1). On January 1, 1985, A purchases at original issue for cash of $9,200 a one-year Treasury bill with a stated redemption price at maturity of $10,000. This obligation is a capital asset in A's hands. The Treasury bill is also a short-term government obligation within the meaning of paragraph (a)(2) of this section and has total acquisition discount of $800 (stated redemption price at maturity, $10,000, minus A's basis, $9,200). On August 1, 1985, A sells the bill to B for $9,700, and A realizes a gain of $500 (amount realized, $9,700 minus A's basis, $9,200). The amount of acquisition discount that has accrued on the bill for all days during the taxable year that A held the note is determined under paragraph (a)(3) of this section as follows:

(1) Total amount of acquisition discount	$800.00
(2) Multiplied by: The number of days A held the bill during the taxable year (210) divided by the total number of days after A acquired bill up to and including the date of maturity (360)	.58333
(3) A's ratable share of acquisition discount	$466.67

Since the amount shown on line (3), $466.67, is less than A's gain of $500, only $466.67 of his gain is includible as interest in gross income. The remaining portion, $33.33, is capital gain.

Example (2). (i) On March 1, 1985, A lends $5,000 to B, an individual, in exchange for B's note with an issue price of $5,000, payable in ten months and calling for interest payable at maturity. B's note is a short-term nongovernmental obligation within the meaning of paragraph (b)(2) of this section and is also a capital asset in A's hands. Interest is to accrue at a rate of 12%, compounded monthly, and totals $523.11 at maturity. The stated redemption price at maturity under § 1.1273–1(b)(1) is $5,523.11. The debt instrument has original issue discount of $523.11 (stated redemption price at maturity, $5,523.11, minus issue price, $5,000). On September 1, 1985, A sells the debt instrument to C for $5,325. A realizes a gain on the sale of $325 (amount realized, $5,325, minus A's basis in the debt instrument, $5,000). A's ratable share of original issue discount is computed as follows:

(1) Total original issue discount	$523.11
(2) Multiplied by: number of days A held the note (180) divided by the number of days after the date A acquired the debt instrument up to and including the date of maturity (300)	.60
(3) A's ratable share of original issue discount	$313.87

Since A's gain, $325, is greater than his ratable share of original issue discount, $313.87, only $313.87 of his gain is includable as interest in gross income. The remaining portion, $11.13, is capital gain.

(ii) The facts are the same as in part (i), except that A elects to compute his original issue discount based on daily compounding. A's share of original issue discount for the 180-day period computed on the basis of daily compounding is $307.60. Since A's gain, $325, is greater than his share of original issue discount, $307.60, only $307.60 of his gain is includable as interest in gross income. The remaining portion, $17.40, is capital gain.

(d) *Short-term nongovernmental obligations issued by a corporation after May 27, 1969, and before July 18, 1984*—(1) *In general.* Gain on the sale or exchange of a short-term nongovernmental obligation described in paragraph (b)(2) of this section issued by a corporation after May 27, 1969, and before July 18, 1984, shall be included in gross income as interest to the extent that the gain does not exceed an amount equal to the ratable monthly portion of original issue discount multiplied by the sum of the number of complete months and any fractional part of a month that the taxpayer held the debt instrument.

(2) *Cross-references.* For definition of the term "ratable monthly portion", see § 1.1232–3A(a)(2). For definition of the term "complete month" and the computation of a fractional part of a month, see § 1.1232–3A(a)(3).

§ 1.1272–1 Current inclusion in income of original issue discount on certain debt instruments issued after July 1, 1982.

(a) *Applicability*—(1) *In general.* Section 1272(a) and this section require a holder of a debt instrument (as defined in section 1275(a) and § 1.1275–1(b)) issued at a discount to include as interest in gross income on a constant interest rate basis the amount of original issue discount (as defined in section 1273(a) and § 1.1273–1(a)) on that debt instrument. Section 1272(a) and this section apply only to the holder of a debt instrument issued at a discount after July 1, 1982. See section 1272(b) and §§ 1.1232–1 through 1.1232–3A for rules relating to debt instruments issued at a discount before July 2, 1982.

(2) *Exceptions.* Section 1272 and this section do not apply to the following:

(i) A holder of a debt instrument issued at a discount where the holder had purchased the debt instrument at a premium (as defined in § 1.1275–1(f));

(ii) A holder that is a life insurance company to which section 811(b) or corresponding provisions of prior law apply;

(iii) A holder of a debt instrument issued at a discount before December 31, 1984, in whose hands the debt instrument is not a capital asset;

(iv) Tax-exempt obligations, as defined in section 1275(a)(3) and § 1.1275–1(d);

(v) United States savings bonds;

(vi) Short-term obligations (as defined in section 1283(b));

(vii) Any debt instrument issued by a natural person (as defined in § 1.1275–1(g)) before March 2, 1984; and

(viii) Any loan made by a natural person to another natural person after March 1, 1984, if (A) the loan is not made in the course of a trade or business of the lender, and (B) the amount of the loan (when increased by the outstanding amount of prior loans between the same parties) does not exceed $10,000. For purposes of this paragraph (a)(2)(viii), the term "loan" does not include a stripped bond or stripped coupon within the meaning of section 1286(e). The aggregate amount of loans between natural persons is the sum of the outstanding principal amounts of loans directly between the individuals regardless of the character of the loans, regardless of the interest rate charged on the loans, and regardless of the date on which the loans were made. This paragraph (a)(2)(viii) shall not apply if one of the principal purposes of the interest arrangements of the loan is the avoidance of any Federal tax by either the borrower or the lender. The determination of whether tax avoidance is one of the principal purposes of the loan shall be made by the Commissioner. For purposes of applying the $10,000 limitation of this paragraph (a)(2)(viii), a husband and wife shall be treated as one person with respect to loans made by either husband or wife to a third person or a spouse of that person. The preceding sentence shall not apply to loans made between a husband and wife, nor to loans where the spouses lived apart at all times during the taxable year in which the loan was made.

(3) *Amounts otherwise includible or deductible.* Nothing in section 1272 or this section shall require the double inclusion or permit the double deduction of any amount from gross income. Thus, for example, payments (or portions of payments) denominated as interest under the debt instrument which are included in the stated redemption price at maturity under § 1.1273–1(b)(2)(ii) because they are not qualified periodic interest payments (as defined in § 1.1273–1(b)(1)(ii)) are not also includible under section 61. See also the rules described in § 1.1271–1(c).

(4) *Cross-references.* See § 1.1275–4 for rules relating to the treatment of debt instruments providing for contingent payments. See § 1.1275–5 for rules relating to debt instruments providing for a variable rate of interest.

(b) *Original issue discount included in income on basis of constant interest rate.* The holder of a debt instrument having original issue discount to which this section applies shall include as interest in gross income an amount equal to the sum of the daily portions of the original issue discount for each day during the taxable year that the holder holds the debt instrument. For this purpose, a person holds a debt instrument on the date of its purchase but not on the date of its disposition. The amount included under this section shall be reduced in the case of a holder who pays an acquisition premium for the debt instrument (as described in paragraph (g) of this section).

(c) *Determination of daily portion*—(1) *In general.* The daily portion of original issue discount on a debt instrument is an amount equal to the total original issue discount allocable to the accrual period (as defined in paragraph (d) of this section) divided by the number of days in the accrual period. See § 1.1275–2(e) for rules relating to counting conventions.

(2) *Amount allocable to an accrual period*—(i) *In general.* The amount of original issue discount allocable to an accrual period (other than a short first accrual period described in paragraph (c)(2)(ii) of this section or a final accrual period described in paragraph (c)(2)(iii) of this section) is—

(A) The product of—

(*1*) The adjusted issue price of the debt instrument (as defined in paragraph (e) of this section) at the beginning of the accrual period, and

(*2*) The yield to maturity of the debt instrument (as defined in paragraph (f) of this section), divided by the number of accrual periods in a year;

(B) Reduced (but not below zero) by the sum of amounts payable as qualified periodic interest (as defined in § 1.1273–1(b)(1)(ii)) on the debt instrument during the accrual period.

(ii) *Special rule for short first accrual periods*—(A) *In general.* If the first accrual period is shorter than a full accrual period, the amount of original issue discount allocable to the first accrual period may be determined by either of the two alternative methods prescribed by this paragraph (c)(2)(ii) or by any other reasonable method. The methods prescribed by this paragraph (c)(2)(ii) are the exact method and the approximate method. As an example of a reasonable method other than the exact or approximate method, a taxpayer may determine the amount of original issue discount allocable to the first accrual period by compounding at monthly intervals with simple interest within a month. The choice of any method permissible under this paragraph (c)(2)(ii) requires a corresponding choice for purposes of calculating yield to maturity described in paragraph (f) of this section. The choice of method shall be reported to the Internal Revenue Service in the time and manner provided in §§ 1.1275–3(a)(1) and 1.1275–3(b)(4). If the taxpayer does not allocate original issue discount to a short first accrual period based on a reasonable method, such discount shall be reallocated based on the exact method.

(B) *Exact method.* Under the exact method, the amount of original issue discount allocable to the first accrual period shall be the product of—

(*1*) The issue price of the debt instrument (as defined in section 1273(b) and § 1.1273–2), and

(*2*) The formula:

[1+i/k ᶠ+1]

In which: i = The yield to maturity, expressed as a decimal;

k-The number of accrual periods in a year (for example, 12, if the accrual period is one month); and

f + A-fraction whose numerator is the number of days in the short first accrual period, and whose denominator is the number of days in a full accrual period;

reduced (but not below zero) by the sum of amounts payable as qualified periodic interest on the debt instrument during the accrual period.

(C) *Approximate method.* Under the approximate method, the amount of original issue discount allocable to the first accrual period is determined as described in paragraph (c)(2)(i) of this section, except that the yield to maturity described in paragraph (c)(2)(i)(B)(2) shall be multiplied by the fraction f as defined in paragraph (c)(2)(ii)(B)(2).

(iii) *Special rule for final accrual period.* The amount of original issue discount allocable to the final accrual period (including a short final accrual period) shall be the excess of the stated redemption price at maturity (as defined in section 1273(a)(2) and § 1.1273–1(b)) over the adjusted issue price at the beginning of the final accrual period. This paragraph (c)(2)(iii) shall not apply to any debt instrument that is an installment obligation (as defined in § 1.1273–1(b)(2)(i)).

(d) *Accrual period*—(1) *Debt instruments issued after December 31, 1984*—(i) *Regular payment or compounding at intervals of one year or less.* If a debt instrument issued after December 31, 1984, calls for more than one payment or compounding date (other than the issue date) and all dates on which an amount is either paid or compounded occur at regular intervals of one year or less, then the accrual period is this interval. A debt instrument shall not fail to qualify for this rule merely because the interval between the issue date and the first payment or compounding date after the issue date or the interval between the maturity date and the preceding payment or compounding date differs from the interval between other payment or compounding dates.

(ii) *Irregular payment or compounding; intervals of more than one year.* if a debt instrument issued after December 31, 1984, calls for more than one payment or compounding date (other than the issue date) and all dates on which an amount is either paid or compounded do not occur at regular intervals of one year or less, the accrual period is the longest period of not more than one year such that all intervals consist of a whole number of accrual periods. For purposes of this paragraph (d)(1)(ii), the interval between the issue date and the first payment or compounding date after the issue date and the interval between the maturity date and the preceding payment or compounding date are not taken into account unless the debt instrument calls for only one payment or compounding date between the issue date and the maturity date.

(iii) *Debt instruments calling for a single payment.* In the case of a debt instrument issued after December 31, 1984, that provides for a single payment at maturity and for no other payment or compounding dates (other than the issue date), the accrual periods are the six-month periods (or the shorter period from the issue date) that end on the day in the calendar year that corresponds either to the stated maturity date of the debt instrument or to the date that is six months before the stated maturity date.

(iv) *Short accrual period.* (A) If the interval between the issue date of a debt instrument for which the accrual period is determined under paragraph (d)(1) (i) or (ii) of this section and the first payment or compounding date does not consist of a whole number of accrual periods, then the first accrual period shall be the short period such that the remainder, if any, of such interval consists of a whole number of accrual periods.

(B) If the interval between the last date before maturity on which an amount is paid or compounded and the maturity date of the debt instrument for which the accrual period is determined under paragraph (d)(1) (i) or (ii) of this section does not consist of a whole number of accrual periods, then the final accrual period shall be the short period such that the remainder, if any, of such interval consists of a whole number of accrual periods.

(v) *Date accrual period begins.* The first accrual period begins on the issue date (as defined in section 1275(a)(2) and § 1.1275-1(c)). Each subsequent accrual period begins on the day following the last day of the preceding accrual period. The final accrual period ends on the stated maturity date.

(vi) *Examples.* The provisions of paragraph (d)(1) of this section may be illustrated as follows:

Example (1). A bond is issued on November 1, 1985, for cash of $85,000, and matures on October 31, 2000, at a stated redemption price of $100,000. The bond provides for quarterly payments of interest at an annual rate of 10%. Under paragraph (d)(1)(i) of this section, the accrual period is the three-month period ending on October 31, July 31, April 30, and January 31 of each calendar year.

Example (2). A debt instrument is issued for $100,000 cash on November 1, 1985, and matures on December 31, 2005. Interest is compounded semiannually from December 31, 1985, but the debt instrument provides for no interest payments during the first five years. Semiannual interest payments are made thereafter at a rate of 13%, compounded semiannually. The interest payments are due on June 30 and December 31 of each calendar year beginning in 1991. Under paragraph (d)(1)(i) of this section, the accrual period is six months. The accrual periods end on June 30 and December 31 of each calendar year. The period from November 1, 1985, to December 31, 1985, is a short accrual period.

Example (3). The facts are the same as in example (2), except that the debt instrument calls for quarterly interest payments on March 31, June 30, September 30, and December 31 of each year during the first five years and semiannual payments on June 30 and December 31 of each succeeding year. Under paragraph (d)(1)(ii) of this section, the longest period such that all intervals between successive payments consist of a whole number of accrual periods is a calendar quarter. The accrual period is therefore the calendar quarter ending on December 31, September 30, June 30, and March 31 of each year.

Example (4). A bond is issued for $75,000, on October 17, 1985, and matures on September 30, 2015, at a stated redemption price of $90,000 with no payments or compounding of interest until maturity. Under paragraph (d)(1)(iii) of this section, the accrual period is six months. The accrual periods end on September 30 and March 31 of each calendar year. The period from October 17, 1985, to March 31, 1986, is a short accrual period.

(2) *Debt instruments issued after July 1, 1982, and before January 1, 1985.* In the case of debt instruments issued at a discount after July 1, 1982 and before January 1, 1985, an accrual period is the one-year period beginning on the day in the calendar year which corresponds to the date of original issue of the debt instrument. The final accrual period ends on the stated maturity date and may constitute a short accrual period.

(e) *Adjusted issue price*—(1) *First accrual period.* The adjusted issue price of a debt instrument at the beginning of the first accrual period is its issue price.

(2) *Subsequent accrual periods*—(i) *In general.* Except as provided in § 1.1275-4(d), the adjusted issue price of the debt instrument at the beginning of each accrual period subsequent to the first accrual period is equal to the adjusted issue price of the debt instrument as of the beginning of the immediately preceding accrual period increased by the amount of original issue discount allocable to that accrual period as determined under paragraph (c)(2) of this section.

(ii) *Special rule for installment obligations.* In the case of a debt instrument that is an installment obligation (as defined in § 1.1273-1(b)(2)(i)), the adjusted issue price of the debt instrument at the beginning of an accrual period subsequent to the first accrual period is the adjusted issue price at the beginning of the immediately preceding accrual period plus the amount of original issue discount allocable to that accrual period determined under paragraph (c)(2) of this section, reduced by the amount of any payment other than a payment of qualified periodic interest (as defined in § 1.1273-1(b)(1)(ii)) made at the end of or during that accrual period. Each payment other than a payment of qualified periodic interest shall be treated first as a payment of original issue discount to the extent accrued as of the date of the payment and not allocated to prior payments, and second as a payment of principal (and no portion thereof shall be treated as prepaid interest).

(f) *Yield to maturity*—(1) *In general.* The term "yield to maturity" (hereinafter "yield") means that interest rate that when used in computing the present value of all payments of principal and interest to be paid in connection with a debt instrument produces an amount equal to the issue price. For purposes of this section, yield shall be determined on the basis of compounding at the end of each accrual period and shall be expressed as an annual interest rate. Yield is determined on the issue date of the debt instrument, and, except in the case of a variable rate debt instrument described in § 1.1275-5, remains constant over the term of the debt instrument. Yield, when expressed as a percentage, shall be calculated to at least two decimal places.

(2) *Short first accrual periods.* In the case of a debt instrument containing a short first accrual period, the taxpayer shall determine yield in a manner consistent with the method chosen for allocating the amount of original issue discount with respect to the short period under section 1272(a)(3) and paragraph (c)(2)(ii) of this section.

(3) *Special rules*—(i) *Application to debt instruments subject to section 1274.* In the case of a debt instrument to which section 1274 applies (other than a debt instrument issued in a potentially abusive situation within the meaning of section 1274(b)(3)(B) and § 1.1274-4(g)) that does not have adequate stated interest (within the meaning of section 1274(c)(2) and § 1.1274-3), the yield is the imputed interest rate (as defined in section 1274(b)(2)(B) and § 1.1274-4(b)).

For example, if the imputed interest rate applied to determine the issue price of a debt instrument under section 1274 is 12%, compounded semiannually, that interest rate also represents the yield of the debt instrument. In a potentially abusive situation, yield shall be determined under paragraph (f)(1) of this section. See § 1.1274–4(h), Example (1).

(ii) *Certain debt instruments with fixed interest rate.* The yield of a debt instrument that has an issue price equal to its stated principal amount, including a debt instrument that has an indefinite maturity (for example, a loan payable on demand), and that calls for a fixed rate of interest over the entire term of the debt instrument compounded at periodic intervals of one year or less, shall be the stated interest rate. For example, if A lends B $100,000, repayable on demand or at a time that is not ascertainable on the issue date, with interest at 12%, compounded semiannually, all interest to be added to principal and payable at maturity, the yield of this loan is 12%, compounded semiannually. See paragraph (k), Example (14) of this section for an illustration of this rule.

(iii) *Debt instrument providing for contingent payments.* The yield of a debt instrument that provides for contingent payments (as described in § 1.1275–4(b)) generally shall be determined for purposes of section 1272 by reference to only the noncontingent payments under the debt instrument. See § 1.1275–4 for rules relating to the treatment of debt instruments providing for contingent payments.

(iv) *Variable rate debt instruments.* The yield of a debt instrument calling for a variable rate of interest based on an objective interest index (as defined in § 1.1275–5(b)) generally is a variable yield. For rules relating to variable rate debt instruments, see § 1.1275–5.

(4) *Yield of debt instrument subject to certain options*—(i) *In general.* The yield of a debt instrument issued for cash or publicly traded property that is subject to a put or call option described in paragraph (f)(4)(ii) of this section or an option to extend described in paragraph (f)(4)(v) of this section shall be determined in accordance with the rules set forth in paragraph (f)(4)(iii) of this section. The yield of a debt instrument issued for nonpublicly traded property and governed by section 1274 that is subject to an option described in paragraph (f)(4) (ii) or (v) of this section shall be determined in accordance with the rule set forth in § 1.1274–6(f). Paragraph (f)(4) of this section shall not apply in a case in which a put or call option is held by a third party. For purposes of paragraph (f)(4) of this section, the term "issuer" shall include a person bearing a relationship to the issuer described in section 108(e)(4).

(ii) *Described options.* An option that is not separately alienable from a debt instrument and that entitles the holder of the option and of the debt instrument to require the issuer to purchase or retire the debt instrument before its stated maturity date is a put option described in paragraph (f)(4) of this section. An option that is not separately alienable from a debt instrument and that entitles the issuer of the option and debt instrument to purchase or retire the debt instrument before its stated maturity date is a call option described in paragraph (f)(4) of this section.

(iii) *Presumption of exercise of option in debt instrument issued for cash or publicly traded property*—(A) *Holders.* The holder of a debt instrument and put option described in paragraph (f)(4)(ii) of this section shall be presumed to exercise this option for purposes of calculating the yield on the debt instrument if, and only if, either—

(*1*) By utilizing the date of exercise of the put option as the maturity date and the amount for which the debt instrument could be sold or retired in accordance with the terms of the put (the put price) as the stated redemption price at maturity, the yield of the debt instrument is greater than it would be if the put option were not exercised, or, equivalently,

(*2*) The put price is greater than the revised issue price (as defined in § 1.1275–1(h)) would be on the date of exercise.

(B) *Issuers.* The issuer of a debt instrument who holds a call option described in paragraph (f)(4)(ii) of this section shall be presumed to exercise this option if, and only if, either—

(*1*) By utilizing the date of exercise of the call as the maturity date and the amount for which the debt instrument could be purchased or retired in accordance with the terms of the call (the call price) as the stated redemption price at maturity, the yield of the debt instrument is lower than it would be if the call option were not exercised, or, equivalently,

(*2*) The call price is less than the revised issue price would be on the date of exercise.

(iv) *Subsequent adjustments.* If a put or call option described in paragraph (f)(4)(ii) of this section is presumed exercised as set forth in paragraph (f)(4)(iii) of this section or § 1.1274–6(f), and is not exercised in fact, the debt instrument shall be treated solely for purposes of sections 1272 and 1273 as if the put or call option were exercised and a new debt instrument were issued on the presumed exercise date for an amount equal to the put price or call price. If, conversely, a put or call option described in paragraph (f)(4)(ii) of this section is presumed not exercised as set forth in paragraph (f)(4)(iii) of this section or § 1.1274–6(f), and is, in fact, exercised, then the debt instrument shall be considered redeemed prior to maturity.

(v) *Options to extend.* If the holder or issuer of a debt instrument has an option to extend the term of the debt instrument on fixed terms and conditions, the debt instrument shall be treated as having a stated maturity date on the latest date on which the debt instrument could be repaid in accordance with such terms and conditions, and the party who may exercise the option to extend shall be treated as having a put option (in the case of the holder of the debt instrument) or a call option (in the case of the issuer of the debt instrument) on the date upon which the debt instrument would be repaid if the option were not exercised. Such put or call option shall be presumed exercised or not exercised in accordance with the rules of paragraph (f)(4) of this section. If the put or call option is presumed exercised, the corresponding option to extend shall be presumed not to be exercised. Conversely, if the put or call option is presumed not exercised, the corresponding option to extend shall be presumed exercised.

(vi) *Variable interest rates.* In the case of a variable rate debt instrument (as defined in § 1.1275–5(a)), the hypothetical yields (as defined in § 1.1275–5(c)(3)(ii)) shall be used for purposes of paragraph (f)(4) of this section.

(g) *Reduction where holder pays acquisition premium*—(1) *Debt instruments purchased after July 18, 1984*—(i) *In general.* If a debt instrument originally issued at a discount after July 1, 1982, is purchased after July 18, 1984, for an amount less than the stated redemption price at maturity but greater than the revised issue price, the purchaser has paid an acquisition premium for the debt instrument. If a purchaser pays an acquisition premium for a debt instrument, the daily portion for any day that the purchaser holds the debt instrument shall be reduced by an amount which is equal to the daily portion for that day (determined without regard to this paragraph (g)(1)(i)) multiplied by the fraction described in paragraph (g)(1)(ii) of this section. For purposes of paragraph (g) of this section, a holder of a debt instrument that was purchased at an acquisition premium includes an original purchaser who acquires the debt instrument for an amount less than the stated redemption price at maturity but greater than the issue price.

(ii) *Determination of fraction.* For purposes of paragraph (g)(1) of this section—

(A) The numerator of the fraction to be determined is the excess (if any) of—

(*1*) The cost of the debt instrument incurred by the purchaser, over

(*2*) The revised issue price (determined without regard to paragraph (g)(1)(i) of this section) of the debt instrument on the date of purchase; and

(B) The denominator of the fraction is the excess of the stated redemption price at maturity over the revised issue price (determined without regard to paragraph (g)(1)(i) of this section) of the debt instrument on the date of purchase.

(2) *Debt instruments purchased before July 19, 1984*—(i) *In general.* If a debt instrument that was originally issued at a discount after July 1, 1982 is purchased before July 19, 1984, for an acquisition premium, the daily portion for any day that the purchaser holds the debt instrument shall be reduced (but not below zero) by the ratable amount of the acquisition premium, determined at the time of purchase.

(ii) *Ratable amount of acquisition premium.* The ratable amount of acquisition premium is equal to—

(A) The excess (if any) of the purchase price over the revised issue price on the date of purchase, divided by

(B) The number of days beginning on the date of purchase and ending on the day before the stated maturity date.

(h) *Transitional rule; binding commitment.* A debt instrument issued pursuant to a written commitment that was binding on July 1, 1982, and at all times thereafter shall be treated as issued on July 1, 1982, and thus is governed by section 1272(b) and § 1.1232-3A. The written commitment must be enforceable against the issuer of the debt instrument under applicable state law and must contain an enforceable obligation to issue the debt instrument at a particular price. Thus, for example, the rules of section 1272(a) and this section do not apply to the exercise of warrants that were outstanding on July 1, 1982, and that were enforceable against the issuer under state law.

(i) [Reserved]

(j) *Basis adjustment.* For purposes of section 1272 and this section, the basis of a debt instrument in the hands of the holder shall be increased by the amount of original issue discount included in the holder's gross income under paragraph (b) of this section, and decreased by the amount of any payment from the issuer to the holder other than a payment of qualified periodic interest with respect to that debt instrument.

(k) *Examples.* The rules stated in paragraphs (b) through (j) of this section may be illustrated by the following examples:

Example (1). On January 1, 1985, A, a calendar-year taxpayer, purchases at original issue for cash of $55,839.48, M Corporation's 5-year zero-coupon bond maturing on January 1, 1990, at a stated redemption price of $100,000. There is no intention to call the bond before maturity. The bond contains $44,160.52 of original issue discount (states redemption price at maturity, $100,000, less issue price, $55,839.48). Since the debt instrument does not provide for payments at regular intervals, under paragraph (d)(1)(iii) of this section, the accrual period is the six-month period ending on December 31 and June 30 of each calendar year. Yield, as determined under paragraph (f) of this section, is 12%, compounded semiannually. The amount of original issue discount allocable to the first accrual period under paragraph (c)(2)(i) of this section is equal to the adjusted issue price at the beginning of the period, which, under paragraph (e)(1) of this section, is the issue price ($55,839.48), multiplied by the semiannual yield factor of 6% (12% divided by 2, the number of accrual periods in a year, under paragraph (c)(2)(i)(A)(2) of this section) less the sum of amounts payable as qualified periodic interest (0), or $3,350.37. The adjusted issue price at the beginning of the second accrual period under paragraph (e)(2) of the this section is equal to the issue price plus the amount of original issue discount includible for the first accrual period ($55,839.48+$3,350.37) or $59,189.85. Under paragraph (c)(2)(i) of this section, the amount of original issue discount allocable to the second accrual period is equal to the adjusted issue price at the beginning of the period, ($59,189.85), multiplied by the semiannual yield factor (6%), less amounts payable as qualified periodic interest (0), or $3,551.39. Since the first and second accrual periods exactly coincide with A's taxable year, A includes in gross income for 1985 the sum of the original issue discount allocable to the first two accrual periods, or $6,901.76. Under paragraph (j) of this section, A increases his basis in the note by the amount of original issue discount taken into gross income for 1985, $6,901.76. A thus has an adjusted basis of $62,741.24. The table below contains the adjusted issue price at the beginning of each accrual period and the amount of original issue discount allocable to each accrual period derived in the same manner as for the first two accrual periods:

Adjusted issue price at beginning of accrual period		OID per accrual period
Jan. 1, 1985	$55,839.48	$3,350.37
July 1, 1985	59,189.85	3,551.39
Jan. 1, 1986	62,741.24	3,764.47
July 1, 1986	66,505.71	3,990.34
Jan. 1, 1987	70,496.05	4,229.76
July 1, 1987	74,725.81	4,483.55
Jan. 1, 1988	79,209.36	4,752.56
July 1, 1988	83,961.92	5,037.72
Jan. 1, 1989	88,999.64	5,339.98
July 1, 1989	94,339.62	5,660.38
Jan. 1, 1990	100,000.00	44,160.52

The sum of the amounts of original issue discount allocable to each accrual period equals the total amount of original issue discount on the bond. Under paragraph (c)(2)(iii) of this section, the amount of original issue discount allocable to the final accrual period is equal to the excess of the stated redemption price at maturity over the adjusted issue price at the beginning of the final accrual period ($100,000-$94,339.62), or $5,660.38.

Example (2). On October 1, 1985, A, a calendar-year taxpayer, purchases at original issue for cash of $55,000, a note of N Corporation with no stated interest maturing on December 31, 1990, at a stated redemption price of $100,000. The bond has $45,000 of original issue discount (stated redemption price at maturity, $100,000, less issue price, $55,000). There is no intention to call the bond before maturity. Since the note does not provide for any payments prior to maturity under paragraph (d)(1)(iii) of this section, the accrual period is the six-month period ending on December 31 and June 30 of each calendar year. The first accrual period is a short accrual period beginning on October 1, 1985, and ending on December 31, 1985.

The yield, determined under paragraph (f)(2) of this section using the exact method, is 11.71779%, compounded semiannually. The adjusted issue price at the beginning of the first accrual period under paragraph (e)(1) of this section is the issue price. The amount of original issue discount that A includes in gross income for 1985 is the amount of original issue discount calculated under paragraph (c)(2)(ii)(A) of this section that is allocable to the first accrual period. Since the exact method was used to calculate yield, the exact method must be used to determine the amount of original issue discount that is allocable to the short period. This amount is determined as follows:

(1) Issue price	$55,000.00
(2) Multiplied by: yield factor, the result of the formula in paragraph (c)(2)(ii)(A) of this section [(1+.117179/2)90/180−1]	0.02888
	1,588.40
(3) Less: amounts payable as qualified periodic interest	0
(4) Original issue discount allocable to first accrual period	1,588.40

A includes $1,588.40 of original issue discount in gross income for 1985. Under paragraph (j) of this section, A increases his basis by that amount. A's adjusted basis thus is $56,588.40 ($55,000+$1,588.40). This amount is also the adjusted issue price at the beginning of the second accrual period determined under paragraph (e)(2)(i) of this section. The amount of original issue discount allocable to the second accrual period is determined as follows:

(1) Adjusted issue price on January 1, 1986	$56,588.40
(2) Multiplied by: yield factor, (.117179/2)	0.05859
	3,315.51
(3) Less: amounts payable as periodic interest	0
(4) Original issue discount allocable to the second accrual period	3,315.51

The adjusted issue price at the beginning of the third accrual period is $59,903.91 ($56,588.40 + $3,315.51).
The amount of original issue discount allocable to the third accrual period is determined as follows:

(1) Adjusted issue price on July 1, 1986	$59,903.91
(2) Multiplied by: yield factor	0.05859
	3,509.77
(3) Less: amounts payable as periodic interest	0
(4) Original issue discount allocable to the third accrual period	3,509.77

The amount of original issue discount which A includes in gross income for 1986 is $6,825.28 ($3,315.51 + $3,509.77). Under paragraph (j) of this section, A increases his basis by that amount. A's adjusted basis thus is $63,413.68 ($56,588.40 + $6,825.28). The amount of original issue discount allocable to the remaining accrual periods may be determined by repeating steps (1) through (4), above, for each accrual period until the final accrual period. The amount of original issue discount allocable to the final accrual period is the excess of the stated redemption price at maturity over the adjusted issue price at the beginning of that period.

Example (3). Assume the same facts as in Example (2), except that the yield under paragraph (f)(2) of this section is determined using the approximate method for the short first accrual period with a resulting yield of 11.70963%, compounded semiannually. Since the approximate method was used to calculate yield, the amount of original issue discount allocable to the first accrual period is determined under the approximate method of paragraph (c)(2)(ii)(B) of this section as follows:

(1) Issue price	$55,000.00
(2) Multiplied by: yield factor, (.1170963/2)	0.05855
	3,220.25
(3) Multiplied by the fraction f (number of days in the first accrual period over number of days in a full accrual period, 90/180)	.50
	1,610.13
(4) Less: amounts payable as qualified periodic interest	0
(5) Original issue discount allocable to the first accrual period	1,610.13

Thus, using the approximate method, A includes $1,610.13 in gross income for 1985 and increases his basis by that amount to $56,610.13, which is also the adjusted issue price at the beginning of the second accrual period.

Example (4). (i) On November 1, 1985, B, a calendar-year taxpayer, purchases at original issue for cash of $86,235.17, N Corporation's 15-year bond, maturing on October 31, 2000, at a stated redemption price of $100,000. The bond provides for semiannual payments of interest at an annual rate of 10% ($5,000 on May 1 and November 1 of each calendar year). There is no intention to call the bond before maturity. The bond has $13,764.83 of original issue discount (stated redemption price at maturity, $100,000, less issue price, $86,235.17). Under the rule prescribed in § 1.1275–2(e)(3), the interest payments due on May 1 and November 1 of each calendar year may be treated as paid on the last day of the preceding month, or on April 30 and October 31 of each calendar year. Assuming this rule is followed, the accrual period, under paragraph (d)(1)(i) of this section, is the interval between payment dates, or the six-month period ending on October 31 and April 30 of each calendar year. Yield under paragraph (f)(1) of this section is 12%, compounded semiannually.

(ii) The amount of original issue discount allocable to the first accrual period is determined as follows:

(1) Issue price	$86,235.17
(2) Multiplied by: yield factor, (.12/2)	.06
	5,174.11
(3) Less: amounts payable as periodic interest	5,000.00
(4) Original issue discount allocable to the first accrual period	174.11

The daily portion of original issue discount for the first accrual period under paragraph (c)(1) of this section is the amount shown on line (4), above, divided by the number of days in the accrual period. Using the 30-day convention described in § 1.1275–2(e), the number of days in a six-month accrual period is 180; therefore, the daily portion of original issue discount for the first accrual period is equal to $174.11/180, or $0.96728. Since B held the bond in 1985 for 60 days, the amount of original issue discount that B includes in gross income for 1985 is equal to 60x$0.96728, or $58.04. The remainder of the original issue discount allocable to the second accrual period, $116.07, is included in gross income for 1986. Under paragraph (j) of this section, B increases his basis by the amount of original issue discount included in gross income for 1985. B's adjusted basis on January 1, 1986, is thus $86,293.21. The adjusted issue price of the bond at the beginning of the second accrual period under paragraph (e)(2) of this section is $86,409.28 (issue price, $86,235.17, plus original issue discount previously includible, $174.11).

(iii) The amount of original issue discount allocable to the second accrual period is determined as follows:

(1) Adjusted issue price on May 1, 1986	$86,409.28
(2) Multiplied by: yield factor	.06
	5,184.56
(3) Less: amounts payable as periodic interest	5,000.00
(4) Original issue discount allocable to the second accrual period	184.56

The adjusted issue price at the beginning of the third accrual period under paragraph (e)(2) of this section is $86,593.84 ($86,409.28 + $184.56). The amount of original issue discount allocable to the third accrual period is determined as follows:

(1) Adjusted issue price on November 1, 1986	$86,593.84
(2) Multiplied by: yield factor	.06
	5,195.63
(3) Less: amounts payable as periodic interest	5,000.00
(4) Original issue discount allocable to the third accrual period	195.63

The daily portion of original issue discount for the third accrual period is $195.63, the amount shown on line (4), above, divided by the number of days in the accrual period (180, using the 30-day convention described in § 1.1275–2(e)), or $1.08683.
B includes in gross income for 1986 only the sum of the daily portions of original issue discount for the number of days in the third accrual period that fall in 1986 for which B held the bond (60 days). Thus, B includes $65.21 for 1986 (60x$1.08683). The remaining original issue discount allocable to the third accrual period, $130.42, is included in gross income for 1987. The total amount of original issue discount includible by B in gross income for 1986 is $365.84 ($116.07 + $184.56 + $65.21).

Example (5). (i) Assume the same facts as in Example (4), except that B sells the bond to C, a calendar-year taxpayer, on November 1, 1988, for cash of $90,000. The revised issue price (as defined in § 1.1275–1(h)) on that date is $87,449.65. Under paragraph (g)(1)(i) of this section, C has purchased the bond at an acquisition premium of $2,550.35 (cost, $90,000, less revised issue price, $87,449.65). The daily portion for any day that C holds the bond shall be reduced under paragraph (g)(1)(i) of this section by an amount equal to the daily portion multiplied by a fraction, described in paragraph (g)(1)(ii) of this section, the numerator of which is the amount of the acquisition premium paid by C, and the denominator of which is $12,550.35, (the excess of the stated redemption price at maturity, $100,000, over the revised issue price, $87,449.65). C thus reduces his daily portion of original issue discount by an amount equal to that daily portion multiplied by the fraction, $2,550.35/$12,550.35, or 0.20321.

(ii) The amount of original issue discount that C includes in gross income for 1988 is determined as follows:

(1) Adjusted issue price on November 1, 1988	$87,449.65
(2) Multiplied by: yield factor	.06
	5,246.98
(3) Less: amounts payable as qualified periodic interest	5,000.00
(4) Original issue discount allocable to accrual period beginning on November 1, 1988	246.98
(5) Divided by: number of days in the accrual period	180
(6) Daily portion of original issue discount	1.37211
(7) Fraction described in paragraph (g)(1)(ii) of this section	0.20321
(8) Line (6) multiplied by line (7)	0.27883
(9) Daily portion of original issue discount includible by C (line (6) minus line (8))	1.09328

Since C holds the bond for only two months in 1988, the amount of original issue discount that C includes in gross income for 1988 is equal to 60x$1.09328, or $65.60. Under paragraph (j) of this section, C increases his basis, $90,000, by that amount. C's adjusted basis as of January 1, 1989 thus is $90,065.60.

(iii) The amount of original issue discount that C includes in gross income for 1989 includes the original issue discount for the remaining 120 days in the accrual period, $131.19 (120x$1.09328), that began on November 1, 1988. The adjusted issue price at the beginning of the next accrual period, however, is determined under paragraph (e)(2) of this section without regard to any adjustments made under paragraph (g) of this section. In determining that adjusted issue price, the full amount of the original issue discount allocable to the immediately preceding accrual period is added to the adjusted issue price at the beginning of the preceding accrual period. The original issue discount allocable to the preceding accrual period (before adjustment for C's acquisition premium) as shown on line (4), above, is $246.98. The adjusted issue price at the beginning of the accrual period beginning on May 1, 1989, is thus $87,696.63 ($87,449.65 + $246.98).

(iv) The amount of original issue discount includible by C for the accrual period beginning on May 1, 1989, is determined as follows:

(1) Adjusted issue price on May 1, 1989	$87,696.63
(2) Multiplied by: yield factor	.06
	5,261.80
(3) Less: amounts payable as qualified periodic interest	5,000.00
(4) Original issue discount allocable to accrual period beginning on May 1, 1989	261.80
(5) Divided by: number of days in the accrual period	180
(6) Daily portion of original issue discount	1.45444
(7) Fraction described in paragraph (g)(1)(ii) of this section	0.20321
(8) Line (6) multiplied by line (7)	0.29556
(9) Daily portion of original issue discount includible by C (line (6) minus line (8))	1.15888

The total amount of original issue discount includible by C for the accrual period beginning on May 1, 1989, is $208.60 (180×$1.15888). The total amount of original issue discount allocable to the accrual period beginning on May 1, 1989, as shown on line (4) above, is $261.80. The adjusted issue price at the beginning of the next accrual period is thus $87,958.43 ($87,696.63 + $261.80).

(v) The amount of original issue discount includible by C for the accrual period beginning on November 1, 1989, is determined as follows:

(1) Adjusted issue price on November 1, 1989	$87,958.43
(2) Multiplied by: yield factor	.06
	5,277.51
(3) Less: amounts payable as periodic interest	5,000.00
(4) Original issue discount allocable to accrual period	277.51
(5) Divided by: number of days in the accrual period	180
(6) Daily portion of original issue discount	1.54172
(7) Fraction described in paragraph (g)(1)(ii) of this section	0.20321
(8) Line (6) multiplied by line (7)	0.31329
(9) Daily portion of original issue discount includible by C (line (6) minus line(8))	1.22843

Since C holds the bond in 1989 for only two months of the accrual period beginning on November 1, 1989, C includes 60×$1.22843, or $73.71 of original issue discount for the last two months of 1989. The remainder of the original issue discount includible by C for the accrual period beginning on November 1, 1989, is included by him in gross income for 1990.

(vi) The total amount of original issue discount includible by C in gross income for 1989 is $413.50 ($131.19 + $208.60 + $73.71). Under paragraph (j) of this section, C increases his basis by this amount. C's adjusted basis as of December 31, 1989 is $90,479.10 ($90,065.60 + $413.51). The amount of original issue discount includible by C for the remaining accrual periods, assuming he holds the bond to maturity, may be determined by repeating steps (1) through (9), above, for each accrual period until maturity.

Example (6). (i) On November 19, 1985, A, a calendar-year taxpayer, purchases at original issue for cash of $68,088.77, O Corporation's bond maturing on December 31, 1988, at a stated redemption price of $75,000. The bond has $8,390.69 of original issue discount (stated redemption price at maturity, $75,000, less issue price, $66,609.31). There is no intention to call the bond before maturity. The instrument provides for payments of interest at an annual rate of 8%, paid quarterly ($1,500 per quarter). The first interest payment is made on December 31, 1985, and is a full $1,500 payment even though the first accrual period from November 19, 1985, to December 31, 1985, is a short first accrual period. Yield to maturity, determined under paragraph (f)(2) of this section according to the exact method, is 12% compounded quarterly. The accrual period, under paragraph (d)(1)(i) of this section, is the interval between payment dates, or a three-month period ending on December 31, September 30, June 30, and March 31 of each calendar year.

(ii) Using the 30-day convention described in § 1.1275–2 (e), the short period contains 42 days. Therefore, the portion of the $1,500 payment on December 31, 1985 that constitutes qualified periodic interest is the amount of interest payable for a short period of 42 days under the exact method for a debt instrument with an interest rate of 8%, compounded quarterly. This amount is $696.30, which is the result of the following formula: $[1+.08/4)\ 42/90-1]\times\$75{,}000$.

(iii) Under paragraph (e)(1) of this section, the adjusted issue price at the beginning of the first accrual period is the issue price. The amount of original issue discount allocable to the first accrual periods is determined under paragraph (c)(2)(ii)(A) of this section as follows:

(1) Issue price	$68,088.77
(2) Multiplied by: yield factor, the result of the formula in paragraph (c)(2)(ii)(A) of this section [(1+.12/4)42/90−1]	.01389
	945.73
(3) Less: amounts payable as periodic interest	696.30
(4) Original issue discount allocable to the first accrual period	249.43

A includes $249.43 of original issue discount in gross income for 1985. A's adjusted issue price at the beginning of the second accrual period under paragraph (e)(2) of this section is determined by increasing A's issue price, $68,088.77, by the amount of original issue discount allocable to the first accrual period, $249.43, and by reducing this sum by the portion of the payment on December 31, 1985, not treated as qualified periodic interest, $803.70. A's adjusted issue price as of January 1, 1986, is thus $67,534.50 ($68,088.77 + $249.43 − $803.70). Under paragraph (j) of this section, this amount is also A's adjusted basis in the debt instrument.

(iv) The amount of original issue discount allocable to the second accrual period is determined as follows:

(1) Adjusted issue price on January 1, 1986	$67,534.50
(2) Multiplied by: yield factor (.12/4)	.03
	2,026.04
(3) Less: amounts payable as qualified periodic interest	1,500.00
(4) Original issue discount allocable to the second accrual period	526.04

(v) Assume the same facts as in part (i), except that A purchases the bond for cash of $68,081.36 and that the yield, determined under paragraph (e)(2) of this section according to the approximate method, is 12%, compounded quarterly. The amount of original issue discount allocable to the first accrual period is determined under paragraph (c)(2)(ii)(B) as follows:

(1) Issue price	$68,081.36
(2) Multiplied by: yield factor (.12/4)	.03
	2,042.44
(3) Multiplied by: the fraction f (number of days in the first accrual period over the number of days in a full accrual period, 42/90)	.46667
	953.14
(4) Less: amounts payable as qualified periodic interest ($1,500x42/90)	700.00
(5) Original issue discount allocable to the first accrual period	253.14

A includes in gross income for 1985 $253.14 of original issue discount. Both A's adjusted issue price and adjusted basis at the beginning of the second accrual period under paragraph (e)(2) of this section is $67,534.50 ($68,081.36 + 253.14 − $800.00); it is also the same as the adjusted issue price at the beginning of the second accrual period in part (i). The amount of original issue discount allocable to the remaining accrual periods to maturity, assuming A holds the bond to maturity, will thus be identical to the amounts determined in part (i).

Example (7). (i) On January 1, 1983, B, a calendar-year taxpayer, purchases at original issue for cash of $86,757.20, M Corporation's 20-year bond maturing on December 31, 2002, at a stated redemption price of $100,000. The bond provides for annual payments of interest at 12%, compounded annually. The bond has $13,242.80 of original issue discount (stated redemption price at maturity, $100,000, less issue price, $86,757.20). There is no intention to call the bond before maturity. The yield determined under paragraph (f)(1) of this section (accurate to two decimal places) is 14.00%, compounded annually. The accrual period, under paragraph (d)(2) of this section is the one-year period beginning on January 1 and ending on December 31 of each calendar year. The adjusted issue price at the beginning of the first accrual period is, under paragraph (e)(2) of this section, the issue price. The amount of original issue discount allocable to the first accrual period is determined under paragraph (c)(2) of this section as follows:

(1) Issue price	$86,757.20
(2) Multiplied by: yield factor	.14
	12,146.01
(3) Less: amounts payable as qualified periodic interest	12,000.00
(4) Original issue discount allocable to the first accrual period	146.01

B includes $146.01 of original issue discount in gross income for 1983. Under paragraph (j) of this section, B increases his basis by this amount. B's adjusted basis thus becomes $86,903.21 ($86,757.20 + $146.01). This amount is also the adjusted issue price at the beginning of the second accrual period under paragraph (e)(2) of this section. The amount of original issue discount allocable to the remaining accrual periods to maturity, determined as in steps (1) through (4), is set forth in the following table:

Accrual period	Adjusted issue price	Original issue discount
1984	$86,903.21	$166.45
1985	87,069.66	189.75
1986	87,259.41	216.32
1987	87,475.73	246.60
1988	87,722.33	281.13
1989	88,003.46	320.48
1990	88,323.94	365.35
1991	88,689.29	416.50
1992	89,105.79	474.81
1993	89,580.60	541.28
1994	90,121.88	617.06
1995	90,738.94	703.45
1996	91,442.39	801.93
1997	92,244.32	914.21
1998	93,158.53	1,042.19
1999	94,200.72	1,188.10
2000	95,388.82	1,354.43
2001	96,743.26	1,544.06
2002	98,287.32	1,712.68

Under paragraph (c) (2) (iii) of this section, the original issue discount allocable to the final accrual period is determined by subtracting the adjusted issue price on January 1, 2002, $98,287.32, from the stated redemption price at maturity, $100,000, for a result of $1,712.68.

(ii) Assume the same facts as in part (i), except that B sells the bond to C on February 1, 1984, for cash of $87,000. The revised issue price of the bond (as defined in § 1.1275–1(h)) on that date is equal to the adjusted issue price of the bond on January 1, 1984, plus the sum of the daily portions of original issue discount for the month of January. The daily portion under paragraph (c) of this section is equal to the amount of original issue discount allocable to the accural period beginning on January 1, 1984, ($166.45 in the table in part (i)) divided by the number of days in the accrual period, (360, using the 30-day convention described in § 1.1275–2(e)). The daily portion is $0.46236. The sum of the daily portions for the month of January is therefore $13.87 ($0.46236 × 30). The revised issue price on February 1, 1984, is $86,917.08 ($86,903.21 + $13.87). Under paragraph (g) of this section, C has purchased the bond at an acquisition premium of $82.92 (cost, $87,000, less revised issue price, $86,917.08). The daily portion of original issue discount for any day that C holds the bond is reduced under paragraph (g)(2) by the ratable amount of the acquisition premium defined in paragraph (g)(2)(ii) as the total acquisition premium ($82.92), divided by the number of days beginning on the date of purchase and ending on the day before the stated maturity date (6,810) using the 30-day convention and 360-day convention described in § 1.1275–2(e). The ratable amount of acquisition premium is thus $0.01218. The daily portion of original issue discount that is includible in gross income for 1984 ($0.46236) is reduced by this amount to result in a daily portion of $0.45018. The amount of original issue discount includible by C in gross income for 1984 is thus $148.56 ($0.45018 x 330). For the remaining accrual periods in the bond's term, the ratable reduction per year will be $4.38 ($0.01218 x 360). The table below sets forth the amount of original issue discount includible in gross income by C for each remaining year in the bond's term, assuming C holds the bond to maturity:

Accrual period	OID allocable	Ratable amount of acquisition premium	OID includable by C
1984	$166.45	$4.02	$162.43
1985	189.75	4.38	185.37
1986	216.32	4.38	211.94
1987	246.60	4.38	242.22
1988	281.13	4.38	276.75
1989	320.48	4.38	316.10
1990	365.35	4.38	360.97
1991	416.50	4.38	412.12
1992	474.81	4.38	470.43
1993	541.28	4.38	536.90
1994	617.06	4.38	612.68
1995	703.45	4.38	699.07
1996	801.93	4.38	797.55
1997	914.21	4.38	909.83
1998	1,042.19	4.38	1,037.81
1999	1,188.10	4.38	1,183.72
2000	1,354.43	4.38	1,350.05
2001	1,544.06	4.38	1,539.68
2002	1,712.68	4.38	1,708.30

Example (8). Assume C, a calendar-year taxpayer, is the holder of a 3-year publicly offered debt instrument which he purchased at original issue on January 1, 1987, for its issue price of $93,803.81. The debt instrument has a face amount of $100,000, and provides for six equal semiannual payments of $19,076.19, the last of which is due on December 31, 1989. Each payment of $19,076.19 represents the semiannual payment necessary to amortize $100,000 at an annual rate of interest of 8%, compounded semiannually, over a 3-year period. Of each payment of $19,076.19, the amounts which represent qualified periodic interest (as defined in § 1.1273–1(b)(1)(iii) are set forth in the table below. The instrument is an installment obligation within the meaning of §1.1273-1(b)(2)(i), and also is a self-amortizing installment obligation within the meaning of § 1.1273-1(b)(2)(iii) of this section and has $6,196.19 of original issue discount (stated redemption price at maturity, $100,000, less issue price, $93,803.81). Yield determined under paragraph (f)(1) of this section, is 12%, compounded semiannually. The accrual period, under paragraph (d)(1)(i) of this section is a six-month period ending on June 30 and December 31 of each calendar year. The adjusted issue price at the beginning of the first accrual period is, under paragraph (e)(1) of this section, the issue price. The amount of original issue discount allocable to the first accrual period is determined under paragraph (c)(2)(i) of this section as follows:

(1) Issue price	$93,803.81
(2) Multiplied by: yield factor	.06
	5,628.23
(3) Less: amount of first interest payment	4,000.00
(4) Original issue discount allocable to the first accrual period	1,628.23

The adjusted issue price at the beginning of the second accrual period is determined under paragraph (e)(2)(ii) of this section by adding to the adjusted issue price ($93,803.81) the amount of original issue discount allocable to the first accrual period ($1,628.23) for a total of $95,432.04, and then decreasing the sum by the amount of the first payment that does not represent qualified periodic interest ($15,076.19). The adjusted issue price at the beginning of the second accrual period is $80,355.85. Note that the same result is obtained by increasing the adjusted issue price ($93,803.81) by the product of this issue price and yield as shown on line (2), above, ($5,628.23) and then by decreasing that sum by the total amount of the first payment ($19,076.19). The amount of original issue discount allocable to the remaining accrual periods may be determined by repeating steps (1) through (4), above, and then determining the new adjusted issue price. The results are set forth in the following table:

Accrual period	Product of adjusted issue price and yield	Qualified periodic interest	OID	Amounts other than qualified periodic interest	Adjusted issue price
1	$5,628.23	$4,000.00	$1,628.23	$15,076.19	$80,355.85
2	4,821.35	3,396.95	1,424.40	15,679.24	66,101.01
3	3,966.06	2,769.78	1,196.28	16,306.41	50,990.89
4	3,059.45	2,117.53	941.92	16,958.66	34,974.15
5	2,098.45	1,439.18	659.27	17,637.01	17,996.41
6	1,079.78	733.70	346.03	18,342.99	

Example (9). (i) On January 1, 1986, A sells B nonpublicly traded property for a stated purchase price of $3,500,000. B pays A $500,000 and gives A a 10-year note for $3,000,000. B's note calls for no interest in the first two years and interest at a rate of 15%, payable annually over the remaining 8 years of the debt instrument, with the first interest payment of $450,000 due on December 31, 1988 and the last such payment due on December 31, 1995, together with the $3,000,000 of principal. Assume that the debt instrument has adequate stated interest. (See § 1.1274-3 (c)(2), Example (1)). The yield of this debt instrument under paragraph (f)(1) of this section is 10.67837%, compounded annually. Since no interest is payable in 1986 or 1987, the payments of interest in years 1988 through 1995 are not qualified periodic interest payments within the meaning of § 1.1273-1(b)(1)(ii). Hence, B's obligation to A is treated as an installment obligation (within the meaning of § 1.1273-1(b)(2) with an issue price of $3,000,000 and a stated redemption price at maturity of $6,600,000 ($3,000,000 stated principal plus 8 payments of $450,000). As a result, B's obligation has original issue discount of $3,600,000 (stated redemption price at maturity, $6,600,000 less issue price, $3,000,000). The amount of original issue discount allocable to 1986 under paragraph (c)(2) of this section is the issue price of $3,000,000 multiplied by the yield, 10.67837%, or $320,351. This produces an adjusted issue price under paragraph (e)(2) of this section as of January 1, 1987 of $3,320,351 (issue price of $3,000,000 plus original issue discount in 1986 of $320,351). The amount of original issue discount allocable to 1987 is the product of this adjusted issue price and the yield of 10.67837%, or $354,560. The adjusted issue price at the beginning of 1988 is thus $3,674,911 ($3,320,351 + $354,560).

(ii) For the years 1988 through 1995, the amount of original issue discount allocable to each year is equal to the adjusted issue price at the beginning of that year multiplied by the yield. Since the aggregate amount of original issue discount accrued as of the end of any accrual period always exceeds the aggregate amount of stated interest as of the end of that accrual period, each $450,000 payment is treated entirely as a payment of original issue discount. The $450,000 payment has no tax consequences other than to reduce the adjusted issue price for future accrual periods under paragraph (e)(2)(ii) of this section. The amount of original issue discount allocable to 1988 is equal to the adjusted issue price of $3,674,911 multiplied by the yield of 10.67837%, or $392,421. The adjusted issue price at the beginning of 1989 is thus $3,617,331 ($3,674,911 + $392,421 − $450,000). The amounts treated as interest and the adjusted issue price for each year of the transaction are set forth in the following table:

Year	Adjusted issue price at beginning of year	Original issue discount
1986	$3,000,000	$320,351
1987	3,320,351	354,560
1988	3,674,911	392,421
1989	3,617,331	386,272
1990	3,553,604	379,467
1991	3,483,071	371,935
1992	3,405,006	363,599
1993	3,318,605	354,373
1994	3,222,978	344,162
1995	3,117,140	332,860

Example (10). A sells Blackacre to B on July 1, 1985, in exchange for cash of $50,000 and B's purchase money obligation having a stated principal amount of $200,000, maturing on June 10, 2015. B's note provides for 360 equal monthly payments of $1,467.53; this amount represents the monthly payment necessary to amortize a loan of $200,000 at an annual rate of interest of 8%, compounded monthly over a 30-year period. Of each payment of $1,467.53 during 1985, the amounts which represent qualified periodic interest payments (as defined in § 1.1273-1(b)(1)(iii)) are set forth in the table below. The note is an installment obligation within the meaning of § 1.1273-2(b)(2)(i) and is a self-amortizing obligation within the meaning of § 1.1273-2(b)(2)(iii) of this section. The stated redemption price at maturity under § 1.1273-2(b)(2)(iii) is the stated principal amount of the obligation, or $200,000. Assume that the transaction is not potentially abusive within the meaning of section 1274(b)(3)(B). Assume also that under section 1274(c)(2) and the regulations thereunder the note does not have adequate stated interest and that the imputed interest rate is 11%, compounded monthly; this is also the yield of the obligation under paragraph (f)(3) of this section. The issue price of the note is the imputed principal amount determined under § 1.1274-4, which is $154,099.87. The note has $45,900.13 of original issue discount (stated redemption price at maturity, $200,000, less issue price, $154,099.87). The accrual period under paragraph (d)(1)(i) of this section, is one month. The adjusted issue price at the beginning of the first accrual period is, under paragraph (e)(1) of this section, the issue price. The amount of original issue discount allocable to the first accural period is determined under paragraph (c)(2)(i) of this section as follows:

(1) Issue price	$154,099.87
(2) Multiplied by: yield factor (.11/12)	.00917
	$1,412.58
(3) Less: amount of first payment that represents qualified periodic interest	−$1,333.33
(4) Original issue discount allocable to the first accrual period	$79.25

The adjusted issue price at the beginning of the second accrual period is determined under paragraph (e)(2)(ii) of this section by adding to the issue price ($154,099.87) the amount of original issue discount allocable to the first accrual period ($79.25) and then decreasing the sum by the amount of the first payment that does not represent qualified periodic interest designated as principal ($134.20). The adjusted issue price at the beginning of the second accrual period is $154.044.92. As stated in Example (8), the same result may be obtained by adding to the issue price ($154.099.87) the product of the adjusted issue price and yield as shown on line (2), ($1,412.58), and then decreasing that sum by the total monthly payment ($1,467.53). The amount of original issue discount allocable to the remaining accrual periods may be determined by repeating steps (1) through (4), and then determining the new adjusted issue price. The results for the first 12 months are set forth in the following table:

Month	Product of adjusted issue price and yield	Qualified periodic interest	OID	Amount other than qualified periodic interest	Adjusted issue price
1	$1,412.58	$1,333.33	$79.25	$134.20	$154,044.92
2	1,412.08	1,332.44	79.64	135.09	153,989.47
3	1,411.57	1,331.54	80.03	135.99	153,933.51
4	1,411.06	1,330.63	80.43	136.90	153,877.04
5	1,410.54	1,329.72	80.82	137.81	153,820.05
6	1,410.02	1,328.80	81.22	138.73	153,762.54
7	1,409.49	1,327.88	81.61	139.65	153,704.50
8	1,408.96	1,326.94	82.02	140.59	153,645.93
9	1,408.42	1,326.01	82.41	141.52	153,586.82
10	1,407.88	1,325.06	82.82	142.47	153,527.17
11	1,407.33	1,324.11	83.22	143.42	153,466.97
12	1,406.78	1,323.16	83.62	144.37	153,406.22

Example (11). (i) On January 1, 1985, A, a calendar-year taxpayer, purchases at original issue for cash of $70,000, M Corporation's 15-year bond, maturing on December 31, 1999, at a stated redemption price of $100,000. Assume that the debt instrument is a capital asset in A's hands. The instrument provides for semiannual payments of interest at an annual rate of 8% ($4,000 semiannually). The bond further provides a put option entitling the holder to require the issuer to retire the bond on December 31, 1994, at a price of $85,000. Yield determined under paragraph (f)(1) of this section without regard to the existence of a put option is 12.47%, compounded semiannually. Yield determined by using December 31, 1994, as the maturity date and $85,000 as the stated redemption price at maturity is 12.56%, compounded semiannually. The revised issue price (as defined in § 1.1275–1(h)) on that date would be $83,736. Under paragraph (f)(4)(iii) (A) of this section, yield is calculated at the time of issue by assuming that A will excise the put option because exercise of the option would increase the overall yield on the instrument from 12.47% to 12.56%, compounded semiannually, or, alternatively, because the put price exceeds the revised issue price as of the date the put becomes exercisable. Since the put option is assumed exercised, the bond is considered to be a 10-year bond with an issue price of $70,000, a stated redemption price at maturity of $85,000, and yield determined under paragraph (f)(1) of this section of 12.56%, compounded semiannually. If the put option is, in fact, not exercised, then under paragraph (f)(4)(iv) of this section the bond is treated, for purposes of sections 1272 and 1273, as if it were retired on the presumed exercise date, December 31, 1994, and M is treated as having issued a new debt instrument to A for an issue price equal to the put price on that date, $85,000. This new debt instrument is treated as maturing on December 31, 1999, at a stated redemption price of $100,000, with yield of 12.08%, compounded semiannally, and providing for payments of interest at an annual rate of 8%, compounded semiannually.

(ii) Assume the same set of facts as in part (i), except that the put price is $82,000. Exercise of the put would result in a yield of 12.34%, compounded semiannually, calculated by using December 31, 1994, as the maturity date and $82,000 as the stated redemption price at maturity. This yield is lower than the yield of 12.47%, compounded semiannually, calculated for the complete 15-year term. It this is assumed at the time of issue, under paragraph (f)(4)(iii)(A) of this section, that A will not exercise the put option, since exercise of the option will result in a lower overall yield or, alternatively, because the put price is less than the revised issue price as of the date the put is exercisable. If the put option is, in fact, exercised, A realizes a capital loss equal to the excess of the revised issue price on the date of exercise ($83,736) over the put price ($82,000), or $1,736. M Corporation will have cancellation of indebtedness income of $1,736 under section 108 as it has redeemed a liability worth $83,736, for only $82,000.

(iii) Assume the same facts as in part (i), except that instead of providing the holder with an option to put the bond, the instrument provides the issuer with the right to call the bond on December 31, 1994, for a call price of $80,000. Exercise of the call would result in a 10-year term, an issue price of $70,000, a stated redemption price at maturity of $80,000, and yield of 12.20%, compounded semiannually. Under paragraph (f)(4)(iii)(B) of this section, it is assumed at the date of issue that the issuer will exercise the call option as it will result in a lower yield, or, alternatively, because the call price is less than the revised issue price as of the date the call is exercisable. If the call option is, in fact, not exercised, then the bond is treated as if it were retired on the presumed exercise date, December 31, 1994, and M is treated as having issued a new debt instrument to A for an issue price equal to the call price on that date, ($80,000). This new debt instrument is treated as having a term of 5 years, a stated redemption price at maturity of $100,000, and a yield of 13.65%, compounded semiannually.

(iv) Assume the same facts as in part (iii), except that call price is $85,000. Exercise of the call would result in a 10-year term, an issue price of $70,000, a stated redemption price at maturity of $85,000, and yield of 12.56%, compounded seminnually. Under paragraph (f)(4)(iii)(B) of this section, it is assumed at the date of issue that the call will not be exercised because it would result in a higher overall yield, or, alternatively, because the call price exceeds the revised issue price as of the date the call is exercisable. If the call is, in fact, exercised, A realizes a capital gain of $1,264 under section 1001 (amount realized, $85,000, less adjusted basis, $83,736). Under § 1.163–7(f), M Corporation is entitled to deduct as interest the excess of the repurchase price ($85,000) over the revised issue price as of the date the call is exercisable ($83,736), or $1,264.

Example (12). (i) The facts are the same as in Example (11), part (i), except that the debt instrument has an initial term of 10 years, a stated redemption price at maturity of $85,000, and the holder, A has an option to extend the term of the debt instrument (as defined in paragraph (f)(4)(v) of this section) for 5 years for a payment of $100,000 at maturity and semiannual interest payments of 8%. Under paragraph (f)(4)(v) of this section, the debt instrument is treated as if it had a term of 15 years and a stated redemption price at maturity of $100,000, and A is treated as having a put option for $85,000 at the end of 10 years. The analysis of the debt instrument is exactly the same as in part (i) of Example (11). Since it was concluded there that the put option will not be exercised, it is similarly concluded that A will not exerise his option to extewnd, and the debt instrument's stated term of 10 years and stated redemption price at maturity of $85,000 will be respected. If the option to extend is exercised, the debt instrument is treated as retired on the presumed exercise date, December 31, 1994, and a new debt instrument is considered issued on that date for a term of 5 years with an issue price equal to the original stated redemption price at maturity of $85,000, a new stated redemption price at maturity of $100,000.

(ii) The facts are the same as in part (i), except that the stated redemption price at maturity is $82,000. The analysis is the same as in part (ii) of Example (eleven). Since it was concluded there that the put option will not be exercised,it is similarly concluded that A will exercise his option to extend. The debt instrument is treated as having a term of 15 years and a stated redemption price at maturity of $100,000. If the option to extend is not exercised, the debt instrument is treated as retired prior to maturity.

Example (13). (i) A debt instrument is issued on March 1, 1987 for $100,000 cash and is redeemable at any time at the option of the holder. The debt instrument calls for interest to accrue at an annual rate of 11%, compounded quarterly, to be paid when the debt instrument is redeemed. Since the debt instrument calls for quarterly compounding of interest, under paragraph (d)(1)(i) of this section, the accrual period is the three-month period ending on May 31, August 31, November 30, and February 28 (or 29) of each calendar year. Pursuant to paragraph (f)(5)(ii) of this section, the yield of the debt instrument is 11%, compounded quarterly.

(ii) Assume that the debt instrument is not redeemed at any time during 1987. The amount of original issue discount allocable to the first accrual period is, under paragraph (c)(2)(i) of this section, the product of the issue price ($100,000) and the yield factor (.11/4), reduced by the sum of amounts payable as qualified periodic interest (0), $2,750.00. The adjusted issue price at the beginning of the second accrual period is, under paragraph (e)(2)(i) of this section, the sum of the issue price and the amount of original issue discount includible for the first accrual period ($100,000 + $2,750), or $102,750. The original issue discount allocable to the second accrual period is the product of the adjusted issue price at the beginning of the second accrual period and the yield factor ($102,750 × 0.0275), or $2,825.63. The original issue discount allocable to subsequent accrual periods is calculated in the same manner as above.

Example (14). (i) On July 1, 1986, A sells Blackacre to B in exchange for B's debt instrument calling for five annual payments each equal to 10% of the gross yield from Blackacre for the immediately preceding fiscal year ending on March 31, 1987. Each payment is to be made on the following June 30, together with interest at a rate of 11%, compounded annually from the issue date, July 1, 1986, to the date of payment. The terms of the debt instrument further specify that if by June 30, 1990, B has not paid at least $5 million to A (exclusive of interest), the payment due on June 30, 1991 shall consist of the excess of $5 million over the sum of all prior payments (exclusive of interest), plus interest at 11%, compounded annually from the issue date. Assume that on July 1, 1986, the Federal short-term rate is 9%, compounded annually, and the Federal mid-term rate is 11%, compounded annually.

(ii) Since B's debt instrument provides for payments of interest on the unpaid principal balance at a fixed rate, the provisions of § 1.1275-4(d) (relating to certain contingent payments within a fixed period) do not apply. B's debt instrument calls for interest at a rate equal to the Federal mid-term rate on the issue date. Under § 1.1274-3(b), therefore, B's debt instrument has adequate stated interest. The issue price of B's debt instrument under § 1.1274-2(b)(1) is thus the stated principal amount, which is the minimum total of principal payments to be made under the debt instrument ($5 million). The accrual period of the debt instrument under paragraph (d)(2) of this section is the one-year period ending on June 30 of each calendar year, and the yield of the debt instrument under paragraph (f)(3)(ii) of this section is 11%, compounded annually. The amount of original issue discount allocable to each annual accrual period under the debt instrument pursuant to paragraph (c)(2)(i) of this section is equal to 11% of the adjusted issue price at the beginning of the accrual period. (Since B is not required to make payments of interest currently and unconditionally at intervals of one year or less over the entire term of the debt instrument, the actual payments of interest are not qualified periodic interest payments within the meaning of § 1.1273-1(b)(1)(ii), and, thus, are original issue discount.

(iii) The gross yield from Blackacre for the fiscal year ending on March 31, 1987 is $13 million; therefore, a payment of $1,300,000 (plus interest of $143,000) is due on June 30, 1987. The amount of original issue discount allocable to the first accrual period is $550,000 (.11 × $5 million). Since all the interest payments under the debt instrument are original issue discount, this amount includes the interest of $143,000 that is actually payable during the first accrual period. The adjusted issue price of the debt instrument at the beginning of the second accrual period, determined under paragraph (e)(2)(ii) of this section, is $4,107,000 (issue price, $5 million, plus original issue discount for the first accrual period, $550,000, minus a payment of $1,443,000).

(iv) The gross yield from Blackacre for the fiscal year ending on March 31, 1988 is $15 million; therefore, a payment of $1,500,000 (plus interest of $348,150) is due on June 30, 1988. The amount of original issue discount allocable to the second accrual period is $451,770 (.11 × $4,107,000). The adjusted issue price of the debt instrument at the beginning of the third accrual period is $2,710,620 (adjusted issue price at beginning of second accrual period, $4,107,000, plus original issue discount for the second accrual period, $451,700, minus a payment of $1,848,150).

(l) [Reserved]

(m) *Purchase*—(1) *Debt instruments issued at a discount after July 18, 1984.* For purposes of section 1272(a) and this section, the term "purchase" means any acquisition of a debt instrument, in which the basis of the debt instrument is not determined in whole or in part by reference to the adjusted basis of the debt instrument in the hands of the persons from whom acquired.

(2) *Debt instruments issued at a discount before July 19, 1984.* For purposes of section 1272(a) and this section, the term "purchase" shall have the same meaning as in paragraph (m)(1) of this section with the additional requirement that the adjusted basis of the debt instrument also not be determined in whole or in part by reference to the adjusted basis of the debt instrument under section 1014 (relating to property acquired from a decedent).

§ 1.1273-1 Determination of amount of original issue discount.

(a) *Definition of original issue discount*—(1) *General rule.* For purposes of sections 1271 through 1275 and the regulations thereunder, the term "original issue discount" means the excess (if any) of the stated redemption price at maturity (as defined in paragraph (b) of this section) over the issue price (as defined in §§ 1.1273-2 (b) and 1.1274-2(b)).

(2) *Loans with indefinite maturities.* The total amount of original issue discount with respect to a loan with an indefinite maturity date (including a loan payable on demand) is indeterminate. See § 1.1272-1(f)(5)(ii) for rules relating to the determination of yield on certain loans with indefinite maturity dates for purposes of current inclusion of original issue discount. See also § 1.1275-4(d) for rules relating to certain loans calling for payments within a fixed period.

(3) *De minimis rule*—(i) *In general.* If the original issue discount with respect to a debt instrument (other than an installment obligation within the meaning of paragraph (b)(2)(i) of this section) is less than one-fourth of one percent of the stated redemption price at maturity multiplied by the number of full years from the issue date (as defined in section 1275(a)(2) and § 1.1275-1(c)) to final maturity, then the amount of original issue discount shall be considered to be zero.

(ii) *Installment obligations*—(A) *In general.* In the case of an installment obligation, the rule of paragraph (a)(3)(i) of this section shall be applied with the following substitution: In lieu of the number of full years from the issue date to final maturity, there shall be substituted the weighted average maturity of the debt instrument. The weighted average maturity of an installment obligation is the sum of the following amounts (computed for each payment other than a payment of qualified periodic interest described in paragraph (b)(1)(ii) of this section)—

(*1*) The number of full years until a payment is made, multiplied by

(*2*) A fraction, the numerator of which is the amount of the payment and the denominator of which is the stated redemption price at maturity.

(B) *Safe harbor for certain installment obligations.* In the case of an installment obligation that calls for payments of principal no more rapidly than a self-amortizing installment obligation (as defined in paragraph (b)(2)(iii) of this section), in lieu of the rule set forth in paragraph (a)(3)(ii)(B) of this section, the rule set forth in paragraph (a)(3)(i) of this section may be applied by substituting one-sixth of one percent for one-fourth of one percent.

(iii) *Examples.* The provisions of paragraph (a)(3) of this section may be illustrated by the following examples:

Example (1). Assume that a debt instrument providing for a principal payment after ten years of $100 and annual interest payments of $10 is issued for $98. The general rule of paragraph (a)(3)(i) of this section applies because the debt instrument is not an installment obligation. The original issue discount is considered to be zero because the discount of $2 is less than $2.50, which is one-fourth of one percent of the stated redemption price at maturity ($100) multiplied by the number of full years to maturity (10). If this debt instrument were issued for $97.50 or less, however, the original issue discount would not be considered to be zero.

Example (2). Assume that a debt instrument providing for nine annual principal payments of $100, a principal payment of $600 after ten years, and annual interest payments at a rate of 10% of the unpaid principal balance is issued for $1,475. The rule of paragraph (a)(3)(ii)(A) of this section applies because the debt instrument is an installment obligation. The original issue discount is considered to be zero because the discount of $25 is less than $26.25, which is one-fourth of one percent of the stated redemption price at maturity ($1,500) multiplied by the weighted average maturity of the debt instrument determined under paragraph (a)(3)(ii) of this section (7 years).

Example (3). Assume that A issues a debt instrument to B with a 30-year term and a stated principal amount of $100,000, and provides for monthly payments of $1,028.61 over the entire term of the obligation. B charges A four points ($4,000), which are deducted from the total amount of funds disbursed to A. The issue price of the debt instrument is thus $96,000.

Assume further that the stated redemption price at maturity is equal to the stated principal amount. The parties may use the special rule of paragraph (a)(3)(ii)(B) of this section because the debt instrument is a self-amortizing installment obligation. Under this rule, the original issue discount is considered to be zero because the discount of $4,000 is less than $5,000, which is one-sixth of the percent of the stated redemption price at maturity ($100,000) multiplied by the number of full years to maturity (30 years).

Example (4). Assume that a debt instrument is issued for $100,000, providing for a principal payment of $100,000 after 5 years, and calling for annual interest payments of $10,000 for the first 3 years and annual interest payments of $10,600 for the last 2 years. All of the first three interest payments and $10,000 of each of the last two interest payments are qualified periodic interest within the meaning of paragraph (b)(1)(ii) of this section. The remaining $600 of each of the last two interest payments is included in the stated redemption price at maturity. Thus, the rule of paragraph (a)(3)(ii)(A) of this section applies, since the debt instrument is an installment obligation and has a stated redemption price at maturity of $101,200. Pursuant to paragraph (a)(3)(ii)(A) of this section, the weighted average maturity of the debt instrument is 4.994 years [(4 years × $600/$101,200) + (5 years × $100,600/$101,200)]. One-fourth of one percent of the stated redemption price at maturity multiplied by the weighted average maturity ($101,200 × 4.994) is $1,263.50. Since the actual amount of discount, $1,200, is less than this amount, the discount is considered to be zero.

Example (5). A lends B $100,000 for 10 years in consideration for B's note calling for interest to be paid semiannually at a rate of 10% for the first 5 years ($5,000 per semiannual period) and thereafter at a variable rate equal to the prime rate of a designated bank. On the issue date, the prime rate of the designated bank is 10.5%, compounded semiannually. For purposes of applying the *de minimis* rules of paragraph (a)(3) of this section, the debt instrument is treated as though it called for interest at a fixed rate of 10%, compounded semiannually for the first 5 years ($5,000 per period) and at a fixed rate of 10.5%, compounded semiannually for the second 5 years ($5,250 per period). The additional $250 of interest in each of the last ten semiannual periods is not qualified periodic interest within the meaning of paragraph (b)(1)(ii) of this section. The stated redemption price at maturity is thus $102,500 and the total amount of original issue discount is $2,500. The debt instrument is treated as an installment obligation with a weighted average maturity of 9.94 years, calculated as follows:

$250×5	=	$1,250
500×6	=	3,000
500×7	=	3,500
500×8	=	4,000
500×9	=	4,500
100,250×10	=	1,002,500
Total		$1,018,750

($1,018,750/$102,500) = 9.94

One-quarter of one-percent of the weighted average maturity (0.0025 × 9.94) multiplied by the stated redemption price at maturity ($102,500) is $2,546.88. Since the actual amount of discount, $2,500, is less than this amount, the discount is considered to be zero.

(b) *Stated redemption price at maturity*—(1) *Debt instruments other than installment obligations*—(i) *In general.* The term "stated redemption price at maturity" of a debt instrument other than an installment obligation (as defined in paragraph (b)(2)(i) of this section) means the amount payable at maturity as fixed by the last modification of the purchase agreement, including dividends, interest, and any other amounts payable at that time, however designated, other than a qualified periodic interest payment (as defined in paragraph (b)(1)(ii) of this section).

(ii) *Qualified periodic interest payment*— (A) *In general.* The term "qualified periodic interest payment" means any one of a series of payments equal to the product of the outstanding principal balance of the debt instrument and a single fixed rate of interest, or a variable rate tied to a single objective index of market interest rates governed by § 1.1275–5, that is actually and unconditionally payable (as defined in paragraph (b)(1)(iii) of this section), or will be treated as constructively received under section 451 and the regulations thereunder, at fixed, periodic intervals of one year or less during the entire term of a debt instrument (including short periods). A qualified periodic interest payment is not included in determining the stated redemption price at maturity, whether or not payable at maturity.

(B) *Fixed rate followed by variable rate.* Any one of a series of payments based on one fixed rate followed by a variable rate (or another fixed rate determined by reference to a single objective interest index) shall constitute a qualified periodic interest payment, provided that the variable rate (or other fixed rate) is the same as the initial fixed rate on the issue date or as of the first day on which there is a binding written contract for the sale or exchange, whichever is earlier.

(C) *Short periods.* A portion of any payment due at the end of a short period shall be a qualified periodic interest payment only to the extent interest is properly allocable to such period, using the same rate of interest applicable to full periods under the debt instrument. If the debt instrument has original issue discount, such portion shall be calculated in a manner consistent with the determination of yield for the short period under § 1.1272–1(f). A payment at the end of a short final accrual period shall not fail to constitute qualified periodic interest merely because the interval between such payment and the preceding payment differs from the fixed, periodic interval between other payments under the debt instrument. For an example illustrating the provisions of this paragraph (b)(1)(ii)(C), see § 1.1272–1(k), Example (6).

(D) *Short-term obligations.* In the case of a short-term obligation (as defined in section 1283(a)(1)(A)), no payments of interest shall be considered to be qualified periodic interest payments.

(iii) *Unconditionally payable.* Interest is payable unconditionally only if the amount of interest is certain and the failure to pay the interest timely results in consequences to the borrower that are typical in normal lending transactions. For example, interest is payable unconditionally if the failure to pay interest timely results in an acceleration of all amounts due under the debt instrument or if the unpaid interest compounds at a penalty rate that is significantly higher than the interest rate otherwise payable under the terms of the debt instrument. Interest payable upon the occurrence of a contingency (such as the existence of profits) is not unconditionally payable.

(2) *Installment obligations*—(i) *Installment obligation defined.* The term "installment obligation" means a debt instrument providing for the payment of any amount other than a qualified periodic interest payment (as defined in paragraph (b)(1)(ii)) before the final maturity date of the instrument.

(ii) *Stated redemption price at maturity of installment obligation.* The term "stated redemption price at maturity" of an installment obligation means the total of all payments provided by the obligation other than qualified periodic interest payments.

(iii) *Self-amortizing installment obligation defined.* The term "self-amortizing installment obligation" means an installment obligation that calls for equal payments composed of principal and qualified periodic interest that are actually and unconditionally payable (or that will be treated as constructively received under section 451 and the regulations thereunder) at fixed periodic intervals of one year or less during the entire term of the obligation, with no additional payment required at the maturity date of the obligation other than a de minimis amount to adjust for rounding, the timing of payments, and similar circumstances.

(iv) *Stated redemption price at maturity of self-amortizing installment obligations.* The stated redemption price at maturity of a self-amortizing installment obligation (as defined in paragraph (b)(2)(iii) of this section) is the stated principal (as defined in § 1.1274-2(b)(1)) of the obligation. This amount is the sum of all payments made under the debt instrument other than qualified periodic interest payments.

(3) *Debt instruments subject to certain puts and calls.* If a debt instrument contains a put or call option that is not separately tradable and that is presumed exercised under §§ 1.1272-1(f)(4)(iii) or 1.1274-6(f), then the put or call date shall be treated as the maturity date of that debt instrument and the amount payable upon exercise of the put or call shall be treated as the amount payable at maturity. See § 1.1272-1(k), Example (11).

(4) *Examples.* The provisions of paragraph (b) of this section may be illustrated by the following examples:

Example (1). A debt instrument is issued on October 1, 1985, which provides for a payment of $50,000 on December 31, 1994. Interest is payable currently and unconditionally (within the meaning of paragraph (b)(1)(iii) of this section) at a single fixed rate of 10%, compounded semiannually. The interest payment due on December 1, 1985, is $1,250. This payment and each subsequent payment of $2,500 per semiannual period are qualified periodic interest payments within the meaning of paragraph (b)(1)(ii) of this section. Thus, under § 1.1273-1(b)(1)(i), the stated redemption price at maturity is $50,000.

Example (2). A debt instrument is issued for $100,000, on January 1, 1986. The debt instrument calls for payments of $5,000 of interest on January 1 of each year from 1987 through 1995, and a final payment of $200,000 on January 1, 1996. The $5,000 payments in 1987 through 1995 and $5,000 of final payment in 1996 are qualified periodic interest payments within the meaning of paragraph (b)(1)(ii) of this section. Thus, the stated redemption price at maturity is $195,000.

Example (3). A debt instrument with a term of 5 years is issued on January 1, 1985, for a stated principal amount of $500,000. The debt instrument provides for annual payments of $145,641.77 for each of 5 years. Each payment consists of interest at 14%, compounded annually on the unpaid principal balance, and principal as follows:

Year	Principal	Interest payments	Total
1	$75,641.77	$70,000.00	$145,641.77
2	86,231.62	59,410.15	145,641.77
3	98,304.05	47,337.72	145,641.77
4	112,066.62	33,575.15	145,641.77
5	127,755.94	17,885.83	145,641.77
	$500,000.00	$228,208.85	$728,208.85

The payments of interest are payable currently and unconditionally at fixed, periodic intervals of one year during the entire term of the debt instrument. Therefore, they are qualified periodic interest payments. Because the debt instrument provides for equal payments of principal and qualified periodic interest, and because no additional payment is required at the maturity date, the debt instrument is a self-amortizing installment obligation as defined in paragraph (b)(2)(iii) of this section. The stated redemption price at maturity is equal to the stated principal amount of $500,000. This amount can also be derived by subtracting from the total payments of $728,208.87, the $228,208.87 of qualified periodic interest payments.

Example (4). A debt instrument is issued on January 1, 1986, for cash of $10,000, maturing on December 31, 1989, and providing for payments of principal at the end of the second and fourth years of $5,000 each. Payments of interest are provided currently and unconditionally at the end of the first and second years of $1,200 each, and at the end of the third and fourth years of $600 each. The debt instrument is an installment obligation as defined in paragraph (b)(2)(i) of this section. Each payment of interest represents the product of a single, fixed rate of 5% on the outstanding principal balance. Each such payment is, therefore, a qualified periodic interest payment, and is not included in the stated redemption price at maturity under the definition set forth in paragraph (b)(2)(ii) of this section. Under that definition, the stated redemption price of an installment obligation is the total of all payments other than qualified periodic interest payments. That total is $10,000.

§ 1.1273-2 Determination of issue price.

(a) *Definitions*—(1) *Property.* The determination of the issue price of a debt instrument depends on whether it is issued for property. For purposes of section 1273, this section, and § 1.1273-1, the term "property" includes debt instruments, investment units, services and the right to use property, but does not include money.

(2) *Publicly offered debt instruments.* The determination of the issue price of a debt instrument also depends on whether it is publicly offered. An issue of debt instruments is publicly offered if it—

(i) Is registered with the Securities and Exchange Commission;

(ii) Would be required to be registered but for the identity of the issuer; or

(iii) Is exempt from registration under section 3 of the Securities Act of 1933.

(b) *Debt instruments not issued for property*—(1) *Publicly offered debt instruments*—(i) *Debt instruments other than Treasury securities.* In the case of an issue of debt instruments other than Treasury securities that is publicly offered (as defined in paragraph (a)(2) of this section) and not issued for property, the term "issue price" under section 1273(b)(1) means the initial offering price to the public at which price a substantial amount of the debt instruments was sold. For this purpose, the term "the public" does not include bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers. The issue price generally is the first price at which debt instruments included in the issue were sold to the public and the issue price will not change if part of the issue is subsequently sold at a different price.

(ii) *Treasury securities.* In the case of an issue of Treasury securities, the issue price is the average price of the debt instruments sold.

(2) *Debt instruments not publicly offered.* In the case of an issue of debt instruments that is not publicly offered and is not issued for property, the issue price of each debt instrument is the price paid by the first buyer of the particular debt instrument, regardless of the amount paid for the remainder of the issue. The rule stated in this paragraph (b)(2) for determining issue price also applies to loans between natural

persons. For rules relating to the treatment of certain cash payments incident to a lending transaction with respect to the determination of issue price, see paragraph (f) of this section.

(3) *Below-market loans subject to section 7872(b).* (i) *In general.* In the case of a below-market loan subject to section 7872(b) (a term loan other than a gift loan), the issue price otherwise determined under this section shall be reduced by the excess amount determined under section 7872(b)(1).

(ii) *Examples.* The provisions of paragraph (b)(3)(i) of this section may be illustrated by the following example:

Example. (i) B is an employee of X Corporation. On July 1, 1986, X loans $80,000 to B. B gives X a note for $100,000, payable in 5 years. Assume that the Federal mid-term rate for July 1986 is 10%, compounded annually. Under the provisions of section 1273(b)(2) and § 1.1273-2(b)(2), the issue price of the note, but for paragraph (b)(3)(i) of this section, would be $80,000.

(ii) The amount loaned from X to B is $80,000. The present value of the payment that is required to be made under the terms of the loan, discounted at 10%, is $62,092.013. Thus, the excess amount described in section 7872(b)(1) is $17,907.87. The issue price of B's debt instrument is thus $62,092.13 ($80,000 paid by X for the debt instrument minus the excess amount of $17,907.87 determined under section 7872(b)(1)).

(c) *Debt instruments issued for property after May 27, 1969*—(1) *Public trading.* If a debt instrument is issued for property after May 27, 1969, and the debt instrument is part of an issue a portion of which is traded on an established securities market, then the issue price of that debt instrument shall be its fair market value determined as of the first date after the issue date that the debt instrument is traded on an established securities market. If a debt instrument (other than a debt instrument described in the preceding sentence) is issued for property after May 27, 1969, and the property is stock or securities that are traded on an established securities market, the issue price of the debt instrument shall be the fair market value of the stock or securities determined as of the issue date of the debt instrument. The fair market value of property for purposes of this paragraph (c)(1)(i) shall be determined as provided in § 20.2031-2 of this chapter (Estate Tax Regulations). If the trading price of the property fails to reflect accurately the value of a debt instrument issued for publicly traded property after May 8, 1986, because of extraordinary circumstances such as the existence of control premium or blockage discount, the issue price of a debt instrument exchanged for such property is determined under section 1274 and the regulations thereunder. Property shall be treated as traded if it is traded on an established securities market on or within 10 trading days after the date it is issued. Trading days are those days on which an established securities market is open. For purposes of this paragraph (c)(1)(i), the term "established securities market" shall have the same meaning as in § 1.453-3(d)(4) (relating to limitations on installment method for purchaser evidences of indebtedness payable on demand or readily tradable). A debt instrument not traded on an established securities market (and not part of an issue a portion of which is so traded) shall not be treated as property that is so traded even if it is convertible into property which is so traded.

(2) *No public trading*—(i) *Debt instruments issued after December 31, 1984.* If a debt instrument is issued after December 31, 1984 and is neither a debt instrument to which section 1273(b) (1), (2), or (3) or paragraph (b) or (c)(1) of this section applies, nor a debt instrument to which section 1274 applies (see § 1.1274-1), then the issue price of the debt instrument under section 1273(b)(4) and this section shall be its stated redemption price at maturity.

(ii) *Debt instruments issued before January 1, 1985.* If a debt instrument is issued for property before January 1, 1985, and is not a debt instrument to which paragraph (c)(1)(i) of this section applies, the issue price of the debt instrument shall be the stated redemption price at maturity. In this case, however, there may be an amount treated as unstated interest under section 483 as it existed prior to its amendment by section 41(b) of the Tax Reform Act of 1984, 98 Stat. 494, and the regulations thereunder. See 26 CFR 1.483-1 and 1.483-2 (revised as of April 1, 1985).

(3) *Reorganization.* For special rules relating to debt instruments issued in a reorganization, see § 1.1275-2(a).

(d) *Investment units issued after May 8, 1986*—(1) *Definition.* An investment unit consists of a debt instrument and a property right, such as a security or option (other than certain options described in § 1.1272-1(f)(4)).

(2) *Allocation of issue price*—(i) *In general.* The issue price of the investment unit shall be allocated between the debt instrument and the property right on the basis of the fair market value of each element of the unit.

(ii) *Publicly-traded debt instrument.* If the debt instrument issued as part of an investment unit is publicly traded, the issue price of the debt instrument shall equal the initial trading price of the debt instrument.

(iii) *Publicly-traded property right.* If the property right issued as part of an investment unit is publicly traded and the debt instrument is not publicly traded, the issue price of the debt instrument shall equal the price paid for the investment unit less the initial trading price of the property right.

(iv) *Nonpublicly-traded property right and debt instrument.* If neither the property right nor the debt instrument issued as part of an investment unit is publicly traded, the issue price of the debt instrument shall equal the present value of all payments under the debt instrument, discounting at a rate agreed to by the issuer and the holder, based on the original yields of other debt instruments with similar maturities and security issued within the previous six months by the issuer. If no such debt instruments were issued, the issuer and the holder may look to comparable debt instruments of other issuers, taking into account (with respect to both the debt instrument in question and comparable debt instruments) the solvency of the issuer, the nature of the issuer's trade or business, the presence and nature of security for the debt instrument, the geographic area in which the loan is made, and any other factors relevant in the circumstances. A debt instrument which is convertible into stock or another debt instrument must not be used as a comparable debt instrument (except where the investment unit contains a debt instrument convertible into stock or another debt instrument). In no event may the yield agreed to by the issuer and the holder be less than the applicable Federal rate on the issue date of the investment unit.

(e) *Convertible debt instruments.* The issue price of a debt instrument which is convertible into stock or another debt instrument of the issuer shall include any amount paid with respect to the conversion privilege.

(f) *Treatment of certain cash payments incident to lending transactions*—(1) *Applicability.* The provisions of paragraph (f) of this section shall apply with respect to cash payments incident to private lending transactions (including seller financing), other than points that are deductible by the borrower under section 461(g)(2). The tax treatment to the lender of any payment to the lender that, when added to other original issue discount arising from the transaction (determined without regard to such payments), produces a total amount of original issue discount which is *de minimis* under the rules of § 1.1273-1(a)(3), shall be governed by principles of tax law other than sections 1272 and 1273 and the regulations thereunder.

(2) *Payments from borrower to lender.* In a lending transaction to which section 1273(b)(2) applies, a payment from the borrower to the lender (other than a payment for services provided by the lender, such as commitment fees or loan processing costs) shall reduce the issue price of the debt instrument evidencing the loan. In a transaction to which section 1274 applies, a payment from the buyer-borrower to the seller-lender designated as points or as interest shall reduce the stated principal amount of the debt instrument evidencing the loan. In addition, the purchase price of the property shall include the amount of any payment from the buyer-borrower to the seller-lender, regardless of how designated.

(3) *Payments from lender to borrower.* A payment from the lender to the borrower in a lending transaction (including a deemed payment within the meaning of paragraph (f)(4) of this section) shall be treated as an amount loaned.

(4) *Payments between lender and third party.* If, as part of a lending transaction, a party other than the borrower (the third party) makes a payment to the lender, that payment may be treated in appropriate circumstances as made from the third party to the borrower followed by a payment in the same amount from the borrower to the lender and governed by the provisions of paragraph (f)(2) of this section. Section 461(g)(2) shall not apply to any deemed payment from the borrower to the lender. Similarly, if the lender makes a payment to a thrid party, that payment may be treated as an additional amount loaned to the borrower and then paid by the borrower to the third party. The character of the deemed payment between the borrower and the third party shall depend on the substance of the transaction.

(5) *Examples.* The provisions of paragraph (f) of this section may be illustrated by the following examples:

Example (1). A lends $100,000 to B for a term of 10 years. At the time the loan is made, B pays $4,000 in points to A. Assume that the points are not deductible by B under section 461(g)(2). The issue price of B's debt instrument is $96,000. Since the $4,000 constitutes more than a *de minimis* amount of original issue discount, under paragraph (f)(2) of this section, the points are accounted for by both A and B as original issue discount under sections 1272 and 1273 and the regulations thereunder.

Example (2). (i) A sells property to B for $1,000,000. In consideration therefor, B gives A $300,000 cash and a $700,000 debt instrument with a term of 5 years, calling for semiannual payments of interest at a rate of 8.5%. In addition to the cash down payment, B pays A $14,000 designated as points on the loan.

(ii) The stated principal amount of B's debt instrument, under paragraph (f)(2) of this section, is $686,000 ($700,000 minus $14,000). Assuming a test rate of 9%, compounded semiannually, the testing amount for B's debt instrument under § 1.1274–3 is $686,153. Thus, under § 1.1274–2, the issue price of B's debt instrument is the stated principal amount of $686,000. B's basis in the property purchased is thus $1,000,000 ($686,000 debt instrument plus $314,000 cash payments).

Example (3). A sells Blackacre to B for $500,000. B makes a cash down payment of $100,000 and borrows $400,000 of the purchase price from a lender, L, repayable in annual installments over a term of 15 years calling for interest at a rate of 9%. As part of the transaction, A makes a payment of $8,000 to L to facilitate the loan to B. Under the provisions of paragraph (f)(2) and (4) of this section, B is treated as having made an $8,000 payment directly to L and a down payment of only $92,000 to A. The payment to L reduces the issue price of B's debt instrument to $392,000. B's basis in Blackacre is $492,000 ($392,000 debt instrument plus $100,000 cash payments). Since the payment to L represents a *de minimis* amount of original issue discount under § 1.1273–1(a)(3), L must account for $8,000 payment without regard to the original issue discount rules. B, however, must account for the payment as original issue discount pursuant to the provisions of § 1.163–7(d).

Example (4). The facts are the same as in example (3), except that the payment from A to L is $20,000. Under the provisions of paragraph (f)(2) and (4) of this section, B is treated as having made a $20,000 payment to L and an $80,000 down payment to A. The issue price of the debt instrument is thus reduced to $380,000. B's basis in Blackacre is $480,000 ($380,000 debt instrument and $100,000 cash payments). B and L both account for the payment as original issue.

Example (5). The facts are the same as in example (4), except that the $20,000 payment is made from L to A. Under paragraph (f) (3) and (4) of this section, L is treated as having made a loan of $420,000 to B and B is treated as having purchased Blackacre for $520,000. Thus, the issue price of B's debt instrument is, under § 1.1273–2(b)(2), the amount loaned, or $420,000. B's basis in Blackacre is $520,000 ($420,000 debt instrument plus $100,000 cash payment).

Example (6). (i) S owns Blackacre, subject to a mortgage held by L with a remaining principal amount of $1,000,000. S sells Blackacre to B in exchange for $2,000,000 cash and B's agreement to assume S's debt to L. As part of the transaction, S, B, and L jointly agree that the terms of the debt instrument will be modified in such a way as to produce an issue price for the modified debt instrument of $900,000. In addition, L agrees to make a cash payment to B of $100,000.

(ii) Under § 1.1274–7, S's debt to L is treated as having been exchanged for a new debt instrument (in a transaction to which section 1274 applies) immediately prior to the sale to B. B is treted as assuming this new debt instrument. With respect to the exchange of debt instruments, B is a third party. Thus, the $100,000 cash payment from L to B is treated as having been made from L to S and then from S to B. The latter payment reduces the net cash payment from B to S to $1,900,000.

(iii) The new debt instrument is treated as having been issued for the old debt instrument plus $100,000 cash. Since the issue price of the new debt instrument is $900,000, the portion of the issue price of the new debt instrument attributable to the old debt instrument is $800,000. Thus, S is treated as having repaid the old debt instrument for $800,000, and, under section 108, has cancellation of indebtedness income of $200,000.

§ 1.1274–1 Debt instruments to which section 1274 applies.

(a) *Types of debt instruments to which section 1274 applies.*—(1) *In general.* Subject to the exceptions and limitations set forth in paragraph (b) of this section, section 1274 and this section apply to any debt instrument given in consideration for the sale or exchange of property unless (i) the debt instrument provides for interest to be paid currently at a constant rate over its entire term, and (ii) the debt instrument provides for adequate stated interest. For purposes of section 1274, the term "sale or exchange" means any transaction treated as a sale or exchange for tax purposes. For purposes of section 1274, the term "property" includes debt instruments and investment units, but does not include money, services, or the right to use property. For the definition of the term "debt instrument," see section 1275(a)(1) and § 1.1275–1(b). For the treatment of debt instruments to which section

1274 and this section apply, see § 1.1274–2. For the treatment of certain payments for the use of property or services, see sections 404 and 467.

(2) *Interest to be paid currently at a constant rate.* A debt instrument provides for interest to be paid currently at a constant rate if all interest provided for in the debt instrument is payable at a single fixed or variable rate and the interest is payable unconditionally and at least annually. For the meaning of the term "payable unconditionally," see § 1.1273–1(b)(1)(iii).

(3) *Adequate stated interest.* To determine if a debt instrument provides for adequate stated interest, the test rate of interest applicable to the debt instrument must be determined. In general, if a debt instrument calls for interest over its entire term at a stated rate (with an appropriate compounding period) no lower than the test rate of interest, the debt instrument provides for adequate stated interest. Special rules, however, are provided for the application of section 1274 to debt instruments involved in potentially abusive situations. See § 1.1274–4(g) for the meaning of the term "potentially abusive situation." For rules relating to the determination of adequate stated interest, see § 1.1274–3. For special rules relating to debt instruments calling for variable rates of interest or for contingent interest, see § 1.1274–3(d).

(b) *Exceptions and limitations to the application of section 1274*—(1) *Debt instruments maturing in 6 months or less.* Section 1274 does not apply to a debt instrument under which none of the payments are due more than six months after the date of the sale or exchange.

(2) *Sales of farms for $1,000,000 or less by certain sellers*—(i) *In general.* Except as provided in paragraph (b)(2)(ii) of this section, section 1274 does not apply to any debt instrument arising from the sale or exchange of a farm (within the meaning of section 6420(c)(2) and the regulations thereunder)—

(A) By an individual, estate, or testamentary trust,

(B) By a corporation which as of the date of the sale or exchange is a small business corporation as defined in section 1244(c)(3) and the regulations thereunder, or

(C) By a partnership which as of the date of the sale or exchange meets requirements similar to those of section 1244(c)(3).

For the purposes of paragraph (b)(2)(i)(C) of this section, a partnership is considered to have met requirements similar to those of section 1244(c)(3) if the partnership is a domestic partnership, and the equity capital invested in the partnership does not exceed $1,000,000. For purposes of the preceding sentence, the equity capital invested in a partnership is the aggregate of all contributions of money to the partnership by its partners, and of all bases to the partnership of property contributed (reduced by the amount of any liability to which the contributed property is subject or which is assumed by the partnership with respect to the contributed property) to it by its partners as determined under section 723. The amount of the equity capital invested in a partnership is not reduced by the amount of any distribution even though the distribution may be considered a capital distribution.

(ii) *Limitation.* Paragraph (b)(2)(i) of this section applies to a sale or exchange of a farm only if it can be determined at the time of the sale or exchange that the sales price cannot exceed $1,000,000, even if the sales price eventually paid for the farm is less than $1,000,000. The determination whether the sales price cannot exceed $1,000,000 is made without regard to any other exception described in paragraph (b) of this section. In addition, the sales price is determined without regard to section 1274 and without regard to any stated interest. The term "sale price" includes the amount of any liability included in the amount realized from the sale or exchange (see § 1.1001–2). For purposes of the determination whether the sales price of a farm cannot exceed $1,000,000, all sales and exchanges which are part of the same transaction (or are part of a series of related transactions) shall be aggregated in accordance with the rules of § 1.1274A–1(d).

(3) *Sales of principal residences.* Section 1274 does not apply to any debt instrument arising from the sale or exchange by an individual of the inidividual's principal residence (within the meaning of section 1034). Whether the principal residence sold or exchanged by the individual is to be used as the principal residence of the buyer does not affect this determination.

(4) *Sales involving total payments of $250,000 or less*—(i) *In general.* Section 1274 does not apply to any debt instrument arising from the sale or exchange of property if the sum of the following amounts does not exceed $250,000 (determined without regard to any other exception prescribed in paragraph (b) of this section):

(A) The aggregate amount of the payments (including interest and principal) due under the debt instrument and under all other debt instruments received as consideration for the sale or exchange, and

(B) The aggregate value of any other consideration (including any liability assumed or taken subject to) to be received for the sale or exchange.

(ii) *Value of consideration other than the debt instrument.* For purposes of paragraph (b)(4)(i)(B) of this section, any consideration (other than a liability assumed or taken subject to) is taken into account at its fair market value. In the case of any liability assumed or taken subject to, the outstanding principal balance or revised issue price (in the case of an obligation originally issued at a discount) of the obligation assumed or taken subject to is taken into account.

(iii) *Aggregation of transactions.* For purposes of paragraph (b)(4) of this section, all sales or exchanges which are part of the same transaction (or a series of related transactions) shall be aggregated in accordance with the rules of § 1.1274A–1(d).

(iv) *Time when $250,000 limitation applied.* The determination of the amount of payments due under all debt instruments and the amount of other consideration to be received is made as of the date of the sale or exchange, or, if earlier, the contract date as defined in § 1.1274–6(e)(1)(ii). If the precise amount due under any debt instrument or the precise amount of any other consideration to be received cannot be determined as of the date of the sale or exchange, the exception described by paragraph (b)(4) of this section applies only if it can be determined that the maximum of the aggregate amount of payments due under the debt instruments and other consideration to be received cannot exceed $250,000.

(5) *Publicly traded debt instruments or property.* Section 1274 does not apply to any debt instrument to which section 1273(b)(3) applies. Thus, section 1274 does not apply to any publicly traded debt instrument or to any debt instrument issued in consideration for the sale or exchange of publicly traded property.

(6) *Certain sales of patents.* Section 1274 does not apply to any amount payable with respect to a transfer by an individual holder described in section 1235 (relating to sales or exchanges of patents) that is contingent on the productivity, use, or disposition of the property transferred.

(7) *Transactions involving personal use property*—(i) *Treatment of issuers.* Section 1274 does not apply to any borrower (issuer) under a debt instrument given in consideration for the sale or exchange of property that is personal use property (within the meaning of section 1275(b)(3)) in the

hands of the issuer. Thus, the tax treatment of the issuer of any amount payable under such a debt instrument is determined without regard to the provisions of section 1274 and the regulations thereunder.

(ii) *Treatment of certain holders.* Section 1274 does not apply to any lender (holder) of a debt instrument that (A) is given in consideration for the sale or exchange of property that is personal use property (within the meaning of section 1275(b)(3)) in the hands of the issuer and (B) is also a loan described in section 7872(c)(1)(A) (relating to gift loans), 7872(c)(1)(B) (relating to compensation-related loans), or 7872(c)(1)(C) relating to corporation-shareholder loans). For rules relating to the treatment of loans described in the preceding sentence, see section 7872 and the regulations thereunder.

(8) *Transactions involving certain demand loans.* Section 1274 does not apply to any debt instrument that evidences a demand loan (within the meaning of section 7872(f)(5) described in section 7872(c)(1)(A) (rlating to gift loans), 7872(c)(1)(B) (relating to compensation-related loans), or 7872(c)(1)(C) (relating to corporation-shareholder loans). For rules relating to the treatment of loans described in the preceding sentence, see section 7872 and the regulations thereunder.

(9) *Sales or exchanges to which section 483(e) and § 1.483–4(b)(2) apply.* Section 1274 does not apply to any debt instrument to which section 483(e) and § 1.483–4(b)(2) (relating to qualified sales) apply.

(10) *Certain transfers subject to section 1041.* Section 1274 does not apply to any debt instrument issued in consideration for a transfer of property subject to section 1041 (relating to transfers of property between spouses or incident to divorce).

(c) *Modified debt instruments*—(1) *In general.* For purposes of section 1274, if the issuer and holder (or a successor to either) modify a debt instrument, the modified debt instrument shall be treated as a new debt instrument given in consideration for the unmodified debt instrument (the old debt instrument). Thus, for purposes of section 1274 and the regulations thereunder, the old debt instrument is treated as property. A new debt instrument shall not be eligible for the election to use the cash method of accounting described in § 1.1274A–1(c) unless the old debt instrument was a cash method debt instrument. A debt instrument has been modified if the terms of the new debt instrument differ "materially either in kind or in extent," within the meaning of § 1.1001–1(a), from the terms of the old debt instrument. For this purpose, a payment to or from the lender (or a successor) not provided for in the debt instrument shall be treated as a modification of the debt instrument. For rules governing the treatment of payments made in connection with the issuance of a debt instrument, see § 1.1273–2(f). This paragraph (c)(1) shall not apply to modifications described in section 104 of Pub. L. No. 99–121.

(2) *Example.* The provisions of paragraph (c)(1) of this section may be further illustrated by the following example:

Example: On January 1, 1983, B issues a ten-year debt instrument to A for $3,000,000. The debt instrument, as originally issued, provides for annual interest payments at 15 percent. On January 1, 1986, A and B agree to modify the debt instrument by lowering the interest rate to 9 percent. The change in interest rate constitutes a modification under § 1.1001–1(a). Because the debt instrument has been modified, the modified debt instrument is treated as a new debt instrument given by B in consideration for the old debt instrument.

(d) *Excessive interest.* If a debt instrument given in consideration for the sale or exchange of property calls for interest at a rate that, in light of the terms of the debt instrument and the creditworthiness of the borrower, is clearly greater than the arm's-length rate of interest that would have been charged in a cash lending transaction (that is, one not involving a sale of property) between the same two parties, the Commissioner may recharacterize a portion of the stated interest as additional purchase price. The portion of interest to be recharterized as additional purchase price shall be determined in a manner consistent with section 1274 and may be based either on the fair market value of the property sold or on the arm's-length rate described in the preceding sentence. In determining whether recharacterization is appropriate, the Commissioner may consider the relation between the tax advantage derived by the borrower from the overstatement of interest and the tax detriment (if any) to the seller from such overstatement.

(e) *Effective date: transitional rule*—(1) *General rule.* Section 1274 and the regulations thereunder apply, except as otherwise provided in this paragraph (e), to any debt instrument given in consideration for a sale or exchange of property if the sale or exchange occurs after December 31, 1984, unless the sale or exchange is made pursuant to a written contract (including an irrevocable written option) which was binding on March 1, 1984. For this purpose, a sale or exchange is not made pursuant to a written contract which was binding on March 1, 1984, if a substantial modification (within the meaning of § 1.1274–6(e)(1)(iii)) in the terms of the contract occurs after March 1, 1984, and before the sale or exchange. Section 1274 and the regulations thereunder shall not apply to any modifications of a debt instrument arising from a sale or exchange unless the debt instrument arises from a sale or exchange to which section 1274 and the regulations thereunder apply (within the meaning of this paragraph (e)) or the debt instrument is assumed or taken subject to in connection with, and the modification is part of, such a sale. For rules relating to sales or exchanges occurring before January 1, 1985, and sales or exchanges pursuant to a written contract (including an irrevocable written option) which was binding on March 1, 1984, and modification of debt instruments to which section 1274 and the regulations thereunder do not apply by reason of the preceding sentence, see section 44(b)(3) of the Tax Reform Act of 1984, section 483 as in effect before its amendment by section 41(b) of the Tax Reform Act of 1984, and 26 CFR 1.483–1 and 1.483–2 (revised as of April 1, 1985).

(2) *Certain sales or exchanges occurring before July 1, 1985 by cash method buyers and sellers.* Section 1274 does not apply to any debt instrument arising from a sale or exchange of property (other than new section 38 property within the meaning of section 48(b) and the regulations thereunder) occurring before July 1, 1985, if—

(i) The property was used in the active business of farming,

(ii) The stated principal amount of the debt instrument does not exceed $2,000,000, and

(iii) The interest (including unstated interest under section 483) on the debt instrument arising from the sale or exchange is taken into account by the buyer and the seller on the cash receipts and disbursements method of accounting.

All sales or exchanges (other than sales or exchanges of new section 38 property) which are part of the same transaction (or a series of related transactions) shall be aggregated in accordance with the rules of § 1.1274A–1(d), and all debt instruments arising from aggregated sales or exchange shall be treated as one debt instrument. The term "farming" has the same meaning as that term has in section 464(e)(1).

(f) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). On July 1, 1985, A, an individual, sells to B land used as a farm within the meaning of section 6420(c)(2). In consideration for the sale, B makes a $250,000 down payment and issues a debt instrument calling for a single $500,000 payment due in 10 years unless profits from the land in each of the 10 years preceding maturity of the debt instrument exceeds a specified amount, in which case B is to make a payment of $800,000. No interest is provided for in the debt instrument. Even though the total payments ultimately payable under the contract may be less than $1,000,000, at the time of the sale or exchange it cannot be determined that the sales price cannot exceed $1,000,000. Thus, the sale of the land used as a farm is not an excepted transaction described in paragraph (b)(2) of this section.

Example (2). On July 1, 1985, A, an individual, sells land (not used as a farm within the meaning of section 6420(c)(2) and the regulations thereunder) to A's child B for $650,000. In consideration for the sale, B issues a debt instrument to A that calls for a payment of $500,000 and a second debt instrument that calls for a payment of $150,000. No other consideration is given. Both debt instruments are due in 10 years. The debt instruments do not provide for interest. The $500,000 debt instrument is subject to section 483(e) and § 1.483–4(b)(2), and is accordingly covered by the exception from section 1274 described in paragraph (b)(9) of this section. Since the exception from section 1274 for debt instruments subject to section 483(e) and § 1.483–4(b)(2) apply to the extent of $500,000, the $150,000 debt instrument is subject to section 1274 even though the total payments under this debt instrument do not exceed $250,000 because the aggregate amount of payments due under the sale, determined without regard to the exception described in paragraph (b)(9) of this section, exceeds $250,000.

Example (3). The facts are the same as in example (2), except that the land sold was land used as a farm within the meaning of section 6420(c)(2) and the regulations thereunder, and was sold for a debt instrument calling for a single payment of $500,000 and a second debt instrument calling for a single payment of $700,000. Both debt instruments are due in 10 years. In this case, the $500,000 debt instrument is subject to section 483(e) and § 1.483–4(b)(2), and is accordingly covered by the exception from section 1274 described in paragraph (b)(9) of this section. Nevertheless, section 1274 applies to the $700,000 debt instrument because this debt instrument arose from a sale of a farm the sales price of which exceeds $1,000,000.

Example (4). F is an entity that is exempt from taxation under section 501(c) of the Code. F holds stock in X Corporation, a privately held company. On July 1, 1986, F sells its stock in X corporation to A, an individual with a regular income flow and a high credit rating who is subject to the highest rate of taxation. In partial consideration for the sale, A gives F a debt instrument with a principal amount of $600,000, calling for interest at a rate of 22 percent. The Commissioner may determine that interest at 22 percent is excessive and recharacterize a portion of the stated interest as additional purchase price.

§ 1.1274-2 Treatment of debt instruments to which section 1274 applies.

(a) *In general.* If section 1274 applies to a debt instrument as provided in § 1.1274–1, section 1274 and this section determine the issue price of the debt instrument for the purpose of sections 1271, 1272, and 1273. The issue price as determined under section 1274 and these regulations generally determines the sales price (in whole or in part) of any property acquired for the debt instrument. Thus, in determining the amount realized from the sale or exchange of property, the amount realized that is attributable to the debt instrument is generally the issue price of the debt instrument. Similarly, in determining the cost basis of property acquired for the debt instrument, the amount of the cost basis of the property attributable to the debt instrument is generally the issue price of the debt instrument. For rules relating to the determination of basis of property in certain transactions between related parties, see § 1.1012–2.

(b) *Issue price*—(1) *Debt instruments that provide for adequate stated interest; stated principal amount.* If section 1274 applies to a debt instrument that provides for adequate stated interest, the issue price of the debt instrument is the stated principal amount of the debt instrument. For purposes of section 1274, the stated principal amount of a debt instrument is the aggregate amount of all payments due under the debt instrument excluding any amount of interest provided for in the debt instrument.

(2) *Debt instruments that do not provide for adequate stated interest; imputed principal amount.* If section 1274 applies to a debt instrument that does not provide for adequate stated interest, the issue price of the debt instrument is the imputed principal amount of the debt instrument. For rules relating to the determination of the imputed principal amount of a debt instrument, see § 1.1274–4.

§ 1.1274-3 Determination whether a debt instrument provides for adequate stated interest.

(a) *In general.* This section prescribes rules for determining whether a debt instrument provides for adequate stated interest. The rules prescribed by this section apply to any debt instrument whether the debt instrument calls for the payment of principal at maturity, the periodic payment of principal, or irregular payments of principal. A debt instrument generally provides for adequate stated interest if it calls for interest on the outstanding principal balance at a rate (with an appropriate compounding period) at least equal to the test rate of interest. For rules relating to the determination of the test rate of interest and rules relating to an appropriate compounding period, see paragraph (e) of this section. Paragraph (b) of this section provides rules for determining adequate stated interest (except with respect to debt instruments involved in a potentially abusive situation) if the debt instrument provides for a stated rate of interest. Paragraph (c) of this section provides rules for determining adequate stated interest in the case of debt instruments that do not satisfy the requirements of paragraph (b) of this section. For special rules relating to debt instruments calling for variable rates of interest or for contingent interest, see paragraph (d) of this section.

(b) *Certain debt instruments that provide for a stated rate of interest)*—(1) *In general.* A debt instrument provides for adequate stated interest if—

(i) The debt instrument provides for interest on the outstanding principal balance of the debt instrument (the stated rate of interest) at a fixed rate;

(ii) The stated rate of interest is no lower than the test rate of interest (based on the appropriate compounding period);

(iii) The debt instrument requires interest to be paid or compounded at the end of each compounding period for the entire term of the debt instrument, and

(iv) The debt instrument is not issued in a potentially abusive situation as defined in § 1.1274–4(g).

For rules relating to debt instruments that do not satisfy the requirements of this paragraph (b)(1), see paragraph (c) of this section.

(2) *Interest payable for a short period*—(i) *In general.* The stated rate of interest is a fixed rate within the meaning of paragraph (a)(1) of this section only if it also applies for short periods (that is, any period shorter than the compounding period on which the test rate of interest is based). For this purpose, adequate stated interest for a short period may be determined by either of the two alternative methods prescribed by this paragraph (b)(2)(i) or by any other reasonable method. The methods prescribed by this paragraph (b)(2)(i) are the exact method and the approximate method. An example of another reasonable method is monthly compounding which reflects compounding at intervals of one month with simple interest within a month. If a debt instrument has original issue discount, the choice of any method

permissible under this paragraph (b)(2) requires a corresponding choice for purposes of determining the amount of original issue discount includible under section 1272 for the short period.

(ii) *Exact method.* The exact method reflects daily compounding of interest. Under this method, an amount of interest payable on an outstanding principal amount (P) for a short period is equal to the result of the following formula:

$I = P \times [(1+i/k)^f - 1]$

In which:

I=Interest payable for the short period

i=The stated rate of interest expressed as a decimal

k=The number of compounding periods on which the test rate of interest is based contained in a year

f=A fraction, the numerator of which is the length of the short period, and the denominator of which is the length of the compounding period on which the test rate of interest is based

For illustrations of the application of the formula for the exact method, see examples (3) and (5) of paragraph (b)(3) of this section.

(iii) *Approximate method.* The approximate method is also provided for the convenience of taxpayers who do not desire to use the exact method. The approximate method reflects simple interest within any compounding period and always produces an amount of interest for the short period that is slightly higher than that produced under the exact method. Under this method, the amount of interest payable on an outstanding principal amount for a short period is determined by multiplying the amount of stated interest for a full period by a fraction, and numerator of which is equal to the length of the short period and the denominator of which is the length of a full period. Thus, the amount of interest payable on an outstanding principal amount (P) for a short period is equal to the result of the following formula:

$I = P \times (i/k) \times f$

In which:

I=Interest payable for the short period

i=The stated rate of interest expressed as a decimal

k=The number of compounding periods on which the test rate of interest is based contained in a year

f=A fraction, the numerator of which is the length of the short period, and the denominator of which is the length of the compounding period on which the test rate of interest is based

For illustrations of the application of the formula for the approximate method, see examples (4), (6) and (7) of paragraph (b)(3) of this section.

(3) *Examples.* The provisions of paragraph (b) of this section may be illustrated by the following examples:

Example (1). Assume that a debt instrument issued in consideration for the sale of nonpublicly traded property calls for the payment of a principal amount of $1,000,000 at the end of a 10-year term and 20 semiannual interest payments of $60,000 each on the principal balance of the debt instrument. The appropriate compounding period is semiannual. Assume that the test rate of interest is 12 percent, compounded semiannually. The debt instrument provides for adequate stated interest because the debt instrument provides for interest equal to the test rate of 12 percent payable semiannually, the compounding period for the test rate.

Example (2). The facts are the same as in example (1), except that the debt instrument calls for 10 annual interest payments of $123,600 each. The appropriate compounding period for the test rate is annual. The debt instrument provides for adequate stated interest because the debt instrument provides for interest equal to 12.36 percent, the rate of interest based on an annual compounding period equivalent to 12 percent, compounded semiannually, and the interest is payable annually, the compounding period for the test rate.

Example (3). Assume that on May 1, 1986, in consideration for the sale of nonpublicly traded property A issues a debt instrument to B calling for a principal payment of $10,000,000 due December 31, 1996, and 10 percent annual interest, $500,000 payable on June 30 and December 31 of each year, beginning on December 31, 1986. In addition, the debt instrument calls for A to make a payment of interest on June 30, 1986, of $163,963.60 for the period from May 1, 1986, to June 30, 1986. The appropriate compounding period is semiannual. Assume that the test rate of interest is 10 percent, compounded semiannually. Further, assume that a convention that assumes a year consists of 12 30-day months is adopted. The debt instrument provides for adequate stated interest. For each semiannual period beginning on July 1, 1986, the debt instrument provides for interest equal to the test rate of 10 percent payable semiannually, the compounding period for the test rate. For the short period from May 1, 1986, through June 30, 1986 (one-third of a full semiannual period), the amount of stated interest payable on June 30, 1986, under the exact method would be $163,963.60, determined as follows:

$\$10{,}000{,}000 \times [(1+.10/2)^{1/3} - 1] = \$163{,}963.60$

Example (4). The facts are the same as in example (3), except that the amount of interest payable for the short period is determined under the approximate method. Under the approximate method, the amount of stated interest payable for the short period would be $166,666.70 determined as follows:

$\$10{,}000{,}000 \times (.10/2) \times (1/3) = \$166{,}666.70$

Example (5). The facts are the same as in example (3), except that the debt instrument is issued on May 19, 1986. Assume that a convention that assumes that a year consists of 12 30-day months is adopted. Thus, the short period is 42/180 of the semiannual period. The amount of stated interest payable on June 30, 1986, under the exact method would be $114,494.20 determined as follows:

$\$10{,}000{,}000 \times [(1 \times .10/2)^{42/180} - 1] = \$114{,}494.20$

Example (6). The facts are the same as in example (5), except that the amount of interest payable for the short period (May 19, 1986, through June 30, 1986) is determined under the approximate method. Under the approximate method, the amount of stated interest payable for the short period would be $116,666.70 determined as follows:

$\$10{,}000{,}000 \times (.10/2) \times (42/180) = \$116{,}666.70$

Example (7). (i) Assume that on July 4, 1985, A sells nonpublicly traded property to B for $1,400,000. In consideration for the sale, B makes a $400,000 down payment, and issues a debt instrument with a stated principal amount of $1,000,000 with interest payable at 8.84 percent on the unpaid balance of the debt instrument. The debt instrument calls for monthly payments of $7,931.37 (consisting of interest at an annual rate of 8.84 percent on the unpaid balance of the principal amount of the debt instrument, and a partial payment of principal) due on the the first of each month for a period of 30 years beginning on September 1, 1985. The appropriate compounding period is one month. Interest is payable on the first of the month for the preceding month. In addition, on July 4, 1985, B makes an advance payment of interest of $6,875.56 for the period from July 4, 1985, through July 31, 1985.

(ii) Since the sale occurs after June 30, 1985, and the stated principal amount of the debt instrument is less than $2,800,000, the test rate of interest based on a monthly compounding period is 8.84 percent. Assume that a convention that assumes that a year consists of 12 30-day months is adopted. The debt instrument provides for adequate stated interest. For the whole-month periods beginning on August 1, 1985, the debt instrument provides for interest payable at a stated rate of interest equal to the test rate based on monthly compounding (8.84 percent) and the interest is payable monthly, the compounding period for the test rate.

For the short period (the period from July 4, 1985, through July 31, 1985), the amount of stated interest payable under the approximate method is $6,875.56 ($1{,}000{,}000 \times (.0884/12) \times (28/30)$).

Example (8). Assume that a debt instrument issued in consideration for the sale of nonpublicly traded property calls for two installment payments of principal, one due in 5 years in the amount of $5,000,000 and a second due in 10 years in the amount of $5,000,000. In addition, the debt instrument calls for 10 semiannual payments of interest of $600,000 each for the first five years, and 10 semiannual payments of interest of $300,000 each for the final five years. The appropriate compounding period is semiannual. Assume that the test rate of interest is 12 percent, compounded semiannually. The debt instrument provides for adequate stated interest because the debt instrument calls for interest on the outstanding principal balance at a rate equal to the test rate of 12 percent payable semiannually, the compounding period for the test rate of interest.

(c) *Debt instruments that do not meet the requirements of paragraph (b) of this section*—(1) *In general.* A debt instrument that does not meet the requirements of paragraph (b) of this section provides for adequate stated interest if the stated principal amount of the debt instrument (as defined in § 1.1274–2(b)) is less than or equal to the testing amount. For this purpose, the term "testing amount" means—

(i) The sum of the present values of all payments (including interest) due under the debt instrument determined by using a discount rate of interest equal to the test rate of interest as determined in paragraph (e) of this section, or

(ii) In the case of a potentially abusive situation (as defined in § 1.1274–4(g)(2)), the fair market value of the property (reduced in the manner prescribed in § 1.1274–4(g)(1)) received in exchange for the debt instrument.

For rules relating to the determination of present value, see § 1.1274–5.

(2) *Examples.* The provisions of paragraph (c) of this section may be illustrated by the following examples:

Example (1). Assume that a debt instrument issued in consideration for the sale of nonpublicly traded property calls for a single payment of $12,100,000 due in two years ($10,000,000 principal and $2,100,000 interest payment). Assume that an annual compounding period is selected. Further, assume that the test rate of interest based on semiannual compounding is 10 percent. The test rate of interest based on an annual compounding period equivalent to 10 percent, compounded semiannually, is 10.25 percent. Since the debt instrument does not call for a fixed rate of interest no lower than the test rate of interest for its entire term, the debt instrument has adequate stated interest if the stated principal amount is less than or equal to the testing amount. The present value of the payment of $12,100,000 (discounted at 10.25 percent, compounded annually) is equal to $9,954,699.95. Thus, since the testing amount is less than the stated principal amount of $10,000,000, the debt instrument does not provide for adequate stated interest.

For the debt instrument to provide for adequate stated interest, the debt instrument must call for a payment of at least $12,155,062.50 at maturity ($10,000,000 principal and $2,155,062.50 interest payment).

Example (2). (i) On January 1, 1986, A sells B nonpublicly traded property for a stated purchase price of $3,500,000. In consideration for the sale, B makes a down payment of $500,000 and issues a 10-year debt instrument with a stated principal amount of $3,000,000. The debt instrument calls for no interest in the first two years and interest at a rate of 15 percent payable annually over the remaining 8 years of the debt instrument. The first interest payment of $450,000 is due on December 31, 1988, and the last such payment is due on December 31, 1995, together with the $3,000,000 payment of principal. Assume that the test rate of interest applicable to the debt instrument is 10.5 percent, compounded annually.

(ii) Since the debt instrument does not call for a fixed rate of interest no lower than the test rate of interest for its entire term, the debt instrument has adequate stated interest if the stated principal amount is less than or equal to the testing amount. To compute the testing amount, all payments due under the debt instrument must be discounted at 10.5 percent, compounded annually, as follows:

(A) The present value of the $3,000,000 principal payment payable on December 31, 1995, is $1,105,347, determined as follows:

$$\$1,105,347 = \frac{\$3,000,000}{(1+.105/1)^{10}}$$

(B)(1) The present value of the eight interest payments of $450,000 as of January 1, 1988, (the interim date) is $2,357,635, determined as follows:

$$\$2,357,635 = \$450,000 \times \frac{1-(1+.105/1)^{-8}}{(.105/1)}$$

(2) The present value of this interim amount as of the January 1, 1986, the computation date, is $1,930,865, determined as follows:

$$\$1,930,865 = \frac{\$2,357,635}{(1+.105/1)^{2}}$$

(iii) Thus, the testing amount (that is, the total present value of all payments due under the debt instrument) is $3,036,212 ($1,105,347 + $1,930,865). Since the stated principal amount is less than the testing amount, the debt instrument provides for adequate stated interest. However, since the debt instrument does not call for interest at a constant rate over its entire term, it is subject to section 1274. For the treatment of this debt instrument under section 1272 and the regulations thereunder, see § 1.1272–1(k) example (9).

Example (3). In a transaction that is a potentially abusive situation, nonpublicly traded property is sold for a $1,000,000 down payment and a debt instrument with a stated principal amount of $7,000,000. The debt instrument calls for annual interest payments at 11 percent, the test rate of interest applicable to the debt instrument. The fair market value of the property is $7,000,000. Since the debt instrument is involved in a potentially abusive situation, the debt instrument is tested for adequate stated interest by determining whether the stated principal amount is less than or equal to the testing amount. Thus, the debt instrument does not provide for adequate stated interest because the stated principal amount of the debt instrument ($7,000,000) exceeds the testing amount ($6,000,000), the fair market value of the property reduced by the amount of the down payment.

(d) *Treatment of debt instruments calling for variable rate of interest or contingent interest*—(1) *Variable rates of interest based on an index*—(1) *In general.* Except as provided in paragraph (d)(1) (ii) and (iii) of this section, a variable rate debt instrument (within the meaning of § 1.1275–5) shall be treated for purposes of determining whether the debt instrument provides for adequate stated interest as if the rate of interest determined under the index were a fixed rate equal to the rate of interest determined under the index as of the date when the test rate of interest is determined (within the meaning of §1.1274–6(e)). Thus, for any period in which interest is payable at a rate determined under the index, the rate of interest fixed by the index as of the date the test rate of interest is determined is treated for purposes of paragraph (b) of this section as the stated rate of interest, and is used to determine the amount of any stated interest payment for purposes of paragraph (c) of this section.

(ii) *Limitation on inceases in rate.* In the case of a debt instrument that limits the number of percentage or basis points by which the rate of interest can vary from one period to the next—

(A) Paragraph (d)(1)(i) of this section shall apply only if, for each period, the limitation permits the rate of interest to increase by at least as many percentage or basis points as such rate is permitted to decrease; and

(B) Section 1.1274–6(a)(2) shall not apply if, by reason of such limitation, the number of percentage points by which the rate (based on annual compounding) can increase for any period is less than 1/12 of the number of months in the adjustment interval preceding such period.

(iii) *Ceiling on variable rate of interest.* Paragraph (d)(1)(i) of this section shall not apply to any debt instrument that places a ceiling on the maximum rate of interest payable under the debt instrument unless—

(A) The excess of the rate initially fixed by the index over the test rate of interest plus the excess of the maximum rate permitted by the ceiling over the test rate is at least equal to 5 percentage points; and

(B) In the case of a debt instrument with a term that exceeds 3 years, the maximum rate permitted by the ceiling is at least equal to the test rate of interest determined without regard to § 1.1274–6(a)(2) plus the difference between such rate and the actual test rate of interest.

(iv) *Treatment of payment if variable rate of interest rules do not apply.* If paragraph (d)(1)(i) of this section does not apply to a debt instrument, variable payments of interest under the debt instrument are contingent payments of interest subject to the rules of § 1.1275–4, but only to the extent such variable payments exceed the minimum payments of interest permitted under the debt instrument. For this purpose, the minimum payment of interest permitted under the debt instrument for any period shall be determined by taking into account any floor on the minimum rate of interest payable under the debt instrument and, in the case of a debt instrument described in paragraph (d)(1)(ii) of this section, the maximum permissible decrease in the interest rate for each period during the term of the debt instrument.

(v) *Examples.* The provisions of paragraph (d)(1) of this section may be further illustrated by the following examples:

Example (1). On January 1, 1986, A sells B nonpublicly traded property. In partial consideration for the sale, B issues a debt instrument in the principal amount of $1,000,000 payable in 5 years. The debt instrument calls for interest payable monthly at a rate of one percentage point above the average prime lending rate of a major bank for the month proceeding the month of the interest payment. Thus, the debt instrument is a variable rate debt instrument within the meaning of § 1.1275–5. Assume that the test rate of interest applicable to the debt instrument is 11.5 percent, compounded monthly. Further, assume that on the date the test rate of interest is determined, one percentage point above the prime lending rate of the designated bank is 12.5 percent. Since the test rate of interest is 11.5 percent, compounded monthly, the debt instrument provides for adequate stated interest.

Example (2). (i) On July 1, 1987, A sells B nonpublicly traded property for a stated purchase price of $5,000,000. In consideration for the sale, B makes a $1,000,000 down payment, and issues a debt instrument calling for a single payment of principal of $4,000,000 due in 10 years. Interest on a debt instrument is payable semiannually on December 31 and June 30 of each year until June 30, 1997. For the first semiannual period, interest is payable at a rate of 9 percent. For subsequent semiannual periods, interest is payable at a rate equal to 3 percentage points above the yield on 6-month Treasury bills for the midpoint of the semiannual period of the interest payment, except that the interest rate cannot increase or decrease by more than one percentage point from the rate payable in the preceding semiannual period. Assume that as of the date the interest rate is determined, the yield on 6-month Treasury bills is 10 percent, compounded semiannually. Further, assume that the Federal short-term rate is 12 percent, compounded semiannually.

(ii) The debt instrument is tested for adequate stated interest by assuming that the index provided in the instrument will remain fixed at the 13 percent rate in effect as of the date the interest rate is determined. Based on this assumption, interest would be payable on the debt instrument as follows:

Semiannual period	Interest rate (percent)	Interest amount
1	9	$180,000
2	10	200,000
3	11	220,000
4	12	240,000
5–20	13	260,000

The testing amount, the sum of the present values (using a discount rate of 12 percent, compounded semiannually) of the assumed interest payments and of the $4,000,000 principal payment due at the end of year 10, is $4,051,100. Since the stated principal amount of $4,000,000 is less than the testing amount, the debt instrument provides for adequate stated interest. Since the interest rate limitation permits rate increases of at least 1 percentage point for each annual adjustment interval, the applicable Federal rate with respect to the debt instrument is determined under § 1.274–6 (a)(2), even though the initial interest rate is fixed at a level below the rate established by the index. Thus, the applicable Federal rate is the Federal short-term rate.

Example (3). On July 1, 1986, A sells nonpublicly traded property to B for $3,000,000. In partial consideration for the sale, B issues a debt instrument that calls for payments of $1,500,000 on July 1, 1989, and July 1, 1992, plus annual interest payments on the outstanding loan balance on July 1 of each year (beginning on July 1, 1987) at 90 percent of the prime rate of a local bank on June 15 of the year of the payment. The debt instrument provides, however, that the rate determined with reference to the bank's prime rate cannot increase or decrease from one year to the next by more than 1 percentage point (100 basis points). Paragraph (d)(l)(i) of this section applies to the debt instrument because the interest rate limitation provided in the debt instrument permits interest rate increases by at least as many percentage points as it permits interest rate decreases. In addition, since the debt instrument permits at least one percentage point increase for each annual adjustment interval, the applicable Federal rate with respect to the debt instrument is determined under § 1.1274–6(a)(2). Thus, the applicable Federal rate is the Federal short-term rate.

Example (4). The facts are the same as in example (3), except that the limitation on the variable rate permits only a one-half percentage point (50 basis point) increase or decrease in the interest rate for each one year adjustment period. Paragraph (d)(l)(i) applies to the debt instrument. However, since the limitation on increases in the interest rate does not permit at least a one percentage point adjustment for each annual adjustment interval, the applicable Federal rate with respect to the debt instrument is determined without regard to § 1.1274–6(a)(2). Thus, the applicable Federal rate is the Federal mid-term rate.

Example (5). The facts are the same as in example (3), except that the limitation on the variable rate applies only to increases in the interest rate. Paragraph (d)(1)(i) of this section does not apply to the debt instrument because the limitation does not permit the interest rate to increase by at least as many percentage points as it permits the interest rate to decrease. Thus, the variable payments of interest are treated in accordance with the rules of paragraph (d)(l)(iv) of this section.

Example (6). On July 1, 1987, A sells nonpublicly traded property to B for $11,000,000. Assume that as the debt instrument is determined, the Federal short-term rate is 10 percent and the Federal long-term rate is 12 percent. In partial consideration for the sale, B issues a debt instrument that calls for payments of $1,000,000 on July 1, 1988, and on each subsequent July 1 until July 1, 1987. Interest on the outstanding principal balance is payable on July 1 of each year at the Federal short-term rate of June of the same year. The debt instrument provides, however, that the interest rate cannot rise above 15 percent. The ceiling provided in the debt instrument satisfies paragraph (d)(l)(iii) of this section because (i) the excess of the rate initially fixed by the index over the test rate (0 percentage points) plus the excess of the maximum rate permitted by the ceiling over the test (5 percentage points) is at least 5 percentage points, and (ii) the maximum rate permitted by the ceiling (15 percent) is greater than the sum of the Federal long-term rate (12 percent) and the difference between that rate and the Federal short-term rate (2-percent). Thus, paragraph (d) (l) (i) of this section applies to this debt instrument.

Example (7). The facts are the same as in example (6), except that the debt instrument calls for interest at a rate equal to 110 percent of the Federal short-term rate for June of the same year and the ceiling specified in the debt instrument is 14 percent. This debt instrument satisfies paragraph (d)(l)(iii) of this section because (i) the excess of the rate initially fixed by the index over the test rate (1 percentage point) plus the excess of the maximum rate permitted by the cap over the test rate (4 percentage points) is at least 5 percentage points, and (ii) the maximum rate permitted by the ceiling (14 percent) is at least equal to the sum of the Federal long-term rate and the difference between such rate and the Federal short-term difference between such rate and the Federal short-term rate. Thus, paragraph (d)(l)(i) of this section applies to the debt instrument.

Example (8). The facts are the same as in example (7), except that the Federal long-term rate is 13 percent. Although the excess of the rate initially fixed by the index over the test rate plus the excess of the maximum rate permitted by the cap over the test rate is at least 5 percentage points, the debt instrument does not satisfy paragraph (d)(1)(iii) of this section because the maximum rate permitted by the ceiling (14 percent) is less than the sum of the Federal long-term rate (13 percent) and the difference between such rate and the Federal short-term rate (3 percent). Thus, paragraph (d)(1)(i) does not apply to this debt instrument and the variable payments of interest are treated in accordance with the rules of paragraph (d)(1)(iv) of this section.

(2) *Contingent payments of interest*—(i) *General rule.* Except as provided in paragraph (d)(2)(ii) of this section, contingent payments of interest are not taken into account in determining whether a debt instrument provides for adequate stated interest.
For additional rules relating to contingent payments, see § 1.1275-4.

(ii) *Special rule.* A debt instrument provides for adequate stated interest if all or part of the contingent payments of interest provided for in the debt instrument are of a nature described in paragraph (d)(2)(iii), and the debt instrument meets the requirements of paragraph (d)(2)(iv) of this section.

(iii) *Nature of contingent interest taken into account in determining adequate stated interest.* Paragraph (d)(2)(ii) of this section applies only to payments of contingent interest if the payments are conditioned on a return from the exploitation of the property acquired for the debt instrument. Such contingent interest payments include payments conditioned on profits, sales, rents, production, or royalties from the property acquired for the debt instrument.

(iv) *Contingent interest as adequate stated interest.* (A) *In general.* A debt instrument given in consideration for property that does not include any recovery property (within the meaning of section 168(c)(1)) or any property described in section 1221(1) (relating to stock in trade, inventories, and other property held for sale to customers) provides for adequate stated interest if—

(*1*) The debt instrument would satisfy paragraph (b) or (c) of this section (taking into account the rule of paragraph (d)(1) of this section) at a test rate of interest equal to 80 percent of the test rate applicable to the debt instrument, and

(*2*) It is reasonable to expect (as of the date the test rate of interest is determined) that contingent payments of interest described in paragraph (d)(2)(iii) will raise the total yield on the debt instrument to at least the test rate of interest applicable to the debt instrument.

(B) *Depreciable or inventoriable property.* A debt instrument given in consideration for property that includes any recovery property or any property described in section 1221(1) provides for adequate stated interest if—

(*1*) The debt instrument satisfies the requirements of paragraph (d)(2)(iv)(A) of this section, and

(*2*) The term of the debt instrument does not exceed 12 years (4 years in the case of a sale or exchange that includes any 3-year or 5-year property (within the meaning of section 168(c)), or any property described in section 1221(1)).

(C) *Entity look-through rule.* For purposes of paragraph (d)(2)(iv) of this section, the purchase of an interest in an entity shall be treated as a purchase of the underlying assets of the entity if the bases of the assets are determined, in whole or in part, by reference to the amount paid for such interest. If the entity owns any recovery property or property described in section 1221(1), paragraph (d)(2)(iv)(B) of this section shall apply even with respect to that portion of the purchase price attributable to nonrecovery property that is not described in section 1221(1). For example, if one corporation purchases stock of another corporation owning nonrecovery property that is not described in section 1221(1) and at least one item of 3-year or 5-year property and makes an election under section 338 (relating to certain stock purchases treated as asset acquisitions), the stock purchase shall be treated as a purchase of 3-year or 5-year property for purposes of paragraph (d)(2)(iv)(B)(*2*) of this section.

(v) *Examples.* The provisions of paragraph (d)(2) of this section may be further illustrated by the following examples:

Example (1). (i) On January 1, 1986, A sells a newly-constructed office building to B for $1,000,000 in cash and a debt instrument with a face amount of $5,000,000. The debt instrument provides for a payment of $5,000,000 on December 31, 1995, plus an interest payment of $400,000 on December 31 of each year. In addition, the debt instrument provides for an additional payment on December 31 of each year equal to 5 percent of the gross rentals derived from the property during the first eleven months of the year. Assume that the test rate of interest (based on annual compounding) applicable to the sale is 10 percent. Thus, under paragraph (d)(2)(i) of this section, the debt instrument does not provide for adequate stated interest.

(ii) Under paragraph (d)(2)(iii) of this section, however, the debt instrument will be deemed to provide adequate interest if (A) the debt instrument states fixed interest at a rate at least equal to 8 percent, (B) it is reasonable to expect the contingent interest will raise the total yield on the debt instrument to at least 10 percent and (C) the term of the debt instrument does not exceed 12 years. The debt instrument satisfies requirements (A) and (C) on its face. It is reasonable to expect the contingent payments to raise the yield of the debt instrument to 10 percent, the debt instrument is deemed to state adequate interest.

(iii) Based on the fair market value of the building, the terms being offered for comparable office space in the vicinity of the building and expectations (based on previous experience with respect to office buildings in the area) as to future vacancy rates, future rentals and initial delays in leasing space in the building, the issuer and holder expect that the contingent payment provisions will result in the following additional payments under the debt instrument:

1986	$30,000
1987	80,000
1988	115,000
1989	125,000
1990	130,000
1991	135,000
1992	140,000
1993	145,000
1994	150,000
1995	155,000

Assuming the contingent payment provision results in these additional payments, the yield of the debt instrument will be 10.23 percent. Because the expectations of the issuer and holder as to future payments under the contingent payment provision are based on an analysis of relevant existing information and reasonable estimates of future events, it is reasonable to expect that the contingent payments will raise the yield on the debt instrument to a rate at least equal to the test rate of interest (10 percent). Thus, under paragraph (d)(2)(iii) of this section, this debt instrument provides for adequate interest.

Example (2). On January 1, 1986, A sells 3-year property to B that is to be held for rent. In partial consideration for the sale, B issues a debt instrument with a term of 3 years in the principal amount of $700,000 calling for fixed payments of interest at 8 percent payable annually, and contingent payments of interest payable annually in an amount equal to 3 percent of the gross rents from the property. Assume that the test rate of interest is 9.2 percent, compounded annually. Further, assume that the contingent payments of interest are such that it is reasonable to expect that the contingent interest payments will raise the total yield on the debt instrument to at least 9.2 percent, compounded annually (taking into account the 8 percent fixed interest payments). Thus, the debt instrument provides for adequate stated interest because the debt instrument calls for stated interest payable at a rate at least equal to 80 percent of the test rate (7.36 percent), and the term of the debt instrument does not exceed 4 years (the appropriate measuring period for a debt instrument given in consideration for the sale of 3-year property).

Example (3). The facts are the same as in example (2), except that the terms of the debt instrument is 5 years. Since, the term of the debt instrument exceeds 4 years and since considering only the fixed payments of interest, the debt instrument does not call for interest at a rate at least equal to the test rate of 9.2 percent, compounded annually, it does not provide for adequate stated interest.

Example (4). The facts are the same as in example (2), except that the rental property is depreciable real property that is 19-year property (within the meaning of section 168 (c)(2)(D)), and the term of the debt instrument is 10 years. The debt instrument provides for adequate stated interest because it calls for stated interest at a rate at least equal to 80 percent of the test rate of interest and the term of the debt instrument does not exceed 12 years.

(e) *Determination of test rate of interest*—(1) *Sales or exchanges occurring after June 30, 1985*—(i) *General rule.* Except as otherwise provided in paragraph (e) of this section, if a sale or exchange occurs after June 30, 1985, the test rate of interest is 100 percent of the applicable Federal rate based on semiannual compounding or an equivalent rate based on an appropriate compounding period (for example, one year, a quarter, or a month). For rules relating to the appropriate compounding period, see paragraph (e)(3) of this section. For rules relating to the determination of the applicable Federal rate, see § 1.1274–6.

(ii) *Qualified debt instruments.* In the case of a qualified debt instrument as defined in § 1.1274A–1(b) the test rate of interest is the lower of—

(*A*) 100 percent of the applicable Federal rate (based on an appropriate compounding period), or

(*B*) 9 percent, compounded semiannually, or an equivalent rate based on an appropriate compounding period.

The rates equivalent to 9 percent, compounded semiannually, for annual, quarterly and monthly compounding periods are as follows:

Compounding period	Equivalent rate
Annual	9.20 percent
Quarterly	8.90 percent
Monthly	8.84 percent

(iii) *Sale-leaseback transactions.* In the case of a debt instrument given in consideration for the sale or exchange of property all or a portion of which, pursuant to a plan, is leased by the transferor of the property or a person related to the transferor (within the meaning of section 168(e)(4)(D)) after the sale or exchange, the test rate of interest is 110 percent of the applicable Federal rate.

(2) *Sales or exchanges occurring before July 1, 1985*—(i) *General rule*—(A) *In general.* In the case of any sale or exchange of property (other than new section 38 property within the meaning of section 48(b) and the regulations thereunder) occurring after December 31, 1984, and before July 1, 1985, the test rate of interest is—

(*1*) If the sale or exchange involves a borrowed amount (within the meaning of paragraph (e)(2)(i)(C) of this section) that does not exceed $2,000,000, 9 percent, compounded semiannually, or an equivalent rate based on an appropriate compounding period, or

(*2*) If the sale or exchange involves a borrowed amount in excess of $2,000,000—

(*i*) The percent set forth in paragraph (e)(i)(A)(1) of this section, plus

(ii) The percent applicable to the borrowed amount in excess of $2,000,000.

(B) *The percent applicable to a borrowed amount in excess of $2,000,000.* The percent applicable to the borrowed amount in excess of $2,000,000 is equal to—

(*1*) The excess of 110 percent of the applicable Federal rate (based on the appropriate compounding period) over the percent set forth in paragraph (e)(2)(i)(A)(1) of this section, multiplied by

(*2*) A fraction, the numerator of which is the excess of the borrowed amount over $2,000,000, and the denominator of which is the borrowed amount.

(C) *Meaning of borrowed amount.* For purposes of paragraph (e)(2)(i) of this section, the term "borrowed amount" means the stated principal amount of a debt instrument as that term is defined in § 1.1274–2(b).

(ii) *New section 38 property.* In the case of any sale or exchange of new section 38 property (within the meaning of section 48(b) and the regulations thereunder) occurring after December 31, 1984, and before July 1, 1985, the test rate of interest is 110 percent of the applicable Federal rate.

(iii) *Special rules for sales or exchanges calling for contingent principal.* If some or all the consideration involved in a sale or exchange taking place before July 1, 1985, consists of contingent payments of principal, then the test rate of interest shall be determined as follows. A stated principal amount shall first be determined by assuming that no contingent principal payments will be made. The test rate of interest for noncontingent payments of principal is then determined in accordance with paragraph (e)(2)(i)(A) of this section. This test rate of interest as so determined shall apply to all fixed payments under the debt instrument. If the fixed stated principal amount is not less than $2,000,000, the test rate of interest that applies to any contingent payment shall be 110 percent of the applicable Federal rate. If $2,000,000 exceeds the fixed stated principal amount, then the test rate of interest that applies to the contingent payments shall be 9 percent, compounded semiannually (or an equivalent rate based on an appropriate compounding period) until the stated principal amount attributable to contingent payments equals this excess. As of the time the stated principal amount equals this excess, the test rate of interest applicable to any subsequent contingent payment is 110 percent of the applicable Federal rate with respect to the contingent payment. For additional rules relating to contingent payments, see § 1.1275–4.

(3) *Selection of the appropriate compounding period*—(i) *In general.* The test rate of interest applicable to a debt instrument must be based on an appropriate compounding period. The longer the compounding period, the higher the annual stated rate of interest. For example, a rate based on annual compounding is slightly higher than the equivalent rate based on semiannual compounding, which in turn is slightly higher than the equivalent rate based on quarterly compounding, monthly compounding, etc.

(ii) *Debt instruments calling for more than one payment or compounding date*—(A) *Regular payment or compounding at intervals of one year or less.* If a debt instrument calls for more than one payment or compounding date (other than the issue date) and all dates on which an amount is either paid or compounded under the debt instrument occur at regular intervals of one year or less, the appropriate compounding period is such interval even if the interval between the issue date and the first payment or compounding date after the issue date or the interval between the maturity date and the preceding payment or compounding date differs from the interval between other payment or compounding dates.

(B) *Irregular payment or compounding; intervals of more than one year.* If a debt instrument calls for more than one payment or compounding date (other than the issue date) and all dates on which an amount is either paid or compounded do not occur at regular intervals of one year or less, the appropriate compounding period is the longest period of not more than one year such that all intervals consist of a whole number of compounding periods. For purposes of this paragraph (e)(3)(ii)(B), the interval between the issue date and the first payment or compounding date after the issue date and the interval between the maturity date and the preceding payment or compounding date are not taken into account unless the debt instrument calls for only one payment or compounding date between the issue date and the maturity date.

(iii) *Debt instruments calling for a single payment.* If a debt instrument calls for a single payment at maturity and for no other payment or compounding dates (other than the issue date), any compounding period of not more than one year may be selected.

(4) *Conversion of a test rate to appropriate compounding period*—(i) *In general.* If the test rate of interest based on an appropriate compounding period (as determined under paragraph (e)(3) of this section) is not provided under paragraph (e) (1) or (2) of this section (as applicable) or § 1.1274–6 (relating to the applicable Federal rate), or if a test rate accurate to more than 2 decimal places is desired by both parties to the transaction, the test rate of interest shall be determined by first determining a test rate of interest based on semiannual compounding, then converting that rate to a rate based on an appropriate compounding period using the procedures prescribed in paragraph (e)(4) (ii) or (iii) of this section (as applicable).

(ii) *Conversion of semiannual test rate of interest to an equivalent rate based on annual compounding.* A test rate of interest based on annual compounding that is equivalent to the test rate based on semiannual compounding may be determined by the application of the following formula:

$r = i + i^2/4$

In which:

r = The equivalent rate of interest based on annual compounding expressed as a decimal

i = The test rate of interest based on semiannual compounding expressed as a decimal

For example, assume that the test rate of interest based on semiannual compounding, is exactly 10 percent. The equivalent rate based on annual compounding is 10.25 percent determined as follows:

$.1025 = .10 + [(.10)^2/4]$

(iii) *Conversion of semiannual test rate of interest to an equivalent rate based on compounding more frequently than semiannually.* A test rate of interest based on compounding more frequently than semiannually that is equivalent to the test rate based on semiannual compounding may be determined by the application of the following formula:

$r = k[(1 + i/2)^{2/k} - 1]$

In which:

r = The equivalent rate based on compounding more frequently than semiannually expressed as a decimal

i = The test rate based on semiannual compounding expressed as a decimal

k = The number of compounding periods in a year on which the annual equivalent rate is to be based (for example, 12, if the equivalent rate is to be based on monthly compounding)

For example, assume that the test rate of interest based on semiannual compounding is exactly 10 percent. The equivalent rate based on quarterly compounding would be 9.8780308 percent determined as follows:

$.098780308 = 4[(1 + .10/2)^{2/4} - 1]$

The equivalent rate based on monthly compounding would be 9.7978152 percent determined as follows:

$.097978152 = 12[(1 + .10/2)^{2/12} - 1]$

The equivalent rate based on semimonthly compounding would be 9.78 percent (accurate to two decimal places) determined as follows:

$.0978 = 24[(1 + .10/2)^{2/24} - 1]$

(5) *Examples.* The provisions of paragraph (e) of this section may be illustrated by the following examples:

Example (1). On January 1, 1985, A sells nonpublicly traded property (other than new section 38 property) to B for $2,300,000. In consideration for the sale, B makes a down payment of $300,000 and issues a debt instrument due in 3 years with a stated principal amount of $2,000,000 calling for annual payments of interest. Thus, the appropriate compounding period for the test rate is annual. The test applicable to the debt instrument is 9.20 percent, compounded annually, since the sale occurred before July 1, 1985, and the borrowed amount (the stated principal amount of the debt instrument) does not exceed $2,000,000.

Example (2). On January 1, 1986, A sells nonpublicly traded property (other than new section 38 property) to B for $3,500,000. In consideration for the sale, B makes a $1,000,000 down payment and issues a debt instrument with a stated principal amount of $2,500,000 due in 10 years and that calls for twenty semiannual payments of interest. Assume that the debt instrument is a qualified debt instrument within the meaning is the lower of 100 percent of the applicable of § 1.1274A–1(b). Thus, the test rate of interest Federal rate or 9 percent, compounded semiannually. Assume that 100 percent of the applicable Federal rate (the Federal long-term rate) is 9.69 percent, compounded semiannually. Thus, the test rate of interest is 9 percent, compounded semiannually.

Example (3). The facts are the same as in example (2), except that the sale takes place on January 1, 1985. On that date, 110 percent of the Federal long-term rate was 12.74, compounded semiannually. Thus, the excess of 110 percent of the applicable Federal rate over 9 percent is 3.74 percent. Since the sale occurred before July 1, 1985, the test rate of interest applicable to the debt instrument is 9.75 percent, compounded semiannually, that is, 9 percent plus the 0.75 percent applicable to the borrowed amount in excess of $2,000,000 ($500,000/$2,500,000 × 3.74 (percent) = 0.75 percent).

Example (4). (i) On April 1, 1985, A sells rental property to B. In consideration for the sale, B issues a debt instrument calling for annual payments of $500,000 for each of the next five years payable on March 31, 1986, through March 31, 1990, plus contingent payments equal to 2 percent of gross rents from the property. The debt instrument has an internal interest clause that calls for each payment (including the noncontingent payments) to be characterized as interest in the smallest amount that would constitute adequate stated interest within the meaning of section 1274. The test rate of interest is determined as follows:

(ii) The borrowed amount (the stated principal amount of the debt instrument) is first determined by assuming that contingent payments will not be made. Pursuant to the internal interest clause, the borrowed amount attributable to the fixed payments is the present value of the 5 payments of $500,000 determined tentatively by using a test rate of 9.20 percent, compounded annually. At that discount rate of interest, the present value of the 5 payments is $1,934,775. Since $2,000,000 exceeds the fixed borrowed amount, the test rate of interest that applies to the fixed payments is 9.20 percent and the tentative calculation of the borrowed amount may be used. (If the tentative calculation of the borrowed amount exceeded $2,000,000, an interrelated calculation would be necessary to compute the actual test rate and borrowed amount.)

(iii) Assume that a contingent payment in the amount of $50,000 is made on March 31, 1986. Pursuant to the internal interest clause, the tentative borrowed amount attributable to that payment is $45,788, the present value of the payment determined by using a discount rate of interest of 9.2 percent. Since this amount is less than $65,225 (the excess of $2,000,000 over the fixed stated principal amount), the test rate applicable to the contingent payment is 9.2 percent, compounded annually and the tentative calculation of the borrowed amount may be used. Thus, the payment is treated as a payment of principal of $45,788 (which gives the buyer additional basis of this amount) and a payment of interest of $4,212.

(iv) Assume that a contingent payment of $30,000 is made on March 31, 1987. Using a discount rate of interest of 9.20 percent, compounded annually, the present value of the payment is $25,158. This amount exceeds $19,437 (the excess of $2,000,000 over the sum of the stated principal amount attributable to the fixed payments and the stated principal amount attributable to the first contingent payment). Thus, the test rate of interest applicable to the payment is 9.20 percent, compounded annually, only with respect to that portion of the payment having a present value of $19,437, and 110 percent of the applicable Federal rate with respect to the remaining portion of the payment (that is, the total amount of the payment less the portion of the payment having a present value of $19,437). The portion of the contingent payment having a present value of $19,437 is $23,178. Thus, the remaining $6,822 of the payment is subject to 110 percent of the applicable Federal rate. One hundred ten percent of the applicable Federal rate (the Federal short-term rate) in effect on April 1, 1985, was 11.43 percent, compounded annually. At the rate of interest pursuant to the internal interest clause, $5,494 of the payment is treated as a payment of principal, and $1,328 of the payment is treated as interest.

(v) Since, as of March 31, 1987, the stated principal amount involved in the transaction is in excess of $2,000,000, all subsequent contingent payments will be subject to a test rate of interest equal to 110 percent of the applicable Federal rate.

§ 1.1274-4 Debt instruments without adequate stated interest.

(a) *In general.* If section 1274 applies to a debt instrument because it does not provide for adequate stated interest (within the meaning of § 1.1274-3), the issue price of the debt instrument is the imputed principal amount of the debt instrument. Except as provided in paragraph (g) of this section, the imputed principal amount of a debt instrument is the sum of the present values of all payments (including interest) due under the debt instrument, determined by using a discount rate equal to the imputed rate of interest as determined under paragraph (b) of this section. For rules relating to the determination of the present value of a payment, see § 1.1274-5.

(b) *Determination of imputed rate of interest*—(1) *General rule.* Except as provided in paragraphs (b) (2) and (3) of this section, the imputed rate of interest applicable to the debt instrument is the same as the test rate of interest as determined in § 1.1274-3(e).

(2) *Special rate for certain sales or exchanges occurring before July 1, 1985*—(i) *In general.* If the test rate of interest applicable to a debt instrument is prescribed in § 1.1274-3(e)(2)(i), the imputed rate of interest is—

(A) If the sale or exchange involves a borrowed amount (as defined in § 1.1274-3(e)(2)(i)(C)) that does not exceed $2,000,000—

(1) 10.00 percent, compounded semiannually, or

(2) An equivalent rate based on an appropriate compounding period.

The rates equivalent to 10.00 percent, compounded semiannually, for annual, quarterly and monthly compounding periods are as follows:

Compounding period	Equivalent rate
Annual	10.25 percent
Quarterly	9.88 percent
Monthly	9.80 percent

(B) If the sale or exchange involves a borrowed amount that exceeds $2,000,000—

(1) The percent determined under paragraph (b)(2)(i)(A) of this section, plus

(2) The percent applicable to the borrowed amount in excess of $2,000,000.

(ii) *Percent applicable to the borrowed amount in excess of $2,000,000.* The percent applicable to the borrowed amount in excess of $2,000,000 is equal to—

(A) The excess of 120 percent of the applicable Federal rate (based on the appropriate compounding period) over the percent determined under paragraph (b)(2)(i)(A) of this section, multiplied by

(B) A fraction, the numerator of which is the excess of the borrowed amount over $2,000,000 and the denominator of which is the borrowed amount.

(iii) *Sales calling for contingent principal.* If some or all the consideration involved in a sale or exchange taking place before July 1, 1985, consists of contingent payments of principal, then in determining the imputed rate of interest under paragraph (b)(2) of this section, the rules of § 1.1274-3(e)(2)(iii) shall apply, except that 120 percent shall be substituted for 110 percent in each place it appears.

(3) *Rate applicable to sales or exchanges of new section 38 property occurring after December 31, 1984, and before July 1, 1985.* The imputed rate of interest applicable to a sale or exchange of new section 38 property (within the meaning of section 48(b) and the regulations thereunder) occurring after December 31, 1984, and before July 1, 1985, is 120 percent of the applicable Federal rate.

(c) *Appropriate compounding period; conversion of imputed rate to appropriate compounding period.* The imputed rate of interest must be based on an appropriate compounding period. An appropriate compounding period depends on the intervals between payments or compounding of interest and shall be determined in accordance with the rules of § 1.1274-3(e)(3) except that if a debt instrument calls for a single payment at maturity and for no other payment or compounding dates, the appropriate compounding periods are the six-month periods (or the shorter period from the issue date of the debt instrument) that end on the day in the calendar year that corresponds either to the maturity date or to the date that is six months before the maturity date. Rules analogous to those set forth in § 1.1274-3(e)(4) shall also apply to convert an imputed rate to a rate based on an appropriate compounding period if not otherwise provided, or to a rate accurate to more than two decimal places if such accuracy is desired by both parties to the transaction.

(d) *Determining imputed principal amount with short period.* In determining the imputed principal amount of a debt instrument when there is a short period, the exact method as prescribed in § 1.1274-5(d)(2)(ii) shall be used to discount a payment or a stream of payments for the short period. The exact method shall also be used for purposes of determining the amount of original issue discount includible under section 1272 for the short period (see § 1272-1(c)(2)(ii)(B)). In addition, for purposes of determining the fraction f with respect to a short period, a convention that assumes that a year consists of 12 30-day months shall be used.

(e) *Treatment of variable rate of interest in determining imputed principal amount.* If § 1.1274-3(d)(1) (relating to payments of interest based on an objective interest index) applies to a debt instrument, the rate of interest fixed by the index as of the date the imputed rate of interest is determined is treated for purposes of determining the imputed principal amound of the debt instrument as the stated rate of interest. If § 1.1274-3(d)(1) does not apply to a debt instrument (either because the debt instrument is not a variable rate debt instrument (within the meaning of § 1.1275-5) or, because, for example, the variable rate debt instrument places a nonqualifying ceiling on the variable rate), the payments of interest shall be treated as contingent payments to the extent provided in § 1.1274-3(d)(1)(iv) and shall be subject to the provisions of paragraph (f) of this section and § 1.1275-4.

(f) *Treatment of contingent payments in determining imputed principal amount.* In the case of a debt instrument calling for any contingent payment, the imputed principal amount of the debt instrument shall be determined solely by reference to the noncontingent payments. Thus, the imputed principal amount of a debt instrument calling for contingent payments is the present value of all noncontingent payments. For additional rules relating to contingent payments, see § 1.1275-4.

(g) *Imputed principal amount of a debt instrument equal to fair market value in potentially abusive situations*—(1) *In* *general.* In the case of any potentially abusive situation, the imputed principal amount of a debt instrument issued in consideration for the sale or exchange of property shall be the fair market value of the property reduced by the fair market value of any consideration, other than the debt instrument (for example, a down payment) given in consideration for the sale or exchange.

(2) *Potentially abusive situation defined*—(i) *In general.* For purposes of paragraph (g)(1) of this section, the term "potentially abusive situation" means—

(A) A tax shelter (as defined in section 6661(b)(2)(C)(ii)), or

(B) Any other situation having potential for tax avoidance (within the meaning of paragraph (g)(2)(ii) of this section).

(ii) *Situations having potential for tax avoidance.* For purposes of paragraph (g)(2)(i)(B) of this section, a situation having potential for tax avoidance means a situation involving—

(A) A recent sales transaction,

(B) Nonrecourse financing,

(C) Financing with a term in excess of the economic life of the property, or

(D) A sale in which the purchase price or the interest thereon is denominated in a currency other than U.S. dollar.

(iii) *Sale between related parties.* Notwithstanding paragraph (g)(2) (i) and (ii) of this section, a sale between related parties governed by § 1.1012–2 involving a situation described in paragraph (g)(2) (i) or (ii) of this section shall not be considered a potentially abusive situation. If, however, a sale of property was the subject of a recent sales transaction, the purchase price of the property in the recent sale shall be relevant in determining the value of the property for purposes of § 1.1012–2.

(h) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). (i) On April 1, 1986, A sells nonpublicly traded property to B in a transaction that is not excepted under the provisions of section 1274 (c)(3) and § 1.1274–1(b) and is not a potentially abusive situation. As part of the consideration for the sale, B issues a debt instrument calling for a $1,000,000 payment of principal due on December 31, 1995, with an interest payment of $20,000 due on June 30, 1986, and semiannual interest payments of $40,000 due at the end of each semiannual period, beginning with the period ending on December 31, 1986, and terminating with the period ending on December 31, 1995. The appropriate compounding period for the test rate is semiannual.

(ii) Assume that the debt instrument does not provide for adequate stated interest within the meaning of § 1.1274–3. Since the debt instrument does not provide for adequate stated interest, the issue price of the debt instrument is the imputed principal amount of the debt instrument. Further, assume that the imputed rate of interest at which the payments due under the debt instrument are to be discounted is 12 percent, compounded semiannually.

(iii) The present value of all the payments due under the debt instrument may be determined as follows:

(A) The payment of principal of $1,000,000 due on December 31, 1995, is due 9 years and 9 months from the computation date of April 1, 1986. Based on a semiannual compounding period, the payment is due 19 and one-half compounding periods from the computation date. Using the exact method to determine present value for the short period (one-half a compounding period) the present value of the payment is $321,022.61 determined as follows:

$$\$321{,}022.61 = \frac{\$1{,}000{,}000}{(1+.12/2)^{19.5}}$$

(B) The interest payment of $20,000 due on June 30, 1986, is due three months from the April 1, 1986, computation date. Since the compounding period is semiannual, the payment is due on a date that represents one-half a compounding period from the computation date. Using the exact method to determine the present value of the payment, the present value of the payment is $19,425.72 determined as follows:

$$\$19{,}425.72 = \frac{\$20{,}000}{(1+.12/2)^{.5}}$$

(C) The interest payments of $40,000 due at the end of each semiannual period beginning with the period ending December 31, 1986, and ending on December 31, 1995, from the computation date of April 1, 1986, represent of a stream of payments that continues for 19 compounding periods preceded by a short period consisting of one-half of a compounding period. Thus, the present value of the stream of payments is determined by first discounting the stream of payments for the 19 compounding periods to determine an interim amount, and then discounting that interim amount for the short period. The present value of the stream of payments, using the exact method to determine present value for the short period, is determined as follows:

(*1*) The interim amount is determined as follows:

$$\$446{,}324.66 = \$40.000 \times \frac{1-(1+.12/2)^{-19}}{(.12/2)}$$

(*2*) The present value of a single payment of $446,324.66 on June 30, 1986, as of the computation date of April 1, 1986, is determined as follows:

$$\$433{,}508.83 = \frac{\$446.324.66}{(1+.12/2)^{.5}}$$

Thus, the present value of the stream of the $40,000 interest payments on the computation date of April 1, 1986, is $433,508.83.

(iv) The imputed principal amount of the debt instrument is $773,957.16, the sum of the amounts determined under (iii) ($321,022.61 + 19,425.72 + $433,508.83).

Example (2). The facts are the same as in § 1.1274–3(c)(2), example (3). Since the debt instrument was received in a transaction that is a potentially abusive situation, the imputed principal amount of the debt instrument is $6,000,000, the fair market value of the property ($7,000,000) reduced by the amount of the down payment ($1,000,000).

§ 1.1274–5 Determination of present value.

(a) *In general.* This section prescribes rules for the determination of the present value of a payment. The present value of a payment is the amount that, if invested on the computation date at a compound rate of interest equal to the discount rate of interest, would increase in value to the amount of the future payment on the payment date. Paragraph (d) of this section prescribes formulas for determining present value. For purposes of these formulas, a compounding period must be selected, and the rate of interest at which the payment or payments are to be discounted must be based on the same compounding period. See paragraph (b) of this section for rules relating to the selection of a compounding period. The formulas are prescribed for determining the present value of a single payment or a stream of payments. A stream of payments means payments of equal amounts due at the end of each full compounding period for a specified period of time. The formulas for determining the present value of a stream of payments yield the same result as the sum of the separately computed present values of each single payment in the stream.

(b) *Compounding period: compounding period for the discount rate of interest.* To determine the present value of a payment or a stream of payments, a compounding period must be established. A compounding period is established depending on the intervals between payment or compounding dates and is determined in accordance with the rules of § 1.1274-3(e)(3), or, if applicable, § 1.1274-4(c). Whatever the compounding period, the rate of interest used to discount a payment or a stream of payments must be based on the same compounding period. For example, if the compounding period is one month, the discount rate of interest must be based on a monthly compounding period. For rules relating to the conversion of interest rates based on semiannual compounding to equivalent rates based on different compounding periods, see § 1.1274-3(e)(4).

(c) *Meaning of symbols used in formulas.* For the purposes of applying the formulas prescribed in paragraph (d) of this section, the following symbols are assigned the following meanings:

PV=The present value of a payment or a stream of payments to be made in the future.
i=The interest rate (expressed as a decimal) at which the payment, or the stream of payments, is to be discounted.
k=The number of compounding periods contained in a year.
FV=The amount of any single payment to be made in the future.
PMT=The amount of any payment that is one of a stream of equal payments to be made in the future.
n=The number of full compounding periods until a single payment is made, or for which a stream of payments continues.
f=A fraction, the numerator of which is the length of a short period (that is, a period less than a full compounding period) and the denominator of which is the length of a compounding period.

(d) *Formulas for determining present value*—(1) *Single payment; no short period.* The present value of a single payment due on a date in the future that is a whole number of compounding periods from the computation date is determined by application of the following formula:

$$PV = \frac{FV}{(1+i/k)^{n}}$$

(2) *Single payment; short period*—(i) *In general.* The present value of a single payment due on a date in the future that is not a whole number of compounding periods from the computation date (that is, a payment due on a date that marks the end of a short period or on a date that marks the end of a whole number of compounding periods preceded by a short period) is determined under either the exact method or the approximate method as prescribed in paragraph (d)(2) (ii) and (iii) of this section, or under any other reasonable method. For example, it is permissible to use monthly compounding of interest (which reflects compounding at monthly intervals with simple interest within a month).

(ii) *Exact method.* The exact method assumes daily compounding of interest. Under this method, the present value of a payment due on a date in the future that is not a whole number of compounding periods from the computation date is determined by application of the following formula:

$$PV = \frac{FV}{(1+i/k)^{n+f}}$$

If the payment is due on a date that marks the end of only a short period (that is, the payment is due on a date that is less than one whole compounding period from the computation date), the value of "n" is zero.

(iii) *Approximate method.* The approximate method assumes simple interest within a compounding period. Thus, the present value of a payment is determined by discounting the payment to the beginning of the first full compounding period, and then further discounting that amount on a simple interest basis for the short period. Under this method, the present value of a payment due on a date in the future that is not a whole number of compounding periods from the computation date is determined by application of the following formula:

$$PV = \frac{FV}{(1+fxi/k)^{n} \times [(1+fxi)/k]}$$

If the payment is due on a date that marks the end of only a short period (that is, the payment is due on a date that is less than one whole compounding period from the computation date), the value of "n" is zero and the formula is:

$$PV = \frac{FV}{(1+fxi)/k}$$

(3) *Stream of payments; no short period, payment at the end of each full compounding period.* The present value of a stream of payments due on dates in the future that mark intervals equal to full compounding periods from the computation date may be determined by application of the following formula:

$$PV = \frac{PMT \times 1-(1+i/k)^{-n}}{(i/k)}$$

(4) *Stream of payments; short period, full compounding period for which no payment is made.* If a stream of payments due on dates in the future that mark intervals equal to full compounding periods is preceded by an interval other than a full compounding period, the present value of such stream of payments is determined as follows. First, the payments are discounted for the number of full compounding periods for which the stream of payments continues to the date that begins the first such compounding period for which the stream of payments continues (the interim date), as set forth in paragraph (d)(3) of this section. Second, this interim amount is then further discounted to the computation date, as if that amount were a single payment due on the interim date.

(e) *Examples.* The provisions of this section may be further illustrated by the following examples:

Example (1). Assume that a single payment of $1,000,000 is due 15 years from the computation date. Further, assume that an annual compounding period is selected, and that the discount rate of interest based on an annual compounding period is 12 percent. Since the payment is due in 15 years and the compounding period is one year, the payment is due on a date that is 15 whole compounding periods from the computation date. The present value of the payment is $182,696.26 determined as follows:

$$\$182,696.26 = \frac{\$1,000,000}{(1+.12/1)^{15}}$$

Example (2). Assume that a single payment of $1,000,000 is due 2 years and 9 months from the computation date. Further, assume that a monthly compounding period is selected and that the discount rate of interest based on a monthly compounding period is 9 percent. Since the payment is due in 2 years and 9 months, and the compounding period is one month, the payment is due on a date that is 33 whole compounding periods from the computation date. The present value of the payment is $781,471.58 determined as follows:

$$\$781{,}471.58 = \frac{\$1{,}000{,}000}{(1+.09/12)^{33}}$$

Example (3). Assume that a single payment of $1,000,000 is due 3 years, 4 months and 15 days from the computation date. Further, assume that an annual compounding period is selected, and that the discount rate of interest is 10 percent based on an annual compounding period. Since the payment is due in 3 years, 4 months and 15 days, and the compounding period is one year, the payment is due on a date in the future that is not a whole number of compounding periods from the computation date. Thus, the payment is due on a date in the future that is preceded by three full compounding periods and a short period. Assume a convention that assumes that a year consists of 12 30-day months is adopted. Thus, the short period is equal to 135 days (four 30-day months plus 15 days). The short period is .375 of a full compounding period (135 days/360 days). Assume that the exact method is used to discount for the short period. Under the exact method, the present value of the payment is $724,936.03 determined as follows:

$$\$724{,}936.03 = \frac{\$1{,}000{,}000}{(1+.10/1)^{3\,375}}$$

Example (4). The facts are the same as in example (3), except that the approximate method is used to discount for the short period. Under the approximate method, the present value of the payment is $724,158.84 determined as follows:

$$\$724{,}158.84 = \frac{\$1{,}000{,}000}{(1+.10/1)^{3}\times[1+(.375\times.10)/1]}$$

Example (5). Assume that on the computation date, January 1, 1986, a payment schedule calls for payments of $10,000 due at the end of each of the next 5 years. Thus, the first $10,000 payment is due on January 1, 1987, and $10,000 on January 1 of each year thereafter with a final payment on January 1, 1991. The compounding period is one year. Further, assume that the discount rate of interest based on an annual compounding period is 12 percent. Since the payment schedule calls for payments due at the end of full compounding periods, the payment schedule consists of a stream of payments which continues for 5 full compounding periods. The present value of the stream of payments is $36,047.76 determined as follows:

$$\$36{,}047.76 = \$10{,}000 \times \frac{1-(1+.12/1)^{-5}}{(.12/1)}$$

Example (6). Assume that on the computation date, January 1, 1986, a payment schedule calls for payments of $1,000 for 360 months. The first payment is due on February 1, 1986, with a final payment on January 1, 2016. The compounding period is one month. Further, assume that the discount rate of interest based on a monthly compounding period is 12 percent. Since the payment schedule calls for payments due at the end of full compounding periods, the payment schedule consists of a stream of payments which continues for 360 full compounding periods. The present value of the stream of payments is $97,218.33 determined as follows:

$$\$97{,}218.33 = \$1{,}000 \times \frac{1-(1+.12/12)^{-360}}{(.12/12)}$$

Example (7). The facts are the same as in example (6), except that the computation date is November 24, 1985. The present value of the stream of payments is determined by discounting the stream to January 1, 1986, and then further discounting that interim amount for the period consisting of the full compounding period at the end of which no payment is due (December 1985) and the short period (the period beginning after November 24, 1985, and ending on December 1, 1985). In example (6), it was determined that the present value as of January 1, 1986, of this stream of payments is $97,218.33. Assume that the exact method is used to discount the stream of payments for the short period. The present value as of November 24, 1985, of the stream of payments is $96,032.55 determined as follows:

$$\$96{,}032.55 = \frac{\$97{,}218.33}{(1+.12/12)^{1\,23333}}$$

Example (8). The facts are the same as in example (7), except that the approximate method is used to discount for the short period. The present value of the stream of payments is $96,031.70 determined as follows:

$$\$96{,}031.70 = \frac{\$97{,}218.33}{(1+.12/12)^{1} \times [1+(.23333 \times .12)12]}$$

Example (9). The facts are the same as in example (7), except that the computation date is December 23, 1985. Thus, there is no full compounding period at the end of which no payment is made preceding the compounding period for which the stream of payments begins. Only a short period of seven days precedes the compounding period for which the stream of payments begins. Under the exact method, the present value of the stream of payments is $96,992.88 determined as follows:

$$\$96{,}992.88 = \frac{\$97{,}218.33}{(1+.12/12)^{.23333}}$$

Example (10). The facts are the same as in example (9), except that the approximate method is used to discount for the short period. The present value of the stream of payment is $96,992.02 determined as follows:

$$\$96{,}992.02 = \frac{\$97{,}218.33}{[1+(.23333\times.12)/12]}$$

§ 1.1274-6 Applicable Federal rate.

(a) *Applicable Federal rate defined*—(1) *In general.* Except as otherwise provided in paragraphs (a)(2) or (3) and (d) of this section, the applicable Federal rate means—

(i) The Federal short-term rate if the term of the debt instrument is not over 3 years,

(ii) The Federal mid-term rate if the term of the debt instrument is over 3 years but not over 9 years, or

(iii) The Federal long-term rate if the term of the debt instrument is over 9 years.

The Federal rates are annual rates of interest based on semiannual compounding. Nevertheless, the Commissioner may prescribe equivalent rates based on compounding periods other than a semiannual period (for example, annual compounding, quarterly compounding and monthly compounding). The Federal rates shall be published in Revenue Rulings.

(2) *Variable rate debt instruments.* Except as otherwise provided in § 1.1274-3(d)(1)(ii), in the case of a variable rate debt instrument (within the meaning of § 1.1275-5), the applicable Federal rate shall be determined by reference to the longest adjustment interval of the objective interest index rather than the term of the debt instrument. For this purpose, the period from the issue date to the first adjustment shall be treated as an adjustment interval. Thus, for example, if a debt instrument provides for a rate of interest based on the prime rate and the rate is adjusted annually, the applicable Federal rate is the Federal short-term rate. Similarly, if the rate of interest is adjustable every 5 years, the applicable Federal rate is the Federal mid-term rate.

(3) *Lower rate permitted in certain cases*— (i) *In general.* the applicable Federal rate with respect to a debt instrument shall be the allowable Treasury index rate (within the meaning of paragraph (a)(3)(ii) of this section) if it is demonstrated that—

(A) The yield of the debt instrument (based on semiannual compounding) is not less than such allowable Treasury index rate, and

(B) The issuer of the debt instrument could obtain a loan in the same stated principal amount and with the same yield and terms from a lender not related to the borrower within the meaning of section 168(e)(4)(D) (nor, in a sale transaction subject to section 483 or 1274, to the seller).

This paragraph (a)(3)(i) shall not apply unless it is stated on the face of the debt instrument that it is intended that the debt instrument qualify as having adequate stated interest under section 1274(d)(1)(D) and paragraph (a)(3) of this section, and that the issuer and all successors and assignees thereof agree to treat the debt instrument as having adquate stated interest on all tax returns for which the determination of adequate stated interest is relevant.

(ii) *Allowable Treasury index rates.* The allowable Treasury index rates are rates published weekly in Federal Reserve Statistical Releases G.13 and H.15. The allowable Treasury index rate at any given time shall include the rate (determined under the following rules) for any day within the preceding 15 days or for any weekly period ending within the preceding 15 days. The allowable Treasury index rates shall be—

(A) In the case of debt instruments having a maturity of one year or more for which a rate is published with the same maturity as the debt instrument, the yield on Treasury constant maturities of that maturity as a debt instrument, and

(B) In the case of debt instruments having a maturity of 3 or 6 months, the auction average yield (investment) on the most recently auctioned U.S. Treasury bills of the same maturity as the debt instrument.

If an allowable Treasury index rate is not published for the exact maturity of the debt instrument, the applicable Federal rate shall be a linear interpolation of the allowable Treasury index rates for the next shortest and the next longest maturities for which rates are published. For maturities of 3 months or less, the allowable Treasury index shall be the auction average yield for the most recently auctioned 3-month Treasury bills.

(b) *Determination of the applicable Federal rate*—(1) *In general.* The Federal short-term, mid-term, and long-term rates shall be computed monthly and shall be based on the yield to maturity of outstanding marketable obligations of the United States of similar maturities during the one month period ending on the 14th day of the month preceding the month for which the rates are applicable. Thus, for example, the Federal rates for April 1985 are determined on the basis of yields of obligations outstanding during the one-month period from February 15, 1985, to March 14, 1985.

(2) *Federal rates for January 1985.* For the month of January 1985 the Federal rates shall be the Federal rates in effect for the month of February 1985.

(3) *Special rules for periods before March 1, 1985*—(i) *Period before January 1, 1985.* If the period as of which the applicable Federal rate is determined (within the meaning of 1.1274-6(e)) is before January 1, 1985, the applicable Federal rate shall be determined by reference to Table II as set forth in Rev. Rul. 84-163, 1984-2 C.B. 179.

(ii) *Period after December 31, 1984, and before March 1, 1985*—(A) *Election of higher applicable rate.* If the period as of which the applicable Federal rate is determined (within the meaning of § 1.1274-6(e)) is after December 31, 1984, and before March 1, 1985, the issuer and holder may file a joint election in the manner prescribed in paragraph (b)(3)(ii)(B) of this section to use the higher applicable Federal rate determined by reference to Table I as set forth in Rev. Rul. 84-163, 1984-2 C.B. 179. The election shall be irrevocable and shall be binding on all successors of the issuer and holder.

(B) *Time and manner of election.* The issuer and holder shall make the election described in paragraph (b)(3)(ii)(A) on or before the last day for filing (including extensions) the returns of the issuer and holder for the taxable year of issue of the debt instrument. The election shall be made by attaching to the returns of the issuer and the holder a statement signed by the issuer and holder that includes the following information—

(*1*) The names, addresses and taxpayer identification numbers of the issuer and holder,

(*2*) A clear indication that the statement relates to a joint election to use the higher applicable Federal rate of interest as determined by reference to Table I as set forth in Rev. Rul. 84–163, 1984–2 C.B. 179, and

(*3*) Any other information necessary to establish that the borrower and lender are entitled to make the election.

For sales or exchanges occurring in 1985, the election may be made by filing an amended return if either the borrower or lender filed their returns for the taxable year which includes the date of the sale or exchange prior to May 8, 1986.

(c) *Foreign currency loans.* In the case of a debt instrument the proceeds or repayment of which is denominated in a foreign currency, the applicable Federal rate shall be a foreign currency rate of interest analogous to the applicable Federal rate described in paragraphs (a) and (b) of this section. For purposes of the preceding sentence, an analogous foreign currency rate of interest is a rate of interest based on yields (with an appropriate compounding period) of the highest grade of outstanding marketable obligations denomiated in such currency (excluding any obligations that benefit from special tax exemptions or preferential tax rates not available to debt instruments generally) with due consideration given to the maturities of the obligations.

(d) *Installment obligations*—(1) *Determining adequate stated interest*—(i) *In general.* Except as provided in paragraph (d)(2) of this section, for purposes of applying § 1.1274–3(b) (relating to the determination of adequate stated interest) to an installment obligation (within the meaning of § 1.1273–1(b)(2)(i) and § 1.1275–2(d)), the term of the obligation shall be determined by reference to the last payment of principal. The Commissioner, however, may disregard nominal payments of principal. Paragraph (d)(2) of this section prescribes special rules for determining adequate stated interest in the manner prescribed in § 1.1274–3(b) for certain types of installment obligations. If, in applying the rule of this paragraph (d)(1)(i) or the rule of paragraph (d)(2) of this section, an installment obligation (including an obligation that has a principal payment that is treated as a nominal payment) does not provide for adequate stated interest, the determination of adequate stated interest with respect to the obligation is governed by § 1.1274–3(c) and paragraph (d)(3) of this section. For circumstances in which multiple debt instruments are not treated as an installment obligation, see § 1.1275–2(d).

(ii) *Examples.* The provisions of paragraph (d)(1)(i) of this section may be further illustrated by the following examples:

Example (1). On July 1, 1986, A sells B nonpublicly traded property for $4,500,000. B agrees to pay the principal in 5 annual installments of $300,000 followed by 5 annual installments of $600,000. B is to pay interest semiannually on the outstanding principal balance. For purposes of applying § 1.1274–3(b) to this debt instrument, the test rate of interest is the Federal long-term rate.

Example (2). At a time when the Federal short-term rate is 15 percent and the Federal long-term rate is 12 percent, A sells B nonpublicly traded property for $5,000,000. B agrees to pay the principal in two installments. The first installment consists of $4,750,000 of principal and is payable at the end of 3 years. The second installment of $250,000 is payable at the end of 10 years. The second payment of principal may be treated as nominal by the Commissioner.

(2) *Special rule for certain installment obligations*—(i) *In general.* In the case of a self-amortizing installment obligation (as defined in § 1.1273–1(b)(2)(iii)) or a level-principal obligation (as defined in paragraph (d)(2)(iv) of this section), § 1.1274–3(b) may be applied by using a test rate that is a weighted average of the Federal short-term, mid-term, and long-term rates determined under the table set forth in paragraph (d)(2)(ii) (for self-amortizing installment obligations) or (iii) (for level-principal obligations) of this section. The weighted average is the sum of—

(A) The product of the Federal short-term rate and the short-term percent set forth in column (1) of the applicable table;

(B) The product of the Federal mid-term rate and the mid-term percent set forth in column (2) of the applicable table; and

(C) The product of the Federal long-term rate and the long-term percent set forth in column (3) of the applicable table.

For purposes of applying the tables, the term of a self-amortizing installment or level-principal obligation that is not a whole number of years shall be considered to be equal to the next largest whole number of years.

(ii) *Table for self-amortizing installment obligations.* The table referred to in paragraph (d)(2)(i) for self-amortizing installment obligations is as follows:

Term (years)	(1) Short-term percent	(2) Mid-term percent	(3) Long-term percent
4	59	41	0
5	38	62	0
6	26	74	0
7	19	81	0
8	15	85	0
9	11	89	0
10	8	71	21
11	7	58	35
12	6	47	47
13	5	39	56
14	4	33	63
15	3	28	69
16	3	23	74
17	2	20	78
18	2	17	81
19	1	15	84
20	1	13	86
21	1	11	88
22	1	9	90
23	1	8	91
24	0	8	92
25	0	7	93
26	0	6	94
27	0	5	95
28–29	0	4	96
30–31	0	3	97
32–37	0	2	98
38–47	0	1	99
48 or more	0	0	100

(iii) *Table for level-principal obligations.* The table referred to in paragraph (d)(2)(i) for level-principal obligations is as follows:

Term (years)	(1) Short-term percent	(2) Mid-term percent	(3) Long-term percent
4	61	39	0
5	42	58	0
6	31	69	0
7	24	76	0
8	19	81	0
9	16	84	0
10	14	70	16
11	12	60	28
12	11	52	37
13	10	45	45
14	9	40	51
15	8	36	56
16	7	33	60
17	6	30	64
18	6	27	67
19	5	26	69
20	5	24	71
21	4	23	73
22	4	21	75
23	4	19	77
24	4	18	78
25	3	18	79
26	3	17	80
27	3	16	81
28	3	15	82
29	3	14	83
30	3	13	84
31	2	13	85
32	2	12	86
33	2	12	86
34	2	12	86
35	2	11	87
36	2	11	87
37	2	10	88
38	2	10	88
39	2	10	88
40	2	9	89

(iv) *Meaning of level-principal obligation.* For purposes of paragraph (d)(2) of this section, the term "level-principal obligation" means an obligation calling for (*1*) equal payments of principal at regular intervals of one year or less over the entire term of the obligation and (*2*) each payment of principal to be accompanied by a payment of interest at a fixed rate on the outstanding principal balance.

(v) *Balloon payments.* The special rule of paragraph (d)(2) of this section may be applied to a debt instrument that would constitute a self-amortizing obligation or a level-principal obligation but for the fact that the debt instrument calls for a lump sum or balloon payment of principal at maturity. In applying this paragraph to such a debt instrument, the balloon payment shall be ignored and the term of the debt instrument shall be determined as if the initial payment pattern continued until the principal were fully repaid. If, however, the debt instrument has a maturity of more than 3 years but not more than 9 years (taking into account the balloon), in applying paragraph (d)(2)(i)(C) of this section, the Federal mid-term rate shall be substituted for the Federal long-term rate.

(vi) *Authority to adjust percent table.* The Commissioner may by Revenue Ruling adjust or replace the tables prescribed in paragraph (d)(2) (ii) and (iii) of this section. Any adjustment or replacement shall become effective no earlier than 30 days after publication of the adjusted or replacement table in the Internal Revenue Bulletin.

(vii) *Examples.* The provisions of this paragraph (d)(2) of this section may be illustrated by the following examples:

Example (1). On July 1, 1986, A sells B nonpublicly traded property for $3,000,000. B issues a debt instrument that calls for 15 years of equal monthly payments of $31,617.03, each representing a partial payment of principal and interest at a rate of 9.66 percent on the outstanding principal balance. Assume that as of the date when the test rate of interest is determined the Federal short-term rate is 8 percent compounded monthly, the Federal mid-term rate is 9 percent compounded monthly, and the Federal long-term rate is 10 percent compounded monthly. Using the table prescribed in paragraph (d)(2)(ii) of this section for a self-amortizing installment obligation with a term of 15 years, the test rate of interest for the debt instrument, based on monthly compounding, is 9.66 percent ((.03)(.08)+(.28)(.09)+(.69)(.10)). Since B's debt instrument calls for interest at a rate of 9.66 percent, payable monthly, it provides for adequate stated interest.

Example (2). The facts are the same as in example (1), except that the debt instrument calls for 5 annual payments of $770,677.10 on June 30 of each year from 1987 through 1991. Each payment represents a partial payment of principal and interest a rate of 8.97 percent. Assume that the Federal short-term rate is 8.30 percent, compounded annually, and the Federal mid-term rate is 9.38 percent, compounded annually. The test rate of interest for the debt instrument, based on annual compounding, is 8.9696 percent ((.38)(.0830)+(.62)(.0938)). Since the debt instrument calls for interest at 8.97 percent payable annually, it provides for adequate stated interest.

Example (3). The facts are the same as in example (2), except that the debt instrument calls for 5 equal annual payments of principal of $600,000. Each payment of principal is accompanied by interest at a rate of 8.93 percent on the outstanding principal balance. The payment schedule for the debt instrument is as follows:

Year	Principal	Interest	Total
1987	$600,000	$267,900	$867,900
1988	600,000	214,320	814,320
1989	600,000	160,740	760,740
1990	600,000	107,160	707,160
1991	600,000	53,580	653,580

Using the table prescribed in paragraph (d)(2)(iii) of this section for a level-principal obligation with a term of 5 years, the test rate for the debt instrument, based on annual compounding, is 8.9264 percent ((.42)(.083)+(.58)(.0938)). Since the debt instrument calls for interest payable annually at a rate of 8.93 percent, it provides adequate stated interest.

Example (4). The facts are the same as in example (1), except that, in lieu of the last 5 years of monthly payments, B's debt instrument calls for a balloon payment on June 30, 1996, of $1,499,849.16 (in addition to the regular payment of $31,617.03 due on that date). This balloon payment is equal to the outstanding principal balance on June 30, 1996 (after taking into account the payment of $31,617.03). For purposes of applying paragraph (d)(2) of this section, the debt instrument is treated as a 15-year self-amortizing installment obligation. Thus, the debt instrument, which calls for interest to be paid monthly at a rate of 9.66 percent, provides for adequate stated interest.

Example (5). (i) On July 1, 1986, A sells B nonpublicly traded property for $3,600,000. B issues a debt instrument that calls for semiannual principal payments of $150,000 on January 1, and July 1 of each year from 1987 through 1992. On January 1, 1993, the remaining principal balance of $1,800,000 is required to be paid. The debt instrument calls for interest to be paid semiannually at a rate of 9.89 percent on the outstanding principal balance. Assume that the Federal short-term and mid-term rates applicable to the transaction, based on semiannual compounding, are 9 and 10 percent, respectively.

(ii) In applying paragraph (d)(2) of this section, the debt instrument is treated as a 12-year level principal obligation with a balloon payment after 6 and one-half years. Under paragraph (d)(2)(iii) and (v) of this section, the test rate for the debt instrument is 9.89 percent ((.11)(.09)+(.52)(.10)+(.37)(.10)). Thus, the debt instrument provides for adequate stated interest.

(3) *Obligations not providing for adequte stated interest under paragraph (d) (1) or (2) of this section*—(i) *Testing amount for installment obligations.* An installment obligation that does not provide for adequate stated interest under paragraph (d) (1) or (2) of this section may nevertheless have adequate stated interest under the rules of § 1.1274–3(c) if the stated principal amount of the debt instrument is less than or equal to the testing amount. For purposes of computing the testing amount for an installment obligation, in determining the present values under § 1.1274–3(c)(1), the discount rate shall be—

(A) In the case of principal payments made not more than 3 years from the issue date and interest payments attributable to such principal payments, the Federal short-term rate;

(B) In the case of principal payments made more than 3 years but not more than 9 years from the issue date and interest payments attributable to such principal payments, the Federal mid-term rate; and

(C) In all other cases, the Federal long-term rate.

(iii) *Examples.* The provisions of paragraph (d)(3) of this section may be illustrated by the following examples:

Example (1). (i) On July 1, 1986, A sells B nonpublicly traded property for $5,000,000. The principal is due in two installments: $2,000,000 due on June 30, 1989, and the remaining $3,000,000 due on June 30, 1991. The debt instrument calls for semiannual payments of interest on the outstanding principal balance at a rate of 8.04 percent. Assume that the Federal short-term and mid-term rates applicable to this transaction are 7 percent compounded semiannually and 8.5 percent, compounded semiannually, respectively.

(ii) The debt instrument does not provide for adequate stated interest under the rule of paragraph (d)(1) of this section because interest is not provided at a rate at least equal to the Federal mid-term rate. The debt instrument cannot satisfy the provisions of paragraph (d)(2) of this section because it is neither a self-amortizing installment obligation nor a level-principal obligation. Thus, under paragraph (d)(3) of this section, the determination of adequate stated interest is made under § 1.1274–3(c). The debt instrument provides for adequate stated interest if the stated principal amount of the debt instrument is less than or equal to the testing amount of the debt instrument (the sum of the present values of the payments determined in the manner provided in paragraph (d)(3) of this section).

(iii) The present value of the $2,000,000 principal payment due on June 30, 1989, discounted at the Federal short-term rate of 7.0 percent compounded semiannually, is

$1,627,001.29. Six semiannual interest payments of $80,400 (one-half of 8.04 percent of $2,000,000) are attributable to this first payment of principal. The present value of this stream of 6 interest payments is $428,415.66.

(iv) The present value of the $3,000,000 principal payment due on June 30, 1991, discounted at the mid-term rate of 8.5 percent compounded semiannually is $1,978,611.91. Ten semiannual interest payments of $120,600 are attributable to this second payment of principal. The present value of this stream of 10 interest payments is $966,112.97.

(v) The testing amount of the debt instrument is $5,000,141.84 ($1,627,001.29 + $428,415.66 + $1,978,611.91 + $966,112.97). Since the testing amount exceeds the stated principal amount of $5,000,000, the debt instrument provides for adequate stated interest.

Example (2). (i) On July 1, 1987, A sells B nonpublicly traded property for $4,000,000. B issues a debt instrument that calls for 9 annual principal payments of $200,000 on June 30 of each year from 1988 through 1996 and a principal payment on June 30, 1997, of $2,200,000. The debt instrument also calls for annual payments of interest at a rate of 9.62 percent on the outstanding principal balance. Assume that the Federal short-term, mid-term and long-term rates, based on annual compounding, are 8 percent, 9 percent, and 10 percent, respectively.

(ii) The debt instrument does not provide for adequate stated interest under the rule of paragraph (d)(1) of this section because it calls for interest at a rate lower than the Federal long-term rate. The debt instrument also does not satisfy the provisions of paragraph (d)(2) of this section because, under those provisions, the test rate of interest (using the weighting factors for a 20-year level principal obligation) is 9.65 percent ((.06) (.08) + (.23) (.09) + (.71) (.10)). Thus, under paragraph (d)(3) of this section, the determination of adequate stated interest is made under § 1.1274–3(c). The debt instrument provides for adequate stated interest if the stated principal amount of the debt instrument is less than or equal to the testing amount of the debt instrument (the sum of the present values of the payments determined in the manner provided in paragraph (d)(3) of this section).

(iii) The present values of the first three principal payments, using a discount rate equal to the Federal short-term rate of 8 percent, is $515,419.40. The portions of the interest payments in the years 1988, 1989 and 1990 attributable to these three principal payments are $57,720 (9.62 percent of $600,000), $38,480 (9.62 percent of $400,000) and $19,240 (9.62 percent of $200,000), respectively. The sum of the present values of these three payments is $101,708.17.

(iv) The sum of the present values of the six principal payments in the years 1991 through 1996, using a discount rate equal to the Federal mid-term rate of 9 percent, is $692,790.45. The interest payments attributable to these principal payments and their present values are as follows:

Year	Interest payment	Present value
1988	$115,440	$105,908.26
1989	115,440	97,163.54
1990	115,440	89,140.86
1991	115,440	81,780.61
1992	96,200	62,523.40
1993	76,960	45,888.73
1994	57,720	31,574.82
1995	38,480	19,311.81
1996	19,240	8,858.63
Total		$542,150.66

(v) The balloon principal payment of $2,200,000 due on June 30, 1997, when discounted at the Federal long-term rate of 10 percent, has a present value of $848,195.24. Interest payments of $211,640 (9.62 percent of $2,200,000) in each year from 1988 through 1997 are attributable to the last principal payment. The present value of this stream of payments is $1,300,436.18.

(vi) The testing amount (the sum of the foregoing present values) is $4,000,700.10:

$515,419.40
107,708.17
692,790.45
542,150.66
848,195.24
1,300,436.18
4,000,700.10

Since the stated principal amount of $4,000,000 is less than the testing amount of $4,000,700.10, the debt instrument provides for adequate stated interest.

(4) *Coordination with other provisions*—(i) *Nine percent interest rate.* In the case of a qualified debt instrument (as defined in 1274A(b) and §1,1274A–1(b)), the provisions of paragraph (d)(2) of this section may be applied to determine if the test rate is lower than 9 percent, compounded semiannually. If so, this lower test rate may be used. Similarly, the provisions of paragraph (d)(3) of this section may be applied to determine if the testing amount using the Federal rates is larger than the testing amount computed by using a discount rate of 9 percent, compounded semiannually. If so, the larger testing amount may be used. However, paragraphs (d) (2) and (3) of this section shall not be applied by substituting 9 percent selectively for those Federal rates that exceed 9 percent.

(ii) *Three-month rule.* In applying section 1274 (d)(1) and paragraph (e)(1)(i) of this section (relating to date as of which applicable Federal rate is determined) in conjunction with paragraph (d) (2) or (3) of this section, the test rate of interest or testing amount for each of the months must be computed separately. However, paragraph (d) (2) or (3) of this section shall not be applied by making a single calculation using the lowest Federal short-term rate during the 3-month period, the lowest Federal mid-term rate during this period and the lowest Federal long-term rate during this period if those rates do not all occur in the same month.

(5) *Installment obligations not stating adequate interest.* For purposes of applying §1.1274–4 (relating to the determination of the imputed principal of a debt instrument), the imputed rate of interest shall be determined by reference to the last payment of principal. The Commissioner, however, may disregard nominal payments of principal.

(e) *Rate of interest applicable to a sale or exchange*—(1) *Date as of which applicable Federal rate of interest determined*—(i) *General rule.* Except as provided in paragraph (e)(2) of this section, for purposes of § 1.1274–3 and § 1.1274–4, the applicable Federal rate with respect to a debt instrument is the lowest of the applicable Federal rates in effect during the three-month period ending with the month in which the earlier of the following dates occur—

(A) The contract date, or

(B) The date of the sale or exchange.

(ii) *Contract date.* The contract date is the first day on which there is a binding contract (including an irrevocable option) in writing for the sale or exchange. If there is a substantial modification (as defined in paragraph (e)(1)(iii) of this section) of the terms of the contract before the date of the sale or exchange, the date of the last substantial modification is the contract date.

(iii) *Substantial modification.* For the purposes of paragraph (e)(1)(ii) of this section, the term "substantial modification" means any substantial change in the terms of the contract, including any change in the sales price other than a change in the sales price arising from an independent appraisal, mechanical formula or contingency provided for in the contract.

(iv) *Example.* The provisions of paragraph (e)(1) of this section may be illustrated by the following example:

Example. In April 1985, A enters into a binding written contract to sell nonpublicly traded property to B. The contract calls for B to issue, in partial consideration for sale, a 15-year debt instrument calling for semiannual payments of interest. One hundred ten percent of the Federal long-term rates for February, March and April 1985 are 12.74 percent, compounded semiannually, 12.54 percent, compounded semiannually, and 13.06 percent, compounded semiannually, respectively. For purposes of determining whether the debt instrument has adequate stated interest, the applicable Federal rate is 12.54 percent (the lower of the Federal long-term rates for February, March and April 1985).

(2) *Special rules for determining rates for certain contracts*—(i) *In general.* In the case of contracts to which the special rules of paragraph (e)(2) of this section apply, the applicable Federal rate with respect to a debt instrument is that rate in effect on the earlier of—

(A) The contract date, or

(B) The date of the sale or exchange.

(ii) *Contracts to which special rules apply.* The special rules of paragraph (e)(2) of this section apply—

(A) To any contract with a contract date occurring before January 1, 1985, and

(B) For purposes of determining the imputed principal amount of a debt instrument (within the meaning of § 1.1274–4), to any contract with a contract date occurring after December 31, 1984, and before July 1, 1985.

(f) *Treatment of certain options*—(1) *In general.* Paragraph (f) of this section governs whether a put or call option described in § 1.1272–1(f)(4)(ii) or an option to extend described in § 1.1272–1(f)(4)(v) is presumed exercised for purposes of section 1274 and the regulations thereunder. In the case of an option to which paragraph (f) of this section does not apply (for example, an option to extend with an uncertain maturity date), the option is a contingency to which the payments under the debt instrument are subject. For rules relating to contingent payments, see § 1.1275–4.

(2) *Seller's options.* The holder of a debt instrument (the seller) with a put option or option to extend shall be presumed to exercise the option if the testing amount (determined under § 1.1274–3(c)(1)) of the debt instrument, assuming exercise of the option, exceeds the testing amount of the debt instrument, assuming the option is not exercised.

(3) *Buyer's options.* The issuer of a debt instrument (the buyer) with a call option or an option to extend shall be presumed to exercise the option if the testing amount of the debt instrument, assuming exercise of the option, is less than the testing amount of the debt instrument, assuming the option is not exercised.

(4) *Examples.* Paragraph (f) of this section may be illustrated by the following examples:

Example (1). In partial consideration for the sale on nonpublicly traded property, a debt instrument (other than a debt instrument issued in a potentially abusive situation) with a stated principal amount of $1,000,000 is issued. The debt instrument is due in 10 years and calls for annual payments of interest at 8 percent for the first 5 years and 14 percent for the final five years. In addition, the debt instrument provides the buyer (issuer) with the option to call (prepay) the debt instrument at the end of 5 years for its full face amount of $1,000,000. Assume that the applicable Federal mid-term and long-term rates applicable to the sale based on annual compounding are 9 percent and 10 percent, respectively. Assuming exercise of the call option the testing amount that would be determined under § 1.1274–3(c)(1)(i) of this section is $961,103.49 (the present value of all of the payments due within a 5-year term discounted at a test rate of 9 percent, compounded annually). Assuming nonexercise of the call option the testing amount that would be determined under § 1.1274–3(c)(1)(i) of this section is $1,018,335.48 (the present value of all the payments due within a 10-year term discounted at a test rate of 10 percent, compounded annually). Thus, under paragraph (f)(3) of this section, because the testing amount determined under $1.1274–3(c)(1)(i), assuming exercise of the option, is less than the testing amount determined under § 1.1274–3(c)(1)(i), assuming nonexercise of the option, the option is presumed exercised. The presumption applies for purposes of section 1274 including, for example, whether the debt instrument provides for adequate stated interest. Thus, in this example, the debt instrument does not provide for adequate stated interest.

Example (2). The facts are the same as in example (1), except that the seller (holder) has an option to put the debt instrument and require the buyer to retire the debt instrument at the end of 5 years. Because the testing amount determined under § 1.1274–3(c)(1)(i), assuming nonexercise of the option exceeds the amount determined under § 1.1274–3(c)(1)(i), assuming exercise, the option is presumed not to be exercised for purposes of section 1274. Thus, in this example, the debt instrument provides for adequate stated interest.

§ 1.1274-7 Assumptions.

(a) *Assumptions in connection with sales or exchanges after June 30, 1985*—(1) *In general.* Section 1274 shall not apply to a debt instrument assumed or taken subject to in connection with a sale or exchange which occurs after June 30, 1985, unless the debt instrument is modified (within the meaning of § 1.1274–1(c)) as part of the sale or exchange.

(2) *Modifications.* If a debt instrument assumed or taken subject to is modified as part of a sale or exchange, the modification shall be treated as a separate transaction taking place either immediately before or immediately after the sale or exchange. The modification of a debt instrument that is attributable to the seller of the property shall be treated as occurring immediately before the sale or exchange. For this purpose, the modification of the debt instrument shall be attributed to the seller of the property unless the seller of the property neither consents to nor participates in the modification. If a modification is treated as taking place immediately before the sale or exchange, the buyer shall be treated as assuming or taking subject to the modified debt instrument. For rules governing the treatment of modifications of debt instruments, see § 1.1274–1(c).

(3) *Examples.* The provisions of paragraph (a) of this section may be illustrated by example (6) of § 1.1273–2(f) and by the following examples:

Example (1). On July 1, 1986, B sells Blackacre to C for $4,000,000, subject to an existing debt instrument with a face amount of $1,000,000. The terms of the debt instrument are not modified as part of the sale or exchange. Under paragraph (a)(1) of this section, the debt instrument is not subject to section 1274.

Example (2). On July 1, 1986, B sells Blackacre to C for $40,000,000 subject to an existing debt instrument held by A with a face amount of $10,000,000 and a remaining term of 7 years that provides for annual interest payments at 10 percent. The debt instrument by its terms is not assumable. However, A desires to raise the rate of interest on the debt instrument. Thus, as part of the sale or exchange, C and A agree (without B's consent) to raise the interest rate to 11 percent. The change in interest rate constitutes a modification under § 1.1001–1(a). Because the debt instrument has been modified, under § 1.1274–1(c) the modified debt instrument is treated as a new debt instrument given in consideration for the old debt instrument. Because B did not consent to or participate in the modification, the modification is treated as taking place immediately after the sale of the property in a transaction involving C and A.

Example (3). On July 1, 1986, B sells Blackacre to C for $40,000,000 subject to an existing debt instrument held by A with a face amount of $10,000,000 and a remaining term of 10 years. This debt instrument provides for annual interest payments at 8 percent. As part of the sale or exchange, A, B, and C jointly agree that the interest rate will be raised to 11 percent and that payment of the interest which accrues during the two years following the assumption will be deferred until maturity. The change in interest rate and deferral of payments constitute a modification under § 1.1001–1(a). Because the debt instrument has been modified, under § 1.1274–1(c) the modified debt instrument is treated as a new debt instrument given in consideration for the old debt instrument. Because B consented to the modification, the modification is treated as taking place immediately before the sale in a transaction involving B and A. C is treated as having assumed the modified debt instrument.

(b) *Assumptions in connection with sales or exchanges occurring after December 31, 1984, and before July 1, 1985*—(1) *Debt instruments that are modified.* If a debt instrument assumed or taken subject to in connection with a sale or exchange that occurs after

December 31, 1984, and before July 1, 1985, is modified (within the meaning of § 1.1274–1(c)) as part of the sale or exchange, the modification shall be treated in accordance with the rules of paragraph (a)(2) of this section.

(2) *Debt instruments that are not modified*—(i) *Sales price in excess of $100,000,000.* Except as provided in paragraph (b)(3) of this section, if a debt instrument is assumed or taken subject to in connection with a sale or exchange that occurs after December 31, 1984, and before July 1, 1985, in which the sales price exceeds $100,000,000 and the debt instrument is not modified as part of the sale or exchange, section 1274 shall apply to the debt instrument solely for purposes of determining the tax consequences of the sale or exchange to the buyer. The sales price in a sale or exchange shall be determined under rules analogous to those set forth in § 1.1274–1(b)(4) (i), (ii), and (iii).

(ii) *Sales price less than or equal to $100,000,000*—(A) *Debt instruments issued after October 15, 1984.* Except as provided in paragraph (b)(3) of this section and section 44(b)(7) of the Tax Reform Act of 1984 (as amended by Pub. L. No. 98–612), if a debt instrument issued after October 15, 1984, is assumed or taken subject to in connection with a sale or exchange that occurs after December 31, 1984, and before July 1, 1985, in which the sales price is less than or equal to $100,000,000 and the debt instrument is not modified as part of the sale or exchange, section 1274 shall apply to the debt instrument solely for purposes of determining the tax consequences of the sale or exchange to the buyer.

(B) *Debt instruments issued before October 16, 1984.* If a debt instrument issued before October 16, 1984, is assumed or taken subject to in connection with a sale or exchange that occurs after December 31, 1984, and before July 1, 1985, in which the sales price is less than or equal to $100,000,000 and the debt instrument is not modified as part of the sale or exchange, section 1274 shall not apply to the debt instrument.

(3) *Exception.* Notwithstanding paragraph (b)(2) of this section, section 1274 shall not apply to any debt instrument assumed or taken subject to in a sale or exchange that occurs after December 31, 1984, and before July 1, 1985, and in which the debt instrument is not modified, if—

(A) The property is not 3-year or 5-year property (within the meaning of section 168(c)(2)) or property described in section 1221(1) (relating to stock in trade, inventories, and other property held for sale to customers) to the buyer, or

(B) In the case of recovery property (within the meaning of section 168(c)(1)) other than 3-year or 5-year property, the remaining term of the debt instrument exceeds two-thirds of the recovery period for such property.

This paragraph (b)(3) shall not apply to the purchase of an interest in an entity if the bases of the underlying assets of the entity are determined, in whole or in part, by reference to the amount paid for such interest and the underlying assets include a more than nominal amount of recovery property or property described in section 1221(1). For example, if a corporation purchases stock in another corporation owning a more than nominal amount of recovery property or property described in section 1221(1) and makes an election under section 338 (relating to certain stock purchases treated as asset acquisitions), the exception contained in this paragraph (b)(3) shall not apply.

(c) *Wraparound indebtedness.* For purposes of this section, a debt instrument originally issued by the buyer of property to the seller in consideration for the sale of the property shall not be treated as a debt instrument assumed or taken subject to, even if the seller is liable to a third party with respect to an indebtedness secured by the property.

(d) *Consideration attributable to assumed debt*—(1) *In general.* If, as part of the consideration for the sale or exchange of property, the buyer assumes or takes subject to an indebtedness that was issued at a discount (including a debt instrument issued in a prior sale or exchange to which section 1274 applied), the portion of the buyer's basis in the property and the seller's amount realized attributable to the debt instrument shall be equal to the revised issue price of the debt instrument (as defined in § 1.1275–1(h)) as of the date of the sale or exchange.

(2) *Example.* The provisions of paragraph (d)(1) of this section may be further illustrated by the following example:

Example. On July 1, 1986, X sells real property to Y in exchange for $3,500,000 in cash and Y's agreement to assume an existing debt instrument secured by the property. The debt instrument was originally issued at a discount. The face amount of the debt instrument is $1,000,000 and its revised issue price under section 1272 as of the date of the sale is $850,000. The debt instrument is not modified as part of the sale or exchange. Thus, the debt instrument is not subject to section 1274. Y's basis in the property is $4,350,000 (the sum of the cash payment ($3,500,000) and the revised issue price of the debt instrument ($850,000)).

§ 1.1274A–1 Special rules for certain transactions where stated principal amount does not exceed $2,800,000.

(a) *In general.* This section provides special rules applicable to a qualified debt instrument as defined in paragraph (b) of this section. For rules relating to the test and imputed rates of interest applicable to a qualified debt instrument, see § 1.1274–3(e)(1)(ii) and § 1.1274–4(b)(1) (or, in the case of a qualified debt instrument subject to section 483, § 1.483–4(a)).

(b) *Definition of qualified debt instrument*—(1) *In general.* The term "qualified debt instrument" means any debt instrument given in consideration for the sale or exchange of property after June 30, 1985, whose stated principal amount does not exceed the qualified amount as defined in paragraph (b)(2) of this section. The term "qualified debt instrument," however, does not include a debt instrument issued in exchange for new section 38 property (within the meaning of section 48(b) and the regulations thereunder) or a debt instrument issued in a sale-leaseback transaction (within the meaning of § 1.1274–3(e)(1)(iii)).

(2) *Qualified amount.* The term "qualified amount" means—

(i) $2,800,000, or

(ii) In each calendar year after 1989, $2,800,000 increased for inflation in the manner prescribed in paragraph (e) of this section.

(3) *Debt instruments calling for contingent payments.* If all or part of the consideration given in a sale or exchange consists of contingent payments, a debt instrument is a qualified debt instrument only if it can be determined at the time of the sale or exchange that the maximum amount of the stated principal due under the debt instrument cannot exceed the qualified amount as defined in paragraph (b)(2) of this section. For example, assume the facts as in § 1.1274–3(e)(5) example (4) except that the sale takes place in April 1, 1986. Since it cannot be determined at the time of the sale or exchange that the maximum stated principal amount cannot exceed $2,800,000, the debt instrument is not a qualified debt instrument. Thus, the test rate of interest applicable to the sale is the applicable Federal rate as determined under § 1.1274–3(e)(1)(i).

(c) *Election to use cash method in certain cases*—(1) *In general.* Section 1274 does not apply to any cash method debt instrument (within the meaning of paragraph (c)(2) of this section). The interest (including unstated interest under section 483) on a cash method debt instrument shall be taken into account by both the borrower and the lender under the cash receipts and disbursements method of accounting. See § 1.446–2.

(2) *Meaning of cash method debt instrument.* For purposes of paragraph (c) of this section, the term "cash method debt instrument" means a qualified debt instrument as defined in paragraph (b) of this section if—

(i) The stated principal amount of the qualified debt instrument does not exceed the cash method amount as defined in paragraph (c)(3) of this section,

(ii) The lender does not use an accrual method of accounting and is not a dealer with respect to the type of property sold or exchanged,

(iii) Section 1274 would have applied to the debt instrument but for the application of section 1274A(c) and paragraph (c) of this section, and

(iv) An election described in paragraph (c)(4) of this section is made with respect to the debt instrument.

For purposes of this paragraph (c)(2), all sales or exchanges which are part of the same transaction (or a series of related transactions) shall be aggregated in accordance with the rules of paragraph (d) of this section, and all debt instruments arising from the aggregated sales or exchanges shall be treated as one debt instrument.

(3) *Cash method amount.* The term "cash method amount" means—

(i) $2,000,000, or

(ii) In each calendar year after 1989, $2,000,000 increased for inflation in the manner prescribed in paragraph (e) of this section.

(4) *Debt instruments calling for contingent principal.* If all or part of the consideration given in a sale or exchange consists of contingent payments, a debt instrument cannot be a cash method debt instrument unless it can be determined at the time of the sale or exchange that the maximum amount of the stated principal due under the debt instrument cannot exceed the cash method amount as defined in paragraph (c)(3) of this section.

(5) *Election*—(i) *In general.* An election is described in this paragraph (c)(4) if both the borrower (issuer) and the lender (holder) jointly elect to treat the debt instrument as a cash method debt instrument.

(ii) *Time and manner of making election.* The borrower and lender shall make the election described in paragraph (c)(4)(i) on or before the last day for filing (including extensions) the returns of the borrower and the lender for the taxable year of issue of the debt instrument. The election shall be made by attaching to the returns a statement signed by the borrower and lender that includes the following information—

(A) The names, addresses and taxpayer identification numbers of the borrower and lender,

(B) A clear indication that an election is being made under paragraph (c)(4) of this section, and

(C) A statement that the debt instrument with respect to which the election is being made fulfills the requirements of a cash method debt instrument.

For sales or exchanges in 1985, the election may be made by filing an amended return if either the borrower or lender filed their returns for the taxable year which includes the date of the sale or exchange prior to May 8, 1986.

(6) *Successors of electing parties.* Except as otherwise provided in this paragraph (c)(5), paragraph (c)(1) of this section shall apply to any successor of the electing lender or borrower (or any transferee thereof). Thus, for any period after the transfer of a cash method debt instrument, the successor shall take into account the interest (including unstated interest) thereon under the cash receipts and disbursements method of accounting. Nevertheless, if the lender (or any successor thereof) transfers the cash debt instrument to a taxpayer who uses an accrual method of accounting, then paragraph (c)(1) of this section shall not apply to the successor of the lender (or a successor thereof) with respect to the cash method debt instrument for any period after the date of the transfer and section 1272 shall apply.

(7) *Special rules.* [Reserved]

(d) *Aggregation of transactions*—(1) *General rule.* All sales or exchanges which are part of the same transaction or a series of related transactions shall be treated as a single sale or exchange. Whether two or more sales or exchanges are treated as a single sale or exchange depends on all the facts and circumstances surrounding the sales or exchanges.

(2) *Examples.* The following examples illustrate the rules of paragaraph (d) of this section:

Example (1). In two transactions evidenced by separate sales agreements, A sells undivided half interests in Blackacre to B. The sales are pursuant to a plan for the sale of a 100 percent interest in Blackacre to B. These sales or exchanges are part of a series of related transactions and, thus, are treated as a single sale or exchange.

Example (2). Pursuant to a plan, unrelated individuals X and Y purchase undivided half interests in Blackacre from A and subsequently contribute these interests to a partnership in exchange for equal interests in the partnership. These purchases are treated as part of the same transaction and, thus, are treated as a single sale or exchange.

Example (3). Fifteen unrelated individuals own all the stock of X Corporation. Y Corporation makes a tender offer to these 15 shareholders. The terms offered to each shareholder are identical. Shareholders holding a majority of the shares of X Corporation elect to tender their shares pursuant to Y Corporation's offer. These sales are part of the same transaction and, thus, are treated as a single sale or exchange.

Example (4). Pursuant to a newspaper advertisement, X Corporation offers for sale similar condominiums in a single building. The prices of the units vary due to a variety of factors, but the financing terms offered by X Corporation to all buyers are identical. The units are purchased by unrelated buyers who decided whether to purchase units in the building at the price and on the terms offered by X Corporation, without regard to the actions of other buyers. Because each buyer acts individually, the sales are not part of the same transaction or a series of related transactions and, thus, are treated as separate sales or exchanges.

(e) *Inflation adjustment of dollar amounts*—(1) *In general.* For each calendar year after 1989, the qualified amount as defined in paragraph (b)(2) of this section and the cash method amount as defined in paragraph (c)(3) of this section shall be determined by multiplying each of those amounts for the year 1988 by the inflation adjustment for the calendar year. Any amount determined under paragraph (e) of this section shall be rounded to the nearest multiple of $100 (or, if the increase is an odd multiple of $50, the increase shall be increased to the nearest multiple of $100).

(2) *Inflation adjustment.* For purposes of paragraph (e)(1) of this section, the inflation adjustment for any calendar year is the ratio of—

(i) The CPI for the preceding calendar year, to

(ii) The CPI for calendar year 1988.

For purposes of this paragraph (e)(2), the CPI for any calendar year is the average of the Consumer Price Index as of the close of the 12-month period ending on September 30 of the calendar year.

(3) *Publication of increased dollar amounts.* The dollar amounts adjusted for inflation as provided in paragraph (e)(1) and (e)(2) of this section shall be determined after the close of the 12-month period ending on September 30, 1988, and each succeeding calendar year. The increased dollar amount shall be published in Revenue Rulings.

§ 1.1275-1 Definitions relating to treatment of debt instruments.

(a) *Applicability.* The definitions contained in this section are applicable for purposes of sections 163(e) and 1271 through 1275 and the regulations thereunder.

(b) *Debt instrument*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, the term "debt instrument" means a bond, debenture, note, certificate, or other evidence of indebtedness, including all rights to deferred payments under a contract, whether or not evidenced by a formal instrument. The term "debt instrument" also includes face-amount certificates as defined in sections 2(a)(15) and (4) of the Investment Company Act of 1940 (15 U.S.C. 80a-2 and 80a-4) as well as certificates of deposit, time deposits, bonus plans, and other deposit arrangements with banks, domestic building and loan associations, and similar financial institutions. A debt instrument includes an instrument calling for payments in the form of cash, stock, securities, or any other property (other than a debt instrument issued by the same obligor).

(2) *Exception.* The term "debt instrument" does not include any annuity contract to which section 72 applies and which—

(i) Depends (in whole or in substantial part) on the life expectancy of one or more individuals, or

(ii) Is issued by an insurance company subject to tax under subchapter L—

(A) In a transaction in which there is no consideration other than cash or another annuity contract meeting the requirements of paragraph (b)(2)(ii) of this section.

(B) Pursuant to the exercise of an election under an insurance contract by a beneficiary thereof on the death of the insured party under the contract, or

(C) In a transaction involving a qualified pension or employee benefit plan.

(c) *Issue date*—(1) *Publicly offered debt instruments.* In the case of debt instruments that are publicly offered (as described in § 1.1273–2(a)(2)), the term "issue date" means the settlement date.

(2) *Non-publicly offered debt instruments not issued for property.* In the case of debt instruments to which section 1273(b)(2) applies, the term "issue date" means the date on which the debt instrument was sold by the issuer. For purposes of this paragraph (c)(2), this date shall be considered to be the settlement date.

(3) *Other debt instruments.* In the case of debt instruments not described in paragraphs (c)(1) or (c)(2) of this section, the term "issue date" means the date on which the debt instrument is exchanged for property.

(d) *Tax-exempt obligations.* The term "tax-exempt obligation" means a debt instrument with respect to which all of the interest—

(1) Is not included in gross income under section 103, or

(2) Is exempt from tax (without regard to the identity of the holder) under any other provision of law.

(e) *Issue.* Two or more publicly offered debt instruments (as described in § 1.1273–2(a)(2)) are part of the same issue if they have the same credit and payment terms, and are sold at substantially the same time pursuant to a common plan of marketing. Two or more debt instruments that are not publicly offered are part of the same issue if they are issued as part of a single transaction or a series of related transactions.

(f) *Premium.* A debt instrument is purchased at a premium if its purchase price exceeds its stated redemption price at maturity. If, under chapter 1 of the Code, the basis of a debt instrument in the hands of the holder is determined, in whole or in part, by reference to the basis of the debt instrument in the hands of another person who purchased the debt instrument at a premium, then the holder shall be considered to have purchased the debt instrument at a premium. Thus, for example, the donee of a debt instrument purchased at a premium by the donor shall be considered to have purchased the debt instrument at a premium.

(g) *Debt instruments issued by a natural person.* A debt instrument issued by an entity other than a natural person shall not be considered to be issued by a natural person merely because a natural person may be a co-maker and may be jointly liable for the debt instrument's repayment. A debt instrument issued by a partnership is considered to be issued by the partnership as an entity even if the partnership is composed entirely of natural persons.

(h) *Revised issue price.* The term "revised issue price" (as defined in section 1278(a)(4)) means the sum of—

(1) The issue price of the debt instrument (as defined in section 1273(b) and § 1.1273–2), and

(2) The aggregate amount of the original issue discount previously includable in the gross income of all holders (determined without regard to sections 1272 (a)(6) or (b)(4) or § 1.1272–1(g)).

§ 1.1275–2 Special rules relating to debt instruments.

(a) *Reorganizations.* (1) *Debt instruments issued after December 13, 1982.* If a debt instrument (referred to in paragraph (a) of this section as the new debt instrument) is issued after December 13, 1982, pursuant to a plan of reorganization as described in paragraph (a)(3) of this section for another debt instrument (referred to in paragraph (a) of this section as the old debt instrument), and the amount which (but for this paragraph (a)(1)) would have been the issue price of the new debt instrument is less than the revised issue price of the old debt instrument, then the issue price of the new debt instrument shall be treated as equal to the revised issue price of the old debt instrument. For purposes of paragraph (a) of this section, the term "debt instrument" includes an investment unit. See § 1.1273–2(d) for rules relating to the allocation of issue price to an investment unit. For a special rule regarding deductibility of original issue discount by the issuer under paragraph (a) of this section, see section 1275(a)(4)(B)(ii)(II).

(2) *Debt instruments issued before December 14, 1982.* If a new debt instrument is issued before December 14, 1982, pursuant to a plan of reorganization, the issue price of the new debt instrument is equal to its stated redemption price at maturity.

(3) *Reorganization.* For purposes of paragraph (a) of this section, a reorganization includes a reorganization within the meaning of section 368(a)(1) or an insolvency reorganization within the meaning of section 371, 373, or 374. A reorganization does not include a transfer pursuant to section 351.

(4) *Example.* The rule set forth in paragraph (a) of this section may be illustrated by the following example:

Example. On January 1, 1986, in a reorganization transaction (within the meaning of paragraph (a)(3) of this section), N Corporation issues a series of 20-year bonds in exchange for an outstanding issue of original issue discount bonds having a revised issue price on that date of $8,750 and a fair market value of $8,600. The 20-year bonds issued pursuant to the reorganization call for a payment of $10,000 at maturity and for annual payments of interest at a rate of 10%, compounded annually ($1,000). Assume that the outstanding issue of original issue discount bonds is publicly traded. The issue price of the newly issued bonds under paragraph (a)(1) of this section is the revised issue price of the outstanding bonds, $8,750.

(b) [Reserved]

(c) *Debt instruments distributed by corporations with respect to stock*—(1) *In general.* In the case of a debt instrument issued by a corporation with respect to its stock, such debt instrument shall be treated as if it had been issued by the corporation for property.

(2) *Examples.* The rule set forth in paragraph (c)(1) of this section may be illustrated by the following examples:

Example (1). On January 1, 1986, M Corporation distributes to A, a shareholder of the corporation, a bond paying $10,000 at maturity on December 31, 1990, and calling for semiannual interest payments at a rate of 10%, compounded semiannually ($500). Assume that the bond is publicly traded and has a fair market value on that date of $10,000. The issue price of the M Corporation bond is, under section 1273(b)(3) and § 1.1273–2(c)(1), $10,000. A has a dividend of $10,000 upon receipt of the bond.

Example (2). The facts are the same as in example (1), except that the bond is not publicly traded. Assume that the test rate of interest is 11%, compounded semiannually. The issue price of the bond is its imputed principal amount under § 1.1274–4 of $9,273.31, discounting at the test rate of 11%, compounded semiannually. A has a dividend of $9,273.31 upon receipt of the bond.

(d) *Aggregation of debt instruments*—(1) *General rule.* All debt instruments, whether or not issued for property, issued in connection with the same transaction or a series of related transactions or as part of the same issue shall be treated together as a single debt instrument with a single issue price, maturity date, yield, and stated redemption price at maturity for purposes of sections 1271 through 1275 and the regulations thereunder, except as provided in paragraph (d)(2) of this section. A single installment obligation (as defined in § 1.1273–1(b)(2)(i)) shall be subject to the rule described in the preceding sentence. Whether debt instruments are issued in connection with the same transaction or a series of related transactions shall be determined in accordance with all the facts and circumstances surrounding the issuance of the debt instrument. See § 1.1274A–1(d).

(2) *Exception.* Paragraph (d)(1) of this section shall not apply if—

(i) Each debt instrument held by the taxpayer is part of a series that is separately traded on an established securities market, or

(ii) (A) Each debt instrument held by the taxpayer is issued in exchange for property; (B) each instrument calls for interest at the lowest rate (or fixed multiple thereof) that constitutes adequate stated interest within the meaning of section 1274(c)(2) and § 1.1274–3; and (C) all interest under each debt instrument is qualified periodic interest within the meaning of § 1.1273–1(b)(1)(ii).

(3) *Effective date.* In general, the rules stated in paragraph (d) of this section shall apply to all installment obligations issued after December 31, 1984, and to all other debt instruments that are issued on or after May 8, 1986. The issuer and holder may elect jointly, however, to apply these rules to serial debt instruments issued after December 31, 1984. Conversely, the issuer and the holder may elect to treat each payment of principal made under an installment obligation issued after December 31, 1984, and before May 8, 1986, as a separate debt instrument maturing serially. The issuer and the holder shall notify the Secretary of this election on their tax returns for their respective taxable years in which the debt instrument(s) is (are) issued. If no election is made, the rules of paragraph (d) of this section shall apply unless the parties have provided for two or more debt instruments maturing serially, in which case the rules of § 1.1232–3(b)(2)((iv)(e) shall apply.

(4) *Example.* The rules set forth in paragraph (d) of this section may be illustrated by the following example:

Example. On January 1, 1987, A sells property to B in exchange for two debt instruments. The first debt instrument has a stated principal amount (as defined in § 1.1274–2) of $500,000, payable in two years. The debt instrument calls for annual payments of interest at a rate of 20%. The second debt instrument also has a stated principal amount of $500,000, and is payable in 10 years. That debt instrument calls for annual payments of interest at a rate of 10%, compounded annually. Assume that the Federal short-term rate on January 1, 1987 is 8%, compounded annually, and that the Federal long-term rate on that date is 10%, compounded annually. Thus, both instruments have adequate stated interest within the meaning of section 1274 and § 1.1274–3. Under paragraph (d)(1) of this section, the two debt instruments will be treated as a single installment obligation because they are part of a single issue and the debt instruments do not satisfy the requirements of paragraph (d)(2) of this section. The combined debt instrument has an issue price of $1,000,000 and a yield of 12.32%, compounded annually. The debt instrument has $100,000 of original issue discount since one-half ($50,000) of each payment of interest on the 2-year debt instrument is not qualified periodic interest within the meaning of § 1.1273–1(b)(1)(ii) when the two debt instruments are aggregated.

The allocation of original issue discount and principal to each of the ten annual accrual periods under the single installment obligation is set forth in the table below:

Year	Payment	Principal	Interest accrued	Qualified periodic interest	OID
1	$150,000	$26,819.35	$123,180.65	$100,000	$23,180.65
2	650,000	530,122.97	119,877.03	100,000	19,877.03
3	50,000	0	54,576.11	50,000	4,576.11
4	50,000	0	55,139.82	50,000	5,139.82
5	50,000	0	55,772.95	50,000	5,772.95
6	50,000	0	56,484.07	50,000	6,484.07
7	50,000	0	57,282.78	50,000	7,282.78
8	50,000	0	58,179.87	50,000	8,179.87
9	50,000	0	59,187.48	50,000	9,187.48
10	550,000	443,057.68	60,319.20	50,000	10,319.20
	1,700,000	1,000,000.00	700,000.00	600,000	100,000.00

(e) *Counting conventions*—(1) *Whole accrual periods.* All whole accrual periods, whether expressed annually, semiannually, quarterly, or monthly, or with reference to any other time period, shall be treated as having equal length. For example, a leap year shall be treated as having the same number of days as a non-leap year; all whole months shall be treated as having the same number of days.

(2) *Short accural periods.* In computing the length of a short accural period, any reasonable convention may be used. Common conventions are "30 days per month/360 days per year", "actual days per month/actual days per year", and "actual days per month/360 days per year". The examples in the regulations under sections 1271 through 1275 use the "30 days per month/360 days per year" convention.

(3) *Amounts payable on the first day of a month*—(i) *In general.* If a debt instrument calls for amounts payable on the first day or the first business day of a month either party to the debt instrument may treat such amounts as payable on the last day of the preceding month. This treatment shall be applied consistently throughout the entire term of the debt instrument and applies for all Federal tax purposes.

(ii) *Example.* A debt instrument is issued on January 1, 1986, providing for payments of interest on July 1 and January 1 of each calendar year through January 1, 2016. Either party may treat the debt instrument as providing for payments of interest on June 30 and December 31 of each calendar year through December 31, 2015.

(f) *Treatment of certain loans for personal use*—(1) *Sections 1274 and 483 not to apply.* In the case of the obligor under any debt instrument given in consideration for the sale or exchange of property, sections 1274 and 483 shall not apply if such property is personal use property (as defined in paragraph (f)(3) of this section). Sections 1274 and 483 shall not apply to either the obligor or the obligee of a debt instrument described in paragraph (f)(1)(i) of this section if the debt instrument is also described in section 7872(c)(1) (A) through (C) and the regulations thereunder. See §§ 1.1274-1(b)(7) and 1.483-1(c)(3)(iii).

(2) *Original issue discount deducted on cash basis in certain cases*—(i) *In general.* In the case in which—

(A) A debt instrument is incurred in connection with the acquisition or carrying of personal use property.

(B) This debt instrument has original issue discount (determined after the application of paragraph (f)(1) of this section), and

(C) The obligor under this debt instrument uses the cash receipts and disbursements method of accounting. then notwithstanding section 163(e) and the regulations thereunder, the original issue discount on such debt instrument shall not be deductible prior to the time when the original issue discount is paid. The preceding sentence notwithstanding, if the amount of original issue discount is *de minimis*, the rule of § 1.163-7(d) shall apply.

(ii) *Time when original issue discount treated as paid.* For purposes of section 1275(b) and paragraph (f)(2) of this section, any amount designated as interest by the parties with respect to a debt instrument described in paragraph (f)(2)(i) of this section but treated as original issue discount because this interest is not qualified periodic interest (as defined in § 1.1273-1(b)(1)(ii)) shall be treated as paid solely by reference to the terms of the debt instrument.

(3) *Definition of personal use property.* The term "personal use property" means any property substantially all of the use of which by the taxpayer is not in connection with a trade or business of the taxpayer or an activity described in section 212. The determination whether property is described in the preceding sentence shall be made as of the issue date of the debt instrument.

(4) *Examples.* The provisions of this paragraph (f) may be illustrated by the following examples:

Example (1). The facts are the same as in § 1.1272-1(k), Example (9), except that the property sold is personal use property in B's hands. Accordingly, B is not entitled to deduct original issue discount until paid. Thus, B may not deduct any amount as interest for 1986 or 1987 because no amount of interest is paid during those years. In each of the years 1988 through 1995, the amount B may deduct as interest is the stated interest amount of $450,000.

Example (2). (i) A borrows $100,000 from bank B to purchase a residence. As part of the condition for obtaining the loan, B charges A $4,000 in points. A chooses not to pay the points at closing, but instead borrows the $4,000 from B on the same terms as the $100,000. Accordingly, A becomes obligated to B for a total amount of $104,000. The $104,000 is payable in 360 monthly installments of $1,069.76, each payment consisting of a partial payment of principal and interest at a rate of 12% on the outstanding principal balance. A's debt instrument is a self-amortizing installment obligation (within the meaning of § 1.1273-1(b)(2)(iii)).

(ii) A's debt instrument has a stated redemption price at maturity of $104,000 and an issue price of $100,000. Accordingly, the points that A is obligated to pay to B take the form of original issue discount. Under the safe harbor test of § 1.1273-1(a)(3)(ii)(B), A's debt instrument has a *de minimis* amount of original issue discount. Therefore, under § 1.163-7(d), the amount of original issue discount allocable to each principal payment is $4,000/360=$11.11 (notwithstanding the fact that the earlier principal payments are less than $11.11). In a year in which A makes 12 monthly payments, the amount of original issue discount deductible by A is $133.33.

§ 1.1275-3 Original issue discount information reporting requirements.

(a) *Information required to be set forth on face of debt instrument.* In the case of any debt instrument issued after May 8, 1986, that has original issue discount and is not described in section 1272(a)(2) or § 1.1272-1(a)(2), the issuer shall set forth on the face of the debt instrument the amount of the original issue discount (as defined in section 1273(a)(1) and § 1.1273-1(a)), the issue date (as defined in section 1275(a)(2) and § 1.1275-1(c)), the yield to maturity (as defined in § 1.1272-1(f)) as well as the method used to determine yield where there is a short accrual period, and the amount of original issue discount allocable to the short accrual period. In cases where it is not possible to set forth the information required by this paragraph (a) on the face of the instrument by the issue date, the issuer shall deliver to the holder of the debt instrument a sticker containing this information within 10 days of the issue date. In the case of any debt instrument that is not publicly offered (within the meaning of § 1.1273-1(a)(2)), however, the requirements stated in this paragraph (a) shall apply only upon a disposition of the debt instrument that occurs after May 8, 1986, by the first holder. For rules relating to the penalty imposed for failure to show the information required by this section on the debt instrument, see section 6706(a) and the regulations thereunder.

(b) *Information required to be reported to Secretary*—(1) *In general.* In the case of any issue of publicly offered debt instruments issued after August 16, 1984, that have original issue discount, the issuer (as defined in paragraph (c) of this section) shall make an information return on Form 8281. The preceding sentence shall not apply to: (i) An issue of debt instruments described in section 1272(a)(2), (ii) certificates of deposit, and (iii) unless otherwise required by the Commissioner pursuant to a Revenue Procedure, stripped bonds and coupons (within the meaning of section 1286).

(2) *Information required to be reported.* The following information shall be reported to the Secretary on Form 8281—

(i) The name, address, and taxpayer identification number of the issuer;

(ii) The issue date (as defined in section 1275(a)(2)), maturity date, and CUSIP number of the issue;

(iii) The amount of original issue discount for the entire issue (as defined in section 1273(a));

(iv) The issue price (as defined in section 1273(b)) expressed as a percentage of the principal amount;

(v) The stated redemption price at maturity of the entire issue, or of each debt instrument within the issue if in denominations of other than $1,000;

(vi) The stated interest rate and the interest payment dates;

(vii) A description of the debt instrument, or, in place of the description, a copy of the offering circular or prospectus, which description shall include a statement of any terms and conditions of the instrument that govern—

(A) Whether payments of principal may be made prior to maturity of the debt instrument;

(B) Whether the debt instrument is part of an investment unit;

(C) Whether the debt instrument is issued in an exchange described in section 368(a);

(D) Whether the debt instrument is part of a serial issue; and

(E) Whether the debt instrument is a stripped bond or stripped coupon.

(viii) The method selected for computing the amount of original issue discount allocable to a short accrual period; and

(ix) Such other information as is required by the form.

(3) *Time and manner of filing of information return*—(i) The information return required by paragraph (b)(1) of this section shall be filed on Form 8281 with the Internal Revenue Service at the address specified on the form. This return must be made on Form 8281 regardless of whether other information

returns are filed by use of electronic media.

(ii) Form 8281 shall be filed with respect to each issue of publicly offered debt instruments—

(A) For debt instruments issued after May 31, 1985, within 30 days after the issue date; and

(B) For debt instruments issued after August 16, 1984, and before June 1, 1985, on or before July 1, 1985.

(4) *Penalty.* For rules relating to the penalty provided for failure to make an information return under paragraph (b) of this section, see section 6706 (b) and the regulations under that section.

(c) *Issuer.* For purposes of this section, the term "issuer" includes not only domestic issuers but also any foreign issuer who is otherwise subject to United States income tax law, unless the issue is neither listed on an established securities market (as defined in § 1.453-3(d)(4)) in the United States nor offered for sale or resale in the United States in connection with its original issuance.

§ 1.1275-4 Contingent payments.

(a) *Applicability.* The rules of this section apply to debt instruments that provide for one or more contingent payments (as defined in paragraph (b) of this section). Contingent payments under a debt instrument subject to section 1274 are governed by the provisions of paragraphs (c) or (d), whichever is applicable. Contingent payments under a debt instrument issued for cash or publicly traded property are governed by the provisions of paragraphs (e) or (f) whichever is applicable. Nothing in this section or in the regulations under sections 1271 through 1274 shall influence whether an instrument calling for contingent payments is properly treated as debt or equity, or whether such instrument evidences a valid indebtedness for Federal income tax purposes.

(b) *Definition of contingent payment*—(1) *In general.* In determining whether a payment called for under a debt instrument is a contingent payment, remote and incidental contingencies may be disregarded by the Commissioner. The parties to the transaction, however, are bound by its form. Thus, neither party may treat any amount under a debt instrument whose payment is subject to a stated contingency as noncontingent. A payment shall not be considered a contingent payment merely because the amount of or the liability for the payment may be impaired by insolvency or default. Variable payments of interest based on current values of an objective interest index (as defined in § 1.1275-5), if made under a debt instrument issued for cash or publicly traded property to which § 1.1275-5(a) applies or if made under a debt instrument to which § 1.1274-3(d)(1)(i) applies, shall not be treated as contingent payments, and if made under a debt instrument to which § 1.1274-3(d)(1)(i) does not apply, shall be treated as contingent payments to the extent provided in § 1.1274-3(d)(1)(iv).

(2) *Certain debt instruments providing for payments contingent only as to time.* In the case of a debt instrument that calls for fixed or minimum payments of principal uncertain as to the time of payment, and that calls for payments of interest on the unpaid principal balance at a fixed or variable rate (which, in a transaction subject to section 1274, constitutes adequate stated interest), such payments shall not be treated as contingent payments (within the meaning of paragraph (b) of this section) and the provisions of § 1.1272-1(c) (in the case of a fixed rate) or §§ 1.1272-1(f)(3)(ii) and 1.1275-5(d) (in the case of a variable rate) shall apply to determine the amount of original issue discount allocable to each accrual period under the debt instrument. See §1.1272-1(k), Example (14). Payments of principal in excess of the minimum amount of principal (other than payments of principal accompanied by adequate stated interest), however, shall be treated as contingent payments.

(c) *Debt instruments subject to section 1274*—(1) *Separation into noncontingent and contingent components.* Except as otherwise provided in section 1274 and the regulations thereunder, in the case of a debt instrument (the "overall debt instrument") subject to section 1274 that calls for one or more contingent payments (other than a debt instrument described in paragraph (d) of this section), the noncontingent payments shall be subject to the rules described in paragraph (c)(2) of this section, and the contingent payments shall be accounted for separately under the provisions of paragraph (c)(3) of this section.

(2) *Treatment of noncontingent payments.* The noncontingent payments under an overall debt instrument described in paragraph (c)(1) of this section shall be treated under sections 1271 through 1275 and the regulations thereunder as a separate noncontingent debt instrument. The issue price of this separate noncontingent debt instrument is the issue price of the overall debt instrument, determined under §§ 1.1274-2(b) and 1.1274-3(d)(2) (if applicable). The stated redemption price at maturity is determined under § 1.1273-1(b)(1), and yield is determined under § 1.1272-1(f), both without reference to the contingent payments. The *de minimis* rule of section 1273(a)(3) and § 1.1273-1(a)(3) shall not apply to the noncontingent debt instrument.

(3) *Treatment of contingent payments*—(i) *In general.* Except as provided in paragraph (c)(3)(iii) of this section, the portion of the payment treated as interest is includible in gross income by the holder and deductible from gross income by the issuer in their respective taxable years in which the amount of the payment becomes fixed.

(ii) *Recharacterization of certain contingent payments.* Any contingent payment made under a debt instrument to which section 1274 applies, other than a contingent principal payment accompanied by a payment of adequate stated interest, shall be treated as consisting of—

(A) A payment of principal in an amount equal to the present value of the payment, determined by discounting the payment at the test rate (using the exact method for short periods) from the date that the amount of the payment becomes fixed to the issue date, and

(B) A payment of interest in an amount equal to the excess of the total amount of the payment over the amount treated as principal.

The preceding sentence notwithstanding, the total amount treated as principal under an overall debt instrument to which section 1274 applies that calls for a fixed or a maximum stated principal amount shall not exceed this fixed or maximum stated principal amount. Once the total of the noncontingent principal payments due under the debt instrument and the portion of the contingent payments treated as principal exceeds the amount described in the preceding sentence, any additional contingent payments shall be treated entirely as interest.

(iii) *Certain delayed contingent payments*—(A) *In general.* In the case in which a contingent payment is not due within six months of the date on which the amount of the payment becomes fixed, the parties shall be treated as if the borrower had issued a separate debt instrument on the date the amount of the payment becomes fixed, maturing on the date that the payment is due. This separate debt instrument shall be treated as a debt instrument to which section 1274 applies. The stated principal amount of this separate debt instrument shall be the amount of the payment that becomes fixed. An amount equal to the issue price of this debt instrument shall be characterized as interest or principal under the rules of paragraph (c)(3)(ii) of this section and accounted for under paragraph (c)(3)(i) of this section, as if an amount equal to the issue price had been paid by the borrower to the lender on the date that the amount of the payment becomes fixed. To determine the issue price of the separate debt instrument, all payments under the debt instrument shall be discounted from the maturity date to the date that the amount of the payment becomes fixed. The amount of a contingent payment shall be treated as fixed even if, once fixed, the payment is payable in the future together with interest that is subject to further contingencies.

(B) *Special rules.* In applying section 1274 to a separate debt instrument described in paragraph (c)(3)(iii)(A) of this section, any provision calling for a test rate other than the applicable Federal rate shall apply if, and only if, such provision applies to the overall debt instrument. (For example, the 9 percent maximum discount rate of section 1274A (a) and § 1.1274A–1(a) applies if the overall debt instrument satisfies the test of § 1.1274A–1(b)(3)). The test rates under paragraphs (c)(3)(ii) and (c)(3)(iii)(A) of this section shall be based on the applicable Federal rates in effect on the date of the sale or exchange (or, if applicable, the contract date), and shall be based on a term beginning on the date the overall debt instrument is issued and ending on the date the contingent payment is due.

(4) *Examples.* The provisions of paragraph (c) of this section may be illustrated by the following examples:

Example (1). (i) A owns Blackacre, unencumbered depreciable real estate. On April 1, 1986, A sells Blackacre to B for a stated purchase price of $6,000,000. B makes a down payment of $1,000,000 and issues to A a debt instrument calling for $5,000,000 to be paid in 5 years, with fixed interest of 6% and contingent interest of up to an additional 8%. Both fixed and contingent interest are payable annually on March 31 of each year from 1987 to 1991. The contingent interest payment in each year is calculated according to a formula that depends on the gross rents B receives from Blackacre during the preceding calendar year. Assume that B's debt instrument does not have adequate stated interest under § 1.1274–3, that the Federal short-term rate is 10%, compounded annually, and that the Federal mid-term rate is 11%, compounded annually.

(ii) The issue price of B's noncontingent debt instrument under paragraph (c)(2) of this section is determined by considering only the five fixed interest payments of $300,000 and the principal payment of $5,000,000. The present value, under § 1.1274–5, of the fixed payments under the overall debt instrument, using a discount rate equal to the Federal mid-term rate of 11%, compounded annually, is $4,076,025.75. This amount is also the issue price of the noncontingent debt instrument. B's basis in Blackacre is thus initially limited to $5,076,025.75 ($1,000,000 down payment plus $4,076,025.75 issue price of the noncontingent debt instrument). B's noncontingent debt instrument has imputed interest of $923,974.25 under section 1274, which is treated as original issue discount subject to current inclusion under section 1272 and the regulations thereunder.

(iii) Assume that the amount of contingent interest that becomes fixed as of December 31, 1986, is $100,000. This amount is treated under paragraph (c)(3)(ii)(A) of this section as a payment of principal to the extent of its present value (using a discount rate equal to the Federal short-term rate of 10%, compounded annually, and the exact method for the short period), discounting from December 31, 1986, (the date the amount of the payment becomes fixed) to April 1, 1986 (the issue date of B's debt instrument) which, under § 1.1274–5, is $93,101.24. The remainder of the $100,000 payment, $6,898.76, is treated under paragraph (c)(3)(ii)(B) of this section as interest. The additional amount treated as principal gives B additional basis in Blackacre on December 31, 1986, and, if A is reporting his gain on the installment method under section 453, is an additional amount realized by A when paid. The portion of the payment treated as interest is includible in gross income by A and deductible from gross income by B in their respective taxable years in which December 31, 1986 occurs.

(iv) Assume that the actual amounts of contingent interest that become fixed in years 1986 through 1989, and the amounts recharacterized as principal using a discount rate equal to the short-term rate (10%) for the first three payments and the mid-term rate (11%) for the fourth payment (and the exact method for the short period) under paragraph (c)(3)(ii) of this section are as follows:

Year	Contingent amounts	Amount treated as principal
1986	$100,000	$93,101.24
1987	200,000	169,274.99
1988	400,000	307,772.71
1989	400,000	279,793.37
		$849,942.32

The total amount recharacterized as principal as of December 31, 1989, is $849,942.32. Assume that the contingent amount fixed on December 31, 1990 is $400,000. The present value of this amount (using a discount rate of 11%, compounded annually and the exact method for the short period) as of April 1, 1986, is $254,357.61. Under paragraph (c)(3)(ii)(A) of this section, this amount would be treated as additional principal. However, the maximum amount of this payment that can be characterized as principal under the limitation of paragraph (c)(3)(ii) of this section is $74,031.94, which is the excess of the stated principal amount of the debt instrument ($5,000,000) over the sum of the testing amount of the debt instrument ($4,076,025.75) and amounts previously characterized as principal ($849,942.32). Thus, only $74,031.94 of the last $400,000 payment is treated as principal; the remainder, $325,968.07, is treated as interest which is includible in gross income by A and deductible from gross income by B in their respective taxable years in which December 31, 1990 occurs.

Example (2). (i) The facts are the same as in example (1), except that all contingent interest is payable at maturity on March 31, 1991. The contingent interest amounts bear interest from the time they become fixed until they are due at a rate of 13%, compounded quarterly. Assume that a rate of 13%, compounded quarterly constitutes adequate stated interest for all purposes of this example. The analysis of the noncontingent payments under the noncontingent debt instrument is the same as in part (ii) of example (1). Thus, B's noncontingent debt instrument has $923,974.25 of original issue discount subject to current inclusion under section 1272 and the regulations thereunder.

(ii) Assume that a $100,000 payment of contingent interest becomes fixed as of December 31, 1986. Since this amount is not due within six months of the time it becomes fixed, under paragraph (c)(3)(iii)(A) of this section, a separate debt instrument subject to the provisions of section 1274 is treated as issued by B on the date the payment becomes fixed, December 31, 1986. This debt instrument has a stated principal amount equal to the amount of the payment that becomes fixed, $100,000, and matures on the date the payment is due, March 31, 1991. The separate debt instrument has a stated redemption price at maturity under § 1.1273–1(b)(1) of $172,238.81 ($100,000 principal plus $72,238.81 of deferred interest). Since the payment bears adequate stated interest, under section 1274(a)(1), the issue price of this separate debt instrument is the stated principal amount of $100,000.

(iii) The $100,000 issue price of B's separate debt instrument is treated under paragraph (c)(3)(ii) of this section as principal to the extent of the present value of the payment as of April 1, 1986. Since the contingent payment is due 4 years and 3 months after it becomes fixed, the Federal mid-term rate of 11%, compounded annually, is used in determining its present value under the exact method (even though the $100,000 amount becomes fixed 9 months after the issue date). This present value is $92,471.47. The remainder of the payment, $7,528.53, is treated as interest. The $92,471.47 of principal gives B additional basis in Blackacre on December 31, 1986. The $7,528.53 payment of interest is includible in gross income by A and deductible from gross income by B for their respective taxable years in which December 31, 1986 occurs.

(iv) Since the interest on B's separate debt instrument to A is not payable currently, it is treated as original issue discount under section 1273 and is subject to current inclusion under section 1272 and the regulations thereunder. The accrual period under $1.1272–1(d)(1)(i) of B's separate debt instrument, is a calendar quarter. The amount of original issue discount on B's separate debt instrument allocable to each year under § 1.1272–1(c) is as follows:

Year	Original issue discount
1987	$13,647.60
1988	15,510.17
1989	17,626.93
1990	20,032.57
1991	5,421.54

Year	Original issue discount
	$72,238.81

Example (3). The facts are the same as in example (2), except that the contingent interest amounts do not bear additional interest from the time they become fixed until they are due. Assume that on December 31, 1986, a contingent interest payment of $100,000 becomes fixed; thus, on this date, B is obligated to pay A $100,000 on March 31, 1991. Since the contingent payment is not due within six months after it becomes fixed, under paragraph (c)(3)(iii)(A) of this section, the payment is treated as a separate debt instrument issued by B on December 31, 1986, for a stated principal amount of $100,000, maturing on March 31, 1991, with a stated redemption price at maturity of $100,000. Since this separate debt instrument bears no interest, it does not have adequate stated interest within the meaning of § 1.1274-3. The issue price of the separate debt instrument is the testing amount under § 1.1274-3, which is arrived at, under paragraph (c)(3)(iii)(B) of this section, by discounting all payments under the separate debt instrument at the test rate in effect on April 1, 1986 (the issue date) from the date the payment is due to the date the payment becomes fixed. Discounting $100,000 from March 31, 1991 to December 31, 1986, (using a discount rate of 11%, compounded annually and the exact method for the short period) yields a present value of $64,176.69. B is thus treated as having issued a separate debt instrument to A with an issue price of $64,176.69, bearing interest at a rate of 11%, compounded annually. The issue price of this debt instrument is treated under paragraph (c)(3)(ii) of this section as principal in an amount equal to the present value of $64,176.69, discounting from December 31, 1986 to April 1, 1986, (using a discount rate of 11%, compounded annually and the exact method for the short period), which is $59,345.13. This principal gives B additional basis in Blackacre on December 31, 1986. The remainder of the payment, $4,831.56, is treated as a payment of interest which is includible in gross income by A and deductible from gross income by B in their respective taxable years in which December 31, 1986 occurs. The $35,923.31 of imputed interest on B's separate debt instrument is original issue discount under section 1273 and is subject to the current inclusion rules of section 1272 and the regulations thereunder.

Example (4). The facts are the same as in example (3), except that the amount of contingent interest payable at maturity depends upon a formula relating to B's average profit or loss from Blackacre during the years 1987 through 1990. Because profits in earlier years may be offset by losses in later years, no amount becomes fixed until December 31, 1990. Since the total amount of contingent interest is due within six months from the date that the amount becomes fixed, the payment is not treated as a separate debt instrument once it becomes fixed under paragraph (c)(3)(iii)(A) of this section. Instead, the amount payable at maturity is treated under paragraph (c)(3)(ii) of this section as a payment of principal in an amount equal to the present value of the payment (using a discount rate of 11%, compounded annually) as of April 1, 1986, and as a payment of interest in an amount equal to the remainder. B is not entitled to deduct the amount of this interest payment from gross income until the date that the payment becomes fixed, December 31, 1990, nor does he receive any additional basis in Blackacre until that date. A is not required to include any interest in gross income until the date that the payment becomes fixed, December 31, 1990, and A has no additional amounts realized until maturity, March 31, 1991.

(d) *Certain contingent payments within a fixed period*—(1) *Applicability.* In the case of an overall debt instrument issued in a transaction to which section 1274 applies that—

(i) Calls for fixed or minimum payments within a specified time period, and

(ii) Either—

(A) Does not provide for adequate stated interest, or

(B) Contains a provision that recharacterizes a portion of each payment as interest to an extent sufficient to constitute adequate stated interest, the buyer's basis in the property purchased and the allocation of interest under the debt instrument given in consideration of the sale or exchange of the property, shall be determined pursuant to the provisions of paragraph (d)(2) of this section. Any payments in excess of the minimum payments provided for under the debt instrument shall be treated as contingent payments subject to the provisions of paragraph (c)(3) of this section.

(2) *Determination of buyer's basis and allocation of interest*—(i) *General rule.* For purposes of determining the buyer's basis in the property purchased and the allocation of interest (whether stated or imputed) to the proper accrual periods under the debt instrument, all future payments to be made under the debt instrument shall be presumed to be made at the latest possible date that is permitted under the terms of the debt instrument (taking into account all prior payments), and in the smallest amount permitted (excluding contemporaneous payments of stated interest). The preceding sentence shall not apply for purposes of determining the recovery of basis to the seller as a result of the sale or exchange of the property.

(ii) *Buyer's basis in property purchased*—(A) *Initial basis.* The buyer's basis in the property purchased at the time of the sale or exchange shall be the issue price of the debt instrument (determined pursuant to the general rule of paragraph (d)(2)(i) of this section).

(B) *Subsequent additions to basis.* When a fixed or minimum payment under the debt instrument is made, the buyer's basis in the property purchased shall be increased on that date by the excess of—

(*1*) The present value as of the issue date of the debt instrument of the amount of the payment, including any stated interest (determined under the provisions of paragraph (d)(2)(v) of this section), over

(*2*) The present value as of the issue date of the amount of the payment, including any stated interest (determined pursuant to the rules of paragraph (d)(2)(i) and (v) of this section).

(iii) *Adjusted issue price of the debt instrument.* For purposes of paragraph (d) of this section, the adjusted issue price at the end of an accrual period (as well as at the beginning of the next succeeding accrual period) is the present value as of that date of all future payments to be made under the debt instrument (determined pursuant to the rules of paragraph (d)(2) (i) and (v) of this section).

(iv) *Amount of original issue discount allocable to an accrual period.* The amount of original issue discount allocable to an accrual period shall be the excess of—

(A) The total amount of original issue discount that would have accrued through the end of that accrual period (determined by taking into account the timing of payments that have been made by the end of that accrual period and by treating all remaining future payments as subject to the general rule of paragraph (d)(2)(i) of this section), over

(B) The total amount of original issue discount allocated to prior accrual periods.

An alternate formulation for the amount of original issue discount allocable to an accrual period is the excess of—

(C) The sum of—

(*1*) The amount of the payment (if any) at the end of the accrual period, and

(*2*) The adjusted issue price of the debt instrument at the end of that accrual period, over

(D) The sum of—

(*1*) The amount by which the buyer's basis is increased as result of the payment, if any, (determined pursuant to paragraph (d)(2)(ii)(B) and (v) of this section), and

(*2*) The adjsuted issue price of the debt instrument at the beginning of the accrual period.

(v) *Special rules.* In applying the provisions of paragraph (d)(2)(ii)(B) and (iii) of this section, any provision calling for a test rate other than the applicable

Federal rate shall apply if, and only if, such provision applies to the overall debt instrument. The test rates under paragraph (d)(2)(ii)(B)(*2*) and (iii) of this section shall be based on the term of the overall debt instrument. The test rate under paragraph (d)(2)(ii)(B)(*1*) of this section shall be based on a term beginning on the date the overall debt instrument is issued and ending on the date the contingent payment is made.

(3) *Example.* The provisions of paragraph (d) of this section may be illustrated as follows:

Example. (i) On July 1, 1986, A sells Blackacre to B in exchange for B's debt instrument calling for five annual payments, each payment equal to 10% of the gross yield from Blackacre for the immediately preceding fiscal year ending on March 31. Each payment is to be made on the following June 30. The debt instrument does not provide for any stated interest. The terms of the debt instrument further specify that if by June 30, 1990, B has not paid at least $5 million to A, the payment due on June 30, 1991 shall consist of the excess of $5 million over the sum of all prior payments. Assume that on July 1, 1986, the Federal short-term rate is 9%, compounded annually, and the Federal mid-term rate is 11%, compounded annually.

(ii) Because no portion of the $5 million payment is unconditionally payable prior to June 30, 1991, the issue price of the debt instrument under § 1.1274-4 and paragraph (d)(2)(i) of this section is its imputed principal amount, determined by taking the present value of $5 million payable at the end of the 5-year term and using a discount rate of 11%, compounded annually. This present value is $2,967,257. B's basis in Blackacre is limited initially to this amount.

(iii) The gross yield from Blackacre for the fiscal year ending on March 31, 1987 is $13 million; therefore, a payment of $1,300,000 is due on June 30, 1987. The present value of this payment as of July 1, 1986, using a discount rate equal to the Federal short-term rate of 9%, compounded annually, is $1,192,660. The present value as of July 1, 1986 of a payment of $1,300,000 due on June 30, 1991, discounted at the Federal mid-term rate of 12%, compounded annually, is $771,487. Since the payment of $1,300,000 is actually made at an earlier date than that presumed under the general rule of paragraph (d)(2)(i) of this section, the buyer's basis is increased on the date of the payment under paragraph (d)(2)(ii)(B) of this section by the excess of the present value of the payment actually made over the present value of that amount. Thus, B receives additional basis in Blackacre as a result of the June 30, 1987 payment equal to $421,173 ($1,192,660−$771,487).

(iv) The adjusted issue price of B's debt instrument at the end of the first accrual period, June 30, 1987, pursuant to paragraph (d)(2)(iii) of this section, is equal to the present value as of June 30, 1987 of a payment of $3,700,000 ($5,000,000−$1,300,000) due on June 30, 1991, using a discount rate of 11%, compounded annually. This present value is $2,437,305.

(v) The amount of original issue discount allocable to the first accrual period, pursuant to paragraph (d)(2)(iv) of this section, is the sum of the payment actually made at the end of that accrual period ($1,300,000) and the adjusted issue price of the debt instrument at the end of the accrual period ($2,437,305) minus the sum of the amount of additional basis B receives as a result of the payment ($421,173) and the issue price of the obligation ($2,967,257). This amount is $348,875 [($1,300,000+$2,437,305)−($421,173+$2,967,257)].

(vi) Assume that the gross yield from Blackacre for the fiscal year ending March 31, 1988 is $15 million; therefore, a payment of $1,500,000 is due on June 30, 1988. Pursuant to the provisions of paragraph (d)(2)(ii)(B) of this section, B receives additional basis in Blackacre of $372,343, calculated as follows:

Present value of actual $1,500,000 payment at end of second accrual period, using a discount rate of 9%, compounded annually	$1,262,520
Reduced by:	
Present value of a hypothetical $1,500,000 payment at maturity, using a discount rate of 11%, compounded annually	(890,177)
	$372,343

(vii) The adjusted issue price of B's debt instrument at the end of the second accrual period is equal to the present value as of June 30, 1988, of a payment of $2,200,000 ($3,700,000−$1,500,000) due on June 30, 1991, using a discount rate of 11%, compounded annually. This present value is $1,608,621.

(viii) The amount of original issue discount allocable to the second accrual period is the sum of the payment actually made at the end of that accrual period ($1,500,000) and the adjusted issue price of the debt instrument at the end of the accrual period ($1,608,621) minus the sum of the amount of additional basis B receives as a result of the payment ($372,343) and the adjusted issue price at the beginning of the accrual period ($2,437,305). The amount of original issue discount allocable to the second accrual period is thus $298,973 [($1,500,000+$1,608,621)−($372,343+$2,437,305)].

(ix) Assume that the gross yield from Blackacre for the fiscal year ending on March 31, 1989 is $14 million, and a payment of $1,400,000 is due on June 30, 1989. Assume further that B receives additional basis of $250,225 as a result of that payment, and that the amount of original issue discount allocable to the third accrual period is $190,452. Therefore, by June 30, 1989, B has made total payments to A of exactly $4,200,000 (including the $1,400,000 payment made on that date). The adjusted issue price of B's debt instrument on June 30, 1989 is equal to the present value as of that date of the $800,000 remaining minimum payment (assuming that the payment will be made on June 30, 1991). This present value is $649,298.

(x) Assume that the gross yield from Blackacre for the fiscal year ending on March 31, 1990 is $18 million; therefore, a payment of $1,800,000 is due on June 30, 1990. Since the remaining minimum payment is only $800,000, this payment is subject to the rules of paragraph (d) of this section only to the extent of that minimum payment. The remainder of the payment, $1,000,000, is characterized as interest or principal under the rules of paragraph (c)(3)(ii) of this section. The present value of $800,000 as of the issue date, July 1, 1986, using a discount rate equal to the Federal mid-term rate of 11%, compounded annually, is $526,985. The present value of a payment of $800,000 due on June 30, 1991, using a discount rate of 11%, compounded annually, is $474,761. B thus receives additional basis in Blackacre attributable to the remaining $800,000 minimum payment of $52,224 ($526,985−$474,761). B also receives additional basis on March 31, 1990, under paragraph (c)(3)(ii) of this section, equal to the present value of the $1,000,000 excess payment, or $658,731. B's total increase in basis is thus $710,955 ($52,224+$658,731).

(xi) Since the minimum payment requirements of the debt instrument have been satisfied, the adjusted issue price of the debt instrument as of June 30, 1990, defined in paragraph (d)(2)(iii) of this section as the present value of all future fixed or minimum payments to be made under the debt instrument, is zero. The amount of original issue discount allocable to the accrual period beginning on July 1, 1989 and ending on June 30, 1990 is equal to the excess of the minimum payment made at the end of that accrual period ($800,000) over the sum of the additional basis B receives as a result of that portion of the payment ($52,224) and the adjusted issue price of the debt instrument at the beginning of the accrual period ($649,298). The amount of original issue discount allocable to the accrual period ending on June 30, 1990 is thus $98,478 [$800,000+$649,298)]. The excess of the $1,000,000 portion of the payment over the portion treated as principal, $658,731, which excess is $341,269, is treated as interest and is accounted for on June 30, 1990.

(xii) Assuming that there is an additional payment during the one remaining accrual period, the amount of additional basis received by B is that portion of the payment due at the end of the accrual period that is treated as principal (as determined under paragraph (c)(3)(ii) of this section). This amount is the present value of the payment as of the issue date, using a discount rate of 11%, compounded annually. The amount of original issue discount allocable to that accrual period is that portion of the payment treated as interest. This amount is equal to the excess of the amount of the payment over the portion that is treated as principal.

(e) *Certain debt instruments issued for cash or publicly traded property*—(1) *Separation into noncontingent and contingent components.* In the case of an overall debt instrument issued for cash or publicly traded property in which the sum of all the noncontingent payments under the debt instrument (regardless of whether designated as interest or principal) is greater than or equal to the issue price of the overall debt instrument, the noncontingent payments shall be subject to the rules described in paragraph (e)(2) of this section, and the contingent payments shall be subject to the rules described in paragraph (e)(3) of this section.

(2) *Treatment of noncontingent payments.* The noncontingent payments under an overall debt instrument described in paragraph (e)(1) of this section shall be treated under sections 1271 through 1275 and the regulations thereunder as a separate noncontingent debt instrument. The issue price of this separate noncontingent debt instrument is the issue price of the overall debt instrument. The stated redemption price at maturity is determined under § 1.1273–1(b)(1); and yield is determined under § 1.1272–1(f), all without reference to the contingent payments. The *de minimis* rule of section 1273(a)(3) and §1.1273–1(a)(3) shall not apply to the noncontingent debt instrument.

(3) *Treatment of contingent payments*—(i) *In general.* The contingent payments under an overall debt instrument described in paragraph (e)(1) of this section shall be treated entirely as interest and, except as provided in paragraph (e)(3)(ii) of this section, shall be includible in gross income by the holder and deductible from gross income by the issuer in their respective taxable years in which the amount of the payment becomes fixed.

(ii) *Certain delayed contingent payments*—(A) *In general.* In the case in which a contingent payment is not due within six months of the date on which the amount of the payment becomes fixed, the parties shall be treated as if the borrower had issued a separate debt instrument on the date the amount of the payment becomes fixed, maturing on the date that the payment is due. The stated principal amount of this separate debt instrument shall be the amount of the payment that becomes fixed. An amount equal to the issue price of this separate debt instrument shall be accounted for as if an amount of interest equal to such issue price had been paid by the borrower to the lender on the date that the amount of the payment becomes fixed. To determine the issue price of the separate debt instrument, all payments under the debt instrument shall be discounted from the date that the payment is due to the date that the payment becomes fixed. The amount of a contingent payment shall be treated as fixed even if, once fixed, the payment is payable in the future together with interest that is subject to further contingencies.

(B) *Special rules.* In applying section 1274 to a separate debt instrument described in paragraph (e)(3)(ii) of this section, (*1*) the test rate shall be based on the term of the overall debt instrument, and (*2*) any provision calling for a test rate other than the applicable Federal rate shall apply if, and only if, such provision would have been applied to the overall debt instrument if it had been issued for nonpublicly traded property.

(4) *Examples.* The provisions of paragraph (e) of this section may be illustrated by the following examples:

Example (1). On April 1, 1986, A sells publicly traded property to B in exchange for B's debt instrument calling for a payment of $5,000,000 in five years with fixed interest of 6% and contingent interest of up to an additional 8% payable annually on March 31 of each year from 1987 to 1991. Assume that the fair market value of the property on April 1, 1986, is $5,000,000. The issue price of the overall debt instrument under section 1273 (b)(3) and § 1.1273 2(c)(1) is $5,000,000. Applying the rules of section 1273 and the regulations, thereunder to only the noncontingent payments under the debt instrument in accordance with paragraph (e)(2) of this section, the issue price of the noncontingent debt instrument is $5,000,000, and its stated redemption price at maturity (under § 1.1273–1(b)(1)) is $5,000,000. Thus, the noncontingent debt instrument has no original issue discount under section 1273(a)(1). Under paragraph (e)(3) of this section, each contingent payment is treated entirely as interest which is accounted for by both A and B in their respective taxable years in which the amount of the payment becomes fixed.

Example (2). (i) The facts are the same as in example (1), except that the contingent interest which becomes fixed on March 31 of each year is not payable until maturity. However, these deferred amounts bear interest at a rate of 13%, compounded quarterly. The analysis of the noncontingent payments under the debt instrument is the same as in example (1).

(ii) Assume that a contingent payment of $100,000 becomes fixed as of December 31, 1986, and is payable on March 31, 1991. Since this amount is not due within six months of the date it becomes fixed, under paragraph (e) (3)(ii)(A) of this section, a separate debt instrument subject to the provisions of section 1274 is treated as issued by B on the date the payment becomes fixed, December 31, 1986. This separate debt instrument has a stated principal amount equal to the amount of the payment as fixed, $100,000, and matures on the date the payment is due, March 31, 1991. The separate debt instrument has a stated redemption price at maturity under § 1.1273–1(b)(1) of $172,238.81 ($100,000 principal plus $72,238.81 of deferred interest). Since the payment bears adequate stated interest, under section 1274(a)(1), the issue price of this separate debt instrument is the stated principal amount of $100,000. The $100,000 issue price of B's separate debt instrument is treated entirely as interest under paragraph (e)(3) of this section, and is accounted for by both A and B in their respective taxable years in which December 31, 1986 occurs.

Example (3). The facts are the same as in example (3), except that the contingent interest amounts do not bear additional interest from the time they become fixed until they are due. Assume that, on December 31, 1986, a contingent interest payment of $100,000 becomes fixed; thus, on this date, B is obligated to pay A $100,000 on March 31, 1991. Since the contingent payment is not due within six months after it becomes fixed, under paragraph (e)(3)(ii)(A) of this section, the payment is treated as a separate debt instrument issued by B on December 31, 1986, for a stated principal amount of $100,000, maturing on March 31, 1991, with a stated redemption price at maturity of $100,000. Since this separate debt instrument bears no interest, it does not have adequate stated interest within the meaning of § 1.1274–3. The issue price of the separate debt instrument is the testing amount under § 1.1274–4, which is calculated, under paragraph (e)(3)(ii)(B) of this section, by discounting all payments under the separate debt instrument at the test rate in effect on April 1, 1986 (the issue date) from the date the payment is due to the date the payment becomes fixed. Discounting $100,000 from March 31, 1991 to December 31, 1986, (using a discount rate of 11%, compounded annually and the exact method for the short period) yields a present value of $64,176.69. B is treated as having issued a separate debt instrument to A with an issue price of $64,176.69, bearing interest at a rate of 11% compounded annually. This issue price is treated entirely as interest under paragraph (e)(3) of this section and the interest on the separate debt instrument is original issue discount.

Example (4). (i) C lends D $1,000,000 for use in D's business on July 1, 1986. D gives C a 5-years debt instrument calling for fixed interest payable semiannually at a rate of 10%, and a repayment of the $1,000,000 principal on June 30, 1991. In addition, the debt instrument calls for an additional contingent interest payment at maturity equal to one percent of the average annual gross sales from D's business during the 5-year period ending on December 31, 1990.

(ii) Analyzing only the noncontingent payments under the debt instrument pursuant to paragraph (e)(2) of this section, the debt instrument has an issue price of $1,000,000 under section 1273(b)(2) and § 1.1273–2(b)(2), and a stated redemption price at maturity under § 1.1273–2(b)(1) of $1,000,000. Thus, the noncontingent debt instrument has no original issue discount under section 1273(a)(1) since the issue price and the stated redemption price at maturity are the same.

(iii) The sales from D's business during 1986 are $3,000,000. Thus, the average annual gross sales during the 5-year period must be at least $600,000 (sales in future years may all be zero but will never be less than zero), and the contingent interest payment at maturity is, therefore, at least $6,000. This amount is the contingent interest payment that becomes fixed as of December 31, 1986. Since the payment is not due within six months of the date that the amount becomes fixed, under paragraph (e)(3)(ii) of this section it is treated as a separate debt instrument subject to section 1274, issued on December 31, 1986, for a stated principal amount of $6,000, and maturing on June 30, 1991 with a stated redemption price at maturity of $6,000. Assume that the test rate of interest on April 1, 1986, is 12%, compounded semiannually. Since the separate debt instrument bears no interest, it does not have adequate stated interest within the meaning of § 1.1274–3. The issue price of the separate debt instrument is, therefore, the testing amount of $3,551.39, determined under § 1.1274–3 using a rate of 12%, compounded semiannually, to discount the $6,000 payment from the date it is due, June 30, 1991, to the date it becomes fixed, December 31, 1986. B's separate debt instrument has a yield of 12%, compounded semiannually. The difference between the stated redemption price at maturity and the issue price of the separate debt instrument is original issue discount. The entire amount of the issue price of B's separate debt instrument, $3,551.39, is treated as interest pursuant to paragraph (e)(3) of this section, and is accounted for by both C and D in their respective taxable years in which December 31, 1986, occurs.

(iv) The sales from D's business during 1987 are $4,000,000. Thus, as of December 31, 1987, it is established that the average annual gross sales from D's business during the 5-year period will be at least $1,400,000 yielding a total payment at maturity of at least $14,000. This represents an additional payment of $8,000 to be made at maturity that becomes fixed on December 31, 1987. The analysis of this payment is the same as in part (iii), except that the testing amount is determined by discounting the $8,000 payment at a rate of 12%, compounded semiannually, from June 30, 1991 to December 31, 1987. This amount is $5,320.46. The entire amount of the issue price of B's separate debt instrument is treated as interest under paragraph (e)(3) of this section and is includible in gross income by C and deductible from gross income by D in their respective taxable years in which December 31, 1987 occurs.

(f) *Certain debt instruments issued for cash or publicly traded property that provide for contingent principal*—(1) *In general.* In the case of a debt instrument issued for cash or publicly traded property that provides for contingent payments, and that fails to provide for total noncontingent payments at least equal to the issue price of the debt instrument (as determined under section 1273(b) and § 1.1273–2), the noncontingent payments shall be treated as payments of principal (without regard to whether designated as interest or principal), and the contingent payments shall be subject to the rules of paragraph (f) (2) and (3) of this section.

(2) *Treatment of contingent payments*—(i) *In general.* Except as provided in paragraph (f)(2)(v) of this section, the portion of the contingent payment treated as interest shall be includible in gross income by the holder and deductible from gross income by the issuer in their respective taxable years in which the amount of the payment becomes fixed.

(ii) *Recharacterization of contingent payments.* Any contingent payment under a debt instrument described in paragraph (f)(1) of this section (other than a contingent payment made at the maturity date) shall be treated as consisting of—

(A) A payment of interest to the extent of interest deemed accrued for the current and all prior accrual periods (as determined under paragraph (f)(2)(iii) of this section) and not allocated to prior payments, and

(B) A payment of principal to the extent of the excess of such payment over the portion treated as interest under paragraph (f)(2)(ii)(A) of this section.

Notwithstanding the preceding sentence, the total amount treated as principal shall be no greater than the excess of the issue price of the debt instrument over the sum of all noncontingent payments to be made under the debt instrument. Once the total of the contingent payments characterized as principal under paragraph (f)(2)(ii)(B) of this section equals this excess, any additional contingent payments shall be treated entirely as interest.

(iii) *Interest deemed accrued.* For purposes of paragraph (f)(2)(ii) of this section, the amount of interest deemed accrued during an accrual period is equal to the product of—

(A) The adjusted issue price (as determined under paragraph (f)(2)(iv) of this section) at the beginning of the accrual period, and

(B) The applicable Federal rate, based upon the due date of the final payment (regardless of whether contingent or noncontingent) under the debt instrument.

For purposes of paragraph (f)(2)(iii)(B) of this section, the applicable Federal rate is that Federal rate that would apply to the debt instrument had it been issued for nonpublicly traded property. In the case of a debt instrument described in paragraph (f)(1) of this section that contains a short accrual period, interest deemed accrued shall be determined according to the exact method under § 1.1272–1(c)(2)(ii)(B).

(iv) *Adjusted issue price.* For purposes of paragraph (f)(2)(iii) of this section, the adjusted issue price of a debt instrument at the beginning of the first accrual period is its issue price. The adjusted issue price of the debt instrument at the beginning of each subsequent accrual period is equal to—

(A) The sum of—

(*1*) The adjusted issue price at the beginning of the immediately preceding accrual period, and

(*2*) The amount of total interest deemed accrued during that accrual period,

(B) Reduced by the amount of all payments (both noncontingent and contingent) due during the immediately preceding accrual period.

(v) *Certain delayed contingent payments*—(A) *In general.* If a contingent payment is not due within six months of the date on which the amount of the payment is fixed, the parties shall be treated as if the borrower had issued a separate debt instrument on the date the amount of the payment becomes fixed, maturing on the date that the payment is due. This separate debt instrument shall be treated as a debt instrument to which section 1274 applies. The stated principal amount of this separate debt instrument shall be the amount of the payment that becomes fixed. An amount equal to the issue price of this debt instrument shall be characterized as interest or principal under the rules of paragraph (f)(2)(ii) of this section and accounted for under paragraph (f)(2)(i) of this section as if an amount equal to the issue price had been paid by the borrower to the lender on the date that the amount of the payment becomes fixed. To determine the issue price of the separate debt instrument, all payments under the debt instrument shall be discounted from the maturity date to the date that the payment becomes fixed. The amount of a contingent payment shall be treated as fixed even if, once fixed, the payment is payable in the future together with interest that is subject to further contingencies.

(B) *Special rules.* In applying section 1274 to a separate debt instrument described in paragraph (f)(2)(iv)(A) of this section, (*1*) the test rate shall be based on the term of the debt instrument described in paragraph (f)(1) of this section, and (*2*) any provision calling for a test rate other than the applicable Federal rate shall apply if, and only if, such provision would have been applied to a debt instrument described in paragraph (f)(1) of this section if it had been issued for nonpublicly traded property.

(3) *Payments at maturity.* If, at the time of final maturity, the outstanding principal balance (issue price less the sum of all prior payments treated as principal under paragraph (f) (1) and (2)(ii) of this section) exceeds the total

amount of the final payment (whether contingent or noncontingent), the entire amount of the final payment shall be treated as principal and the debt instrument shall be treated as retired for such amount. If, conversely, at that time, the total amount of the final payment exceeds the outstanding principal balance, the debt instrument shall be treated as retired for an amount equal to such outstanding principal balance, and the final payment shall be treated as interest to the extent of such excess.

(4) *Examples.* The provisions of paragraph (f) of this section may be illustrated by the following examples:

Example (1). (i) On January 1, 1990, A sells to B publicly traded property having a fair market value on that date of $1,000,000. In exchange therefor, B issues to A a debt instrument maturing on June 30, 1991 for $900,000. The debt instrument also provides for an additional contingent payment at maturity of up to $500,000.

(ii) The issue price of the debt instrument, under section 1273(b)(3) and §1.1273-2(c)(1), is $1,000,000, the fair market value of the property. The sum of the noncontingent payments under the debt instrument is $900,000. Since the sum of the noncontingent payments under the debt instrument is less than its issue price, the noncontingent payments are treated as payments of principal under paragraph (f)(1) of this section, and the contingent payments are characterized as interest or principal under paragraph (f)(2)(ii) of this section.

(iii) Assume that the amount of the contingent payment at maturity is equal to the maximum amount of $500,000. The total payment at maturity is, therefore, $1,400,000. The outstanding principal balance at maturity is equal to the issue price of $1,000,000, since no other payments of principal have been made. Since the amount of the final payment exceeds the outstanding principal balance at maturity, under paragraph (f)(3) of this section, it is treated as a payment of principal to the extent of $1,000,000. The remainder of the final payment, $400,000, is treated as interest and is includible in gross income by A and deductible from gross income by B, under paragraph (f)(1) of this section, in their respective taxable years in which June 30, 1991 occurs.

Example (2). The facts are the same as in example (1), except that the amount of the contingent payment actually made at maturity is $50,000. Under paragraph (f)(3) of this section, since the outstanding principal balance of $1,000,000, exceeds the amount of the $950,000 payment at maturity, the entire $950,000 is treated as principal and the debt instrument is treated as redeemed for this amount. A's basis in B's debt instrument is equal to the amount loaned, $1,000,000, and A's amount realized upon maturity of the debt instrument is $950,000. A, therefore, realizes a loss of $50,000 on the retirement of B's debt instrument on June 30, 1991.

Example (3). (i) On January 1, 1988, C loans D $2,000,000 in exchange for D's 18-month debt instrument maturing on June 30, 1989. The debt instrument provides for three semiannual payments on June 30 and December 31 of $600,000 in addition to three contingent payments in amounts based upon profits from D's business. Assume that the Federal short-term rate on January 1, 1988 is 10%, compounded semiannually. Assume further that the contingent payments, when made on June 30, 1988, December 31, 1988, and June 30, 1989, are in the amounts of 0, $350,000, and $75,000, respectively.

(ii) The issue price of the debt instrument, under section 1273(b)(2) and §1.1273-2(b)(2), is the amount loaned, or $2,000,000. The sum of the noncontingent payments under the debt instrument is $1,800,000. Under paragraph (f)(1) of this section, all of the noncontingent payments are treated as principal. The accrual period, under §1.1272-1(d)(1)(i), is the six-month interval between payment dates, ending on June 30 and December 31 of both years. Total interest deemed accrued, under paragraph (f)(2)(iii) of this section, during the first accrual period is equal to the product of the issue price, $2,000,000, and one-half of the Federal short-term rate, .05, or $100,000. No contingent payment is made as of the end of the accrual period. Therefore, under paragraph (f)(2)(iv) of this section, the adjusted issue price of the debt instrument at the beginning of the second accrual period is equal to the sum of the issue price and the total interest deemed accrued ($2,000,000 + $100,000), reduced by the amount of the noncontingent payment made during the accrual period ($600,000). This amount is $1,500,000.

(iii) Total interest deemed accrued during the second accrual period is equal to the product of the adjusted issue price at the beginning of the accrual period, $1,500,000, and one-half of the Federl short-term rate, .05, or $75,000. The contingent payment of $350,000 is treated, under paragraph (f)(2)(ii)(A) of this section, as a payment of interest to the extent of the total interest deemed accrued as of the end of the accrual period that was not allocated to a previous payment, or $175,000. This amount is includible in gross income by C and deductible from gross income by D, under paragraph (f)(1) of this section, in their respective taxable years in which December 31, 1988 occurs. The remainder of the contingent payment, $175,000, is treated as a payment of principal under paragraph (f)(2)(ii)(B) of this section. The adjusted issue price at the beginning of the third accrual period, under paragraph (f)(2)(iv) of this section, is equal to the sum of the adjusted issue price at the beginning of the second accrual period, $1,500,000, and the total interest deemed accrued during the accrual period, $75,000, reduced by the sum of the payments made during the accrual period, $950,000. This amount is $625,000.

(v) The contingent payment of $75,000 increases the final payment at maturity to $675,000. The outstanding principal balance at maturity is equal to the issue price, $2,000,000, less the sum of amounts previously characterized as principal, $1,375,000, or $625,000. This amount is less than the $675,000 final payment at maturity. Therefore, under paragraph (f)(3) of this section, the debt instrument is deemed retired for an amount equal to the outstanding principal balance of $625,000. The remainder of the final payment, $50,000, is treated as a payment of interest which is includible in gross income by C and deductible from gross income by D in their respective taxable years in which June 30, 1989 occurs.

Example (4). The facts are the same as in example (3), except that the amount of the contingent payment on December 31, 1988 is $500,000. This payment is initially treated, under paragraph (f)(2)(ii)(A) of this section, as interest to the extent of $175,000, which is the interest deemed accrued as of that date under paragraph (f)(2)(iii) of this section. The remainder of the payment, $325,000, is treated as a payment of principal to the extent of the excess of the issue price of the debt instrument, $2,000,000, over the sum of the noncontingent payments under the debt instrument, $1,800,000, or $200,000. The remaining $125,000 is treated as a payment of interest, under paragraph (f)(2)(ii) of this section. The total amount of the second contingent payment treated as interest is, therefore, $300,000 ($175,000+$125,000). The contingent payment at maturity is treated entirely as interest, since the portion of the contingent payment made at the end of the second accrual period that was treated as principal exactly equals the difference between the issue price and the sum of all noncontingent payments under the debt instrument.

Example (5). (i) The facts are the same as in example (3), except that the contingent amounts under the debt instrument are all payable at maturity, and a contingent amount of $250,000 becomes fixed at the end of the first accrual period. Assume that the contingent payments bear interest from the date they become fixed until they are due at a rate that constitutes adequate stated interest within the meaning of § 1.1274-3, and that such interest is payable at maturity.

(ii) Since the $250,000 contingent amount that becomes fixed on June 30, 1988 is not due within six months of the date it becomes fixed, under paragraph (f)(7)(iii) of this section, a separate debt instrument is treated as issued by D on that date. This debt instrument has a stated principal amount equal to the amount of the payment as fixed, $250,000, and matures on June 30, 1989, the date the payment is due. Since the separate debt instrument provides for adequate stated interest, the issue price is its stated principal amount of $250,000. An amount equal to the issue price is recharacterized under paragraph (f)(7)(ii)(A) of this section as a payment of interest equal to total interest deemed accrued during the first accrual period of $100,000. Thus, the issue price of D's separate debt instrument is treated as a payment of interest to the extent of $100,000. This amount is includible in gross income by C and deductible from gross income by D in their respective taxable years in which June 30, 1988 occurs. The remainder of the issue price, $150,000, is treated as principal. The interest on D's separate debt instrument is original issue discount subject to the inclusion rules of section 1272 and the regulations thereunder.

(iii) The facts are the same as in part (i), except that the contingent payments do not bear interest from the date they become fixed to the date they are due. The stated redemption price at maturity of the separate debt instrument is, therefore, $250,000, under § 1.1273–1(b)(1)(i). Since the separate debt instrument does not have adequate stated interest, its issue price is the testing amount under § 1.1274–3, determined, under paragraph (f)(2)(iv)(B) of this section, by discounting all payments under the separate debt instrument by the test rate of 10%, compounded semiannually. This issue price is $226,757.37. The issue price of the separate debt instrument is recharacterized under paragraph (f)(7)(ii)(A) of this section as a payment of interest equal to the total interest deemed accrued during the first accrual period, $100,000. The issue price is thus treated as a payment of interest of $100,000, which is includible by C and deductible by B in their respective taxable years in which June 30, 1988 occurs. The remainder of the issue price, $126,757.37, is treated as principal.

(g) *Special rules for certain debt instruments*—(1) *In general.* In the case of a debt instrument calling for one or more contingent payments, if the contingent payments are computed in a manner that can be reasonably expected to produce a front-loading or back-loading of interest deductions and, if a principal purpose for such front-loading or back-loading of interest deductions is the avoidance of Federal income tax, then the Commissioner may reallocate interest under the debt instrument in a manner consistent with section 1272 and the regulations thereunder. In determining whether such a purpose exists, the Commissioner shall give considerable weight to whether one of the parties is exempt from Federal income taxation or, if both parties are subject to tax, to the relative tax brackets of the parties. In making a reallocation under this paragraph (g)(1), the Commissioner may make reasonable assumptions as to the amounts of contingent interest that will accrue under the terms of the debt instrument. For example, the Commissioner may look to the actual accruals of contingent interest prior to the date such reallocation is made as a guide to future amounts of contingent interest that will accrue.

(2) *Examples.* The provisions of paragraph (g)(1) of this section may be illustrated by the following examples:

Example (1). (i) X is a public charity not subject to Federal income tax pursuant to section 510(a). On July 1, 1986, X lends $1,000,000 to M, a taxable corporation, in exchange for M's 5-year debt instrument having an issue price, under section 1273(b)(2) and § 1.1273–2(b)(2), of $1,000,000. All of the interest under the debt instrument is contingent upon the profits from M's business, and accrues annually and is payable at maturity. The interest that accrues for each year under the debt instrument is equal to a specified percentage of the profits from M's business during that calendar year. The specified percentages for each year are as follows:

Year	Percentage
1986	4.0
1987	3.2
1988	2.4
1989	1.6
1990	0.8

(ii) Assume that paragraph (g)(1) of this section applies to the debt instrument by virtue of the fact that X is not subject to Federal income taxation. The Commissioner may, therefore, reallocate the interest that accrues under M's debt instrument in a manner consistent with section 1272 and the regulations thereunder. Assume that M's profits for 1986 are $5,000,000. Accordingly, the amount of interest that accrues as of December 31, 1986, is $200,000. Absent special circumstances, the Commissioner may assume that A's profits for the years 1987 through 1990 will remain at $5,000,000. Under this assumption, the amount of interest payable at maturity would be $600,000 ($200,000 + $160,000 + $120,000 + $ 80,000 + $40,000), the stated redemption price at maturity of M's debt instrument would be, under § 1.1273–1(b)(1), $1,600,000, and the yield, under § 1.1272–1(f), would be 9.85615, compounded annually. The Commissioner may, therefore, limit M's interest deduction for M's taxable year in which December 31, 1986 occurs, to $98,561 (the product of this issue price, $1,000,000, and the yield, .098561).

Example (2). The facts are the same as in example (1), except that M lends $1,000,000 to X for a term of 5 years, and the specified percentages of M's profits for each year that are payable as contingent interest are as follows:

Year	Percentage
1986	0
1987	0
1988	5
1989	5
1990	5

Assume that paragraph (g)(1) of this section applies to X's debt instrument, and that M's profits for 1986 are $5,000,000. Assuming that M's profits will remain at this level, the amount of interest payable at maturity would be $750,000 (3x.05x$5,000,000). The yield of the debt instrument under this assumption would be 11.8427%, compounded annually. The Commissioner may, therefore, require M to include in gross income for its taxable year in which December 31, 1986 occurs, $118,427 ($1,000,000x.118427).

§ 1.1275–5 Variable rate debt instruments.

(a) *Applicability.* The rules of this section shall apply to variable rate debt instruments. For purposes of sections 1271 through 1275, a variable rate debt instrument is a debt instrument which states interest based on current values (within the meaning of paragraph (c) of this section) of an objective interest index (within the meaning of paragraph (b) of this section). Payments of interest under a debt instrument that provides for a variable rate of interest that is not based on current values of an objective interest index described in paragraph (b) of this section shall be treated as contingent payments in accordance with the rules of §§1.1274–3(d)(2) and 1.1275–4.

(b) *Objective interest index.* The term "objective interest index" means either—

(1) A rate which, as of the issue date of the debt instrument, is made known publicly and offered currently to unrelated borrowers in private lending transactions by a financial institution, or

(2) A rate reflecting an average (based on a statistically significant sample) of current yields on a class of publicly traded debt instruments.

Examples of objective interest indices include the prime rate of a designated financial institution, LIBOR (London Interbank Offered Rate), the applicable Federal rate, and the average yield on Treasury securities as published in Federal Reserve bulletins. For purposes of this section, interest expressed as a fixed multiple of an objective interest index or as a constant number of percentage or basis points more or less than an objective interest index shall constitute interest based on an objective interest index. However, interest expressed as a fixed multiple of an objective interest index plus or minus a constant number of percentage or basis points shall not constitute interest based on an objective interest index.

(c) *Current values*—(1) *Debt instruments issued after May 8, 1986.* In the case of a debt instrument issued after May 8, 1986, an interest rate shall not be considered to be based on current values of an index unless the rate in effect during any accrual period is based on values of the index in effect—

(i) No later than the close of that accrual period, and

(ii) No earlier than three months prior to the beginning of the first accrual period during which such rate was in effect.

(2) *Debt instruments issued after July 1, 1982, and before May 8, 1986.* In the case of a debt instrument issued after July 1, 1982, and before May 8, 1986, an interest rate shall not be considered to be based on current values of an index unless the rate in effect during any accrual period is based on values of the index in effect—

(i) No later than the close of that accrual period, and

(ii) No earlier than one year prior to the beginning of the first accrual period during which such rate was in effect.

(d) *Original issue discount on variable rate debt instrument*—(1) *Debt instruments for which the issue price equals the stated principal amount.* Except as provided in paragraph (d)(4) of this section, in the case of a variable rate debt instrument for which the issue price equals the stated principal amount but which has original issue discount because some or all of the stated interest under the debt instrument is not qualified periodic interest, the excess of the amount of interest that actually accrues under the terms of the debt instrument during an accrual period over any qualified periodic interest shall constitute original issue discount for this period.

(2) *Debt instruments for which the issue price is less than the stated principal amount.* In the case of a variable rate debt instrument for which the issue price is less than the stated principal amount, the amount of original issue discount allocable to each accrual period shall be equal to the sum of—

(i) The amount of original issue discount allocable to the period as set forth in paragraph (d)(1) of this section (if any), and

(ii) The excess of—

(A) The product of the hypothetical adjusted issue price (as defined in paragraph (d)(3)(i) of this section) at the beginning of the accrual period and the hypothetical yield of the debt instrument (as defined in paragraph (d)(3)(ii) of this section), over

(B) The amount of hypothetical interest (as defined in paragraph (d)(3)(iii) of this section).

(3) *Definitions*—(i) *Hypothetical adjusted issue price.* The hypothetical adjusted issue price of a variable rate debt instrument at the beginning of an accrual period is the amount that would have been the adjusted issue price of the debt instrument under § 1.1272–1(e) had the debt instrument called for fixed interest at a rate equal to the rate established by the objective interest index on the issue date, or, in a transaction to which section 1274 applies and for which there was a binding written contract prior to the issue date, the contract date. See § 1.1274–6(e).

(ii) *Hypothetical yield*—(A) *In general.* The hypothetical yield of a debt instrument (other than a debt instrument to which section 1274 applies that does not have adequate stated interest) is the interest rate that would be the yield if the debt instrument called for a fixed rate of interest equal to the rate established by the objective interest index on the issue date or, if applicable, the contract date.

(B) *Debt instruments to which section 1274 applies that do not have adequate stated interest.* In the case of a variable rate debt instrument to which section 1274 applies that does not have adequate stated interest, the hypothetical yield shall be the imputed interest rate determined under § 1.1274–4.

(iii) *Hypothetical interest.* The hypothetical interest for an accrual period is the amount of interest that would have been paid or accrued with respect to that accrual period had the debt instrument called for a fixed rate of interest equal to the rate established by the objective interest index on the issue date or, if applicable, the contract date.

(4) *Special rule.* In cases in which a debt instrument provides for—

(i) A fixed rate of interest during some accrual periods and a variable rate in other accrual periods, or,

(ii) One variable rate during some accrual periods and one or more variable rates based on a different index or formula in other accrual periods,

any original issue discount on the debt instrument shall be reallocated in a manner consistent with the rules of sections 1272 and 1275 and the regulations thereunder to prevent the front-loading or back-loading of interest.

(5) *Examples.* The provisions of paragraphs (a) through (d) of this section may be illustrated by the following examples:

Example (1). Assume that on January 1, 1986, A lends B $100,000 in exchange for B's note having an issue price of $100,000 repayable in 10 years. A and B are unrelated, cash-method, calendar-year taxpayers. All interest is payable at maturity, compounded on June 30 and December 31 of each year, at a rate equal to the Federal short-term rate in effect on the compounding date. Assume that on June 30, 1986, the Federal short-term rate for that date is 8%, compounded semiannually. The amount of interest that accrues under that debt instrument for the first six-month accrual period is $4,000. This is the amount of original issue discount allocable to the first accrual period under paragraph (d)(1) of this section.

Example (2). (i) On July 1, 1986, A lends B $100,000 in return for B's note to A calling for a payment of $100,000 on June 30, 1990. Interest accrues on the outstanding loan balance at a variable rate based on current values of an objective interest index. The interest rate established is determined on June 30 and December 31 of each year for the preceding semiannual accrual period, and interest calculated under this rate is added to the outstanding loan balance. On each of those same dates, B agrees to make a payment of $9,000 to A (or the entire outstanding loan balance if less) in reduction of the outstanding loan balance. If the loan has not been repaid at the end of 15 years, B is obligated to repay the entire outstanding loan balance at that time.

(ii) None of the interest payments under B's note are qualified periodic interest (within the meaning of § 1.1273–2(b)(1)(ii) (since they are not payable at a fixed or variable rate of interest. The amount of original issue discount thus attributable to each semiannual accrual period is the amount of interest that accrues for that period under the terms of the debt instrument. The semiannual payments of $9,000 are payments other than qualified periodic interest and thus reduce the adjusted issue price at the beginning of the next succeeding accrual period pursuant to § 1.1272–1(e)(2)(ii). The adjusted issue price at the beginning of each accrual period represents the outstanding loan balance at the beginning of that period.

(iii) Assume that the rate of interest established by the index for the semiannual accrual period ending on January 1, 1987 is 10%, compounded semiannually. Thus, $5,000 of interest accrues for the first accrual period and constitutes the amount of original issue discount attributable to that period. The adjusted issue price of the debt instrument at the beginning of the second accrual period is, pursuant to § 1.1272–1(e)(2), $96,000, calculated as follows:

(1) Issue price	$100,000
(2) Original issue discount for the first accrual period	5,000
(3) Line (1) plus line (2)	$105,000
(4) Interest payment at end of first accural period	9,000
(5) Line (3) minus line (4)	$96,000

Example (3). (i) On January 1, 1986, A purchases nonpublicly traded property from B. A and B are cash-method taxpayers. In consideration for the sale, A gives B a 5-year debt instrument, maturing on December 31, 1990, with a stated principal amount of $500,000, calling for annual payments of interest on December 31 of each year, at a rate equal to two points less than the prime rate of a designated bank in effect at the time of payment. The annual payments of interest are qualified periodic interest payments (as defined in § 1.1273–2(b)(1)(ii)). The stated redemption price at maturity determined under § 1.1273–2(b)(1) is $500,000. The accrual period under § 1.1272–1(d)(1) coincides with the calendar year. Assume that on January 1, 1986, the prime rate of the designated bank expressed in terms of a rate based on annual compounding is 12%, and that therefore, the index rate on the issue date is 10%, compounded annually. Assume further that the test rate for this 5-year debt instrument is 12%, compounded annually. Thus, the debt instrument does not provide adequate stated interest under the provisions of § 1.1274–3(d)(1). The issue price is $463,952.24, the imputed principal amount determined under § 1.1274–4(e) by discounting at a rate of 12%, compounded annually, all payments that would be made under the debt instrument if the index rate were to remain constant at 10%, compounded annually. The debt instrument has $36,047.76 of original issue discount (stated redemption price at maturity, $500,000, less issue price, $463,952.24). The hypothetical yield, under paragraph (d)(3)(ii)(B) of this section, is 12%, compounded annually. The hypothetical adjusted issue price at the beginning of the first accrual period is, under § 1.1272–1(e)(1), the issue price.

(ii) The amount of original issue discount allocable to the first accrual period under paragraph (d)(2) of this section is determined as follows:

(1) Issue price	$463,952.24
(2) Hypothetical yield	.12
(3) Line (1) multiplied by line (2)..	$55,674.27
(4) Less: hypothetical interest	50,000.00
(5) Line (3) minus line (4) (amount of original issue discount allocable to the first accrual period)	$5,674.27

The hypothetical adjusted issue price at the beginning of the second accrual period is $469,626.51, the sum of the issue price ($463,952.24) and the amount of original issue discount allocable to the first accrual period ($5,674.27). The amount actually paid as interest is includible as interest in gross income by B when received and deductible as interest from gross income by A when paid.

(iii) The amount of original issue discount allocable to the second accrual period is determined as follows:

(1) Hypothetical adjusted issue price on 1/1/87	$469,626.51
(2) Hypothetical yield	.12
(3) Line (1) multiplied by line (2)..	$56,355.18
(4) Less: hypothetical interest	50,000.00
(5) Line (3) minus line (4) (amount of original issue discount allocable to the second accrual period)	$.355.18

The hypothetical adjusted issue price at the beginning of the third accurual period is $475,981.69 ($469,626.51 + $6,355.18).

(iv) The amount of original issue discount attributable to the remaining three accrual periods is determined in a similar manner. The amount of original issue discount attributable to each of the five accrual periods is set forth in the table below:

Accrual period	Original issue discount
1986	$5,674.27
1987	6,355.18
1988	7,117.80
1989	7,971.94
1990	8,928.57

Example (4). (i) The facts are the same as in example (3), except that all interest is compounded annually on December 31 and paid at maturity. Based upon an interest rate of 10%, compounded annually, the amount payable at maturity will be $805,255, composed of $500,000 principal and $305,255 of deferred interest. The issue price is $456,923.31, which is the imputed principal amount determined under §§ 1.1274–3(d)(l) and 1.274–4 (the present value of $805,255, discounting at 12%, compounded annually). The hypothetical yield is 12%, compounded annually.

(ii) Assume that the actual amounts accured as interest under the debt instrument are as follows:

Year	Index rate (percent)	Interest accrued	Loan balance at end of year
1	14	$70,000.00	$570,000.00
2	11	62,700.00	632,700.00
3	9	56,943.00	689,643.00
4	13	89,653.59	779,296.59
5	11	85,722.62	865,019.21

The amount of original issue discount allocable to the first accrual period is determined under paragraph (d)(2) of this section as follows:

(1) Issue price	$456,923.31
(2) Hypothetical yield	.12
(3) Line (1) multiplied by line (2)..	$54,830.80
(4) Less: hypothetical interest	50,000.00
(5) Line (3) minus line (4)	$4,830.80
(6) Amount of Interest actually accrued	$70,000.000
(7) Line (5) plus line (6) (amount of original issue discount allocable to the first accrual period)	$74,830.80

The hypothetical adjusted issue price at the beginning of the second accrual period is $511,754.11, the sum of the issue price ($456,923.31) and the product of the price and the hypothetical yield of 12% ($54,830.80). The amount of original issue discount allocable to each of the five annual accrual periods is set forth in the following table:

Year	(1) Hypothetical adjusted issue price (HAIP)	(2) Yield × HAIP	(3) Hypothetical interest	(4) Column (2) minus column (3)	(5) Interest accrued	(6) OID column (4) plus column (5)
1	$456,923.31	$54,830.80	$50,000.00	$4,830.80	$70,000.00	$74,830.80
2	511,754.11	61,410.49	55,000.00	6,410.49	62,700.00	69,110.49
3	573,164.60	68,779.75	60,500.00	8,279.75	56,943.00	65,722.75
4	641,944.36	77,033.32	66,550.00	10,483.32	89,653.59	100,136.91
5	718,977.68	86,277.32	73,205.00	13,072.32	85,722.62	98,794.94

Example (5). (i) C lends $1,000,000 to D in exchange for D's 10-year note calling for semiannual payments of interest at a rate equal to the prime rate of a designated bank for the first 5 years, and semiannual payments of interest at a rate equal to 150% of the prime rate of the same bank for the second 5 years. All of the stated interest during the first 5 years and interest during the second 5 years, to the extent it does not exceed the prime rate of the designated bank, is qualified periodic interest within the meaning of § 1.1273–1(b)(1)(ii), and is therefore not subject to reallocation under paragraph (d)(4)(i) of this section. The additional interest of 50% of the prime rate payable in each of the last 5 years is treated as original issue discount and shall be reallocated and accounted for over the entire 10-year term of the debt instrument in a manner consistent with sections 1272 and 1275 and the regulations thereunder.

(ii) Assume that the prime rate of the designated bank on the issue date is 10%, compounded semiannually. If the prime rate were to remain at this rate over the entire term of D's debt instrument, the yield of the debt instrument, under § 1.1272–1(f), would be 11.802%, compounded semiannually, and the debt instrument would have $250,000 of original issue discount. The original issue discount allocable to the first ten semiannual accrual periods would be as follows:

Accrual period	Original issue discount
1	$9,012
2	9,543
3	10,107
4	10,703
5	11,334
6	12,003
7	12,712
8	13,462
9	14,256
10	15,098

C and D must account for these amounts of original issue discount during each of the first 5 years of the debt instrument. For each of the remaining ten accrual periods, the amount of original issue discount allocable to each such period is the amount of interest actually payable for the accrual period, reduced by the portion of the payment treated as qualified periodic interest and by the amount of original issue discount allocated to the corresponding semiannual accrual period during the first 5 years. For example, if the amount of interest payable with respect to the eleventh semiannual accrual period were $70,000, $50,000 would be treated as qualified periodic interest, $9,012 would be treated as a payment of original issue discount already accounted for during the first accrual period, and the remainder, $10,988, would be treated as original issue discount allocable to the eleventh accrual period.

§ 1.6045-1 [Amended]

Par. 29. Paragraph (c) of § 1.6045-1 is amended by removing the phrase "section 1232(b)(1)" every place it appears and adding in its place the phrase "section 1273(a)(1)".

§ 1.6049-4 [Amended]

Par. 30. Paragraph (e)(2) of § 1.6049-4 is amended by removing the phrase "section 1232 (a)(3)" and adding in its place the phrase "section 1271(a)(3)(A)".

Par. 31. Section 1.6049-5 is amended as follows:

1. In paragraph (b)(1)(vi)(B) (*4*) by removing the phrase "section 1232 (b)(1)" and adding in its place the phrase "section 1273 (a)(1)".

2. In paragraph (c) by removing the ninth sentence thereof and by revising the second, fourth and seventh sentences to read as follows:

§ 1.6049-5 Interest and original issue discount subject to reporting after December 31, 1982.

* * * * *

(c) *Original issue discount treated as payment of interest.* * * * In the case of an obligation as to which there is during any calendar year an amount of original issue discount includible in the gross income of any holder (as determined under section 1272 and the regulations thereunder), the issuer of the obligation or a middleman (as defined in § 1.6049-4(f)(4)) shall be treated as having an amount of interest equal to the amount of original issue discount so includible without regard to any reduction by reason of an acquisition premium under section 1272(a)(6) and (b)(4) or a pùrchase at a premium under section 1272(c)(1) and § 1.1275-1(f). * * * In the case of (1) an obligation to which section 1272 does not apply (for example, a short-term government obligation as defined in section 1271(a)(3)(A)) and (2) an obligation issued on or before December 31, 1982, in bearer form, the amount of original issue discount includible in gross income shall be treated as if paid in the calendar year in which the date of maturity occurs or in which the date of redemption occurs if redemption occurs before maturity. * * * Discount on short term government obligations as defined in section 1271(a)(3)(B), such as Treasury bills, and discount on other obligations with a maturity at the date of issue of not more than 1 year (a short term obligation), including commerical paper, when paid at maturity or redemption if redemption occurs before maturity, shall constitute a payment of interest for purposes of section 6049. * * *

§ 1.6049-6 [Amended]

Par 32. Paragraph (d) of § 1.6049-6 is amended by removing the phrase "section 1232A" and adding in its place the phrase "section 1272 (a)".

Par. 33. Paragraph (e) of § 1.7872-4, as proposed in the **Federal Register** for August 20, 1985, (50 FR 33561) is revised to read as follows:

§ 1.7872-4 Types of below-market loans.

* * * * *

(e) *Tax avoidance loan*—(1) *In general.* A tax avoidance loan is any below-market loan one of the principal purposes for the interest arrangements of which is the avoidance of Federal tax with respect to either the borrower or the lender, or both. For purposes of this rule, tax avoidance is a principal purpose of the interest arrangements if a principal factor in the decision to structure the transaction as a below-market loan (rather than, for example, as a market interest rate loan and a payment by the lender to the borrower) is to reduce the Federal tax liability of the borrower or the lender or both. The purpose for entering into the transaction (for example, to make a gift or to pay compensation) is irrelevant in determining whether a principal purpose of the interest arrangements of the loan is the avoidance of Federal tax.

(2) *Certain loans incident to sales or exchanges.* If, pursuant to a plan that is incident to a sale or exchange of property, a party who is related (within the meaning of section 168(e)(4)(D)) to the seller—

(i) Makes a below-market loan to the buyer of the property, or

(ii) Makes a below-market loan to the seller that is assumed by the buyer in connection with the sale or exchange, then the loan shall be treated as a tax avoidance loan within the meaning of paragraph (e)(1) of this section. There shall be an irrebuttable presumption that such a plan exists if such a loan is made within one year of the sale or exchange.

(3) *Examples.* The provisions of paragraph (e) of this section may be illustrated by the following examples:

Example (1). (i) S and T are each wholly-owned subsidiaries of P. S sells property to an individual, A, for cash of $3,000,000. Three months after the sale, T loans to A $2,000,000 for 10 years at an interest rate of 6%, payable semiannually. On the date the loan is made, the Federal long-term rate is 12%, compounded semiannually.

(ii) The loan from T to A is a tax avoidance loan pursuant to paragraph (e)(2) of this section. The issue price of the debt instrument given in exchange for the loan is $1,311,805, and the total amount of foregone interest is $688,195. On the date the loan is made, A is treated as having received a refund of $688,195 of the purchase price of the property from S, thereby reducing A's basis in the property by this amount. T is treated as having paid a dividend of $688,195 to P, and P is treated as having made a contribution to the capital of S in the same amount.

Example (2). The facts are the same as in example (1), except that T loans the $2,000,000 to S immediately before the sale. A purchases the property for cash of $1,000,000 and assumes S's debt to T. On the date of the sale, the Federal long-term rate is 12%, compounded semiannually. The loan from T to S is a tax-avoidance loan. The issue price of the debt instrument and the amount of foregone interest are the same as in example (1). A's basis in the property is limited to $2,311,805 (see § 1.1274-7(d)). T is treated as having paid a dividend of $688,195 to P, and P is treated as having made a contribution to the capital of S in the same amount.

§ 1.9006-1 [Amended]

Par. 34. Paragraph (c)(1)(vii) of § 1.9006-1 is amended by removing the phrase "May 27, 1969." and adding in its place the phrase "May 27, 1969, and before July 18, 1984."

PART 3—CAPITAL CONSTRUCTION FUND

Par. 35. The authority citation for Part 3 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 3.2 [Amended]

Par. 36. Paragraph (d) of § 3.2 is amended by removing the phrase "ratable monthly portion" every place it appears and adding in its place the word "amount", and by removing the phrase "section 1232(a)(3)" every place it appears and adding in its place the phrase "section 1272".

§ 3.3 [Amended]

Par. 37. Paragraph (b) of § 3.3 is amended by removing the phrase "section 1232(a)(3)(E)" every place it appears and adding in its place the phrase "section 1272(d)(2)", and by removing the phrase "ratable monthly portion" every place it appears and adding in its place the word "amount".

PART 5f—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

Par. 38. The authority citation for Part 5f continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 5f.163-1 [Amended]

Par. 39. Paragraph (f) of § 5f.163-1 is amended by removing the word "1232(d)" from each place that it appears and adding in its place the word "1287", and by removing the phrase "section 1232B" from each place that it appears and adding in its place the phrase "section 1286".

PART 6a—TEMPORARY REGULATIONS UNDER TITLE II OF THE OMNIBUS RECONCILIATION ACT OF 1980

Par. 40. The authority citation for Part 6a continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 6a.103A-2 [Amended]

Par. 41. Paragraph (i)(2)(vi)(B) of § 6a.103A-2 is amended by removing the phrase "section 1232(b)(2)" and adding in its place the phrase "section 1273(b)".

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 42. The authority for Part 25 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 25.2512-8 also issued under 26 U.S.C. 483(g) and 26 U.S.C. 1275(d).

Par. 43. Section 25.2512-4 is revised to read as follows:

§ 25.2512-4 Valuation of notes.

The fair market value of notes, secured or unsecured, is presumed to be the amount of unpaid principal, plus accrued interest to the date of the gift, unless the donor establishes a lower value. The fair market value of a debt instrument (as defined in § 1.1275-1(b)) whose issue price is determined under section 1273(b) (1), (2), or (3), or section 1274 is presumed to be its revised issue price (as defined in § 1.1275-1(h)). Unless returned at this value, it must be shown by satisfactory evidence that the note is worth less than the unpaid amount (because of the interest rate, or date of maturity, or other cause), or that the note is uncollectible in part (by reason of the insolvency of the party or parties liable, or for other cause), and that the property, if any, pledged or mortgaged as security is insufficient to satisfy it. See § 25.2512-8 and § 1.1012-2 for special rules relating to certain sales or exchanges of property. See § 25.7872-1 for special rules in the case of gift loans (within the meaning of § 1.7872-4(b)) made after June 6, 1984.

Par. 44. Section 25.2512-8 is revised to read as follows:

§ 25.2512-8 Transfers for insufficient or excessive consideration.

Transfers reached by the gift tax are not confined to those only which, being without a valuable consideration, accord with the common law concept of gifts, but embrace as well sales, exchanges, and other dispositions of property for a consideration to the extent that the value of the property transferred by the donor differs from the value in money or money's worth of the consideration given therefor. However, a sale, exchange, or other transfer of property made in the ordinary course of business (a transaction which is bona fide, at arm's length, and free from any donative intent), will be considered as made for consideration in money or money's worth equal to the value of the property transferred. If the buyer issues one or more debt instruments as all or a part of the consideration for the property, then the property and the debt instruments shall be valued in accordance with the rules set forth in § 1.1012-2. A consideration not reducible to a value in money or money's worth, as love and affection, promise of marriage, etc., is to be wholly disregarded, and the entire value of the property transferred constitutes the amount of the gift. Similarly, a relinquishment or promised relinquishment of dower or curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other material rights in the spouse's property or estate, shall not be considered to any extent a consideration "in money or money's worth." See, however, section 2516 and the regulations thereunder with respect to certain transfers incident to a divorce.

PART 514—FRANCE

Par. 45. The authority citation for Part 514 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 514.23 [Amended]

Par. 46. Section 514.23 is amended by removing the phrase "section 1232(b)" from paragraph (b) every place it appears and adding in its place the phrase "section 1273".

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

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Tuesday
April 8, 1986

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 882

Neurological Devices; Effective Date of Requirement for Premarket Approval; Implanted Diaphragmatic/Phrenic Nerve Stimulator; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 882

[Docket No. 84N-0362]

Neurological Devices; Effective Date of Requirement for Premarket Approval; Implanted Diaphragmatic/Phrenic Nerve Stimulator

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to require the filing of a premarket approval application or a notice of completion of a product development protocol for the implanted diaphragmatic/phrenic nerve stimulator, a medical device. This action is being taken under the Medical Device Amendments of 1976.

EFFECTIVE DATE: July 7, 1986.

FOR FURTHER INFORMATION CONTACT: Robert F. Munzner, Center for Devices and Radiological Health (HFZ-430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7226.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 4, 1979 (44 FR 51771), FDA published a final rule (21 CFR 882.5830) classifying into class III (premarket approval) the implanted diaphragmatic/phrenic nerve stimulator, a medical device. Section 882.5830 of FDA's regulations setting forth the classification of neurological therapeutic devices intended for medical use applies to: (1) Any implanted diaphragmatic/phrenic nerve stimulator that was in commercial distribution before May 28, 1976, and (2) any device that FDA has found to be substantially equivalent to an implanted diaphragmatic/phrenic nerve stimulator described in (1) and that has been marketed on or after May 28, 1976.

In the Federal Register of August 16, 1985 (50 FR 33056), FDA published a proposed rule to require the filing under section 515(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(b)) of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the implanted diaphragmatic/phrenic nerve stimulator. In accordance with section 515(b)(2)(A) of the act, FDA included in the preamble to the proposal the agency's proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the premarket approval requirements of the act, and on the benefits to the public from use of the device (50 FR 33057). The agency also provided an opportunity for interested persons to submit comments on the proposed rule and the agency's proposed findings, and, under section 515(b)(2)(B) of the act, provided an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. Any petition requesting a change in the classification of the implanted diaphragmatic/phrenic nerve stimulator was required to be submitted by September 3, 1985. The comment period closed on October 15, 1985.

FDA did not receive any comments on the August 16, 1985 proposed rule or on FDA's proposed findings with respect to the risks or the benefits of the implanted diaphragmatic/phrenic nerve stimulator. Further, FDA did not receive any petitions requesting a change in the classification of the device. Accordingly, FDA is promulgating a final rule requiring premarket approval for the diaphragmatic/phrenic nerve stimulator under section 515(b)(3) of the act. The agency is also summarizing its findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the implanted diaphragmatic/phrenic nerve stimulator to have an approved PMA or declared completed PDP, and the benefits to the public from the use of the device.

Findings With Respect to Risks and Benefits

Degree of Risk

1. *Surgical procedure.* Implantation of the electrodes requires that the patient's phrenic nerve be exposed either in the cervical area under local anesthetic or by entering the chest through the third intercostal space under general anesthetic. Two additional incisions are required to implant the receiver and the electrode wires. As with any surgical procedure, complications such as infections may occur.

2. *Injury to the phrenic nerve.* Attaching and securing the electrode to the nerve, mechanical irritation of the nerve by the continuing presence of the electrode, the electrical current used for stimulation, infection, and the formation of scar tissue around the nerve can all injure the phrenic nerve.

3. *Injury to the diaphragm.* Repeated stimulation may cause fatigue of the diaphragm muscle and result in permanent damage to the muscle.

4. *Upper airway obstruction.* Use of the device may induce upper airway obstruction or worsen the obstruction if it is already present.

5. *Interference with demand type cardiac pacemakers.* Use of the device has been shown to interfere with the function of some demand type cardiac pacemakers.

6. *Respiratory arrest.* In patients requiring total ventilatory support (e.g., quadriplegics), malfunction or failure of the device could result in death within minutes. Failures are most commonly due to receiver malfunction, breakage of antenna wires, battery depletion, transmitter malfunction, or electrode wire breakage.

7. *Tissue toxicity.* The simulator is made of materials that are generally recognized to be biocompatible. The surface of the implanted device, lead wires, or electrodes, however, may contain material that is not biocompatible. Also some of the materials may have unknown constituents that cause subtle changes not recognized in the reported studies. Contaminants may be introduced during manufacture or sterilization of the device.

FDA concludes that these risks could be eliminated or reduced by requiring the implanted diaphragmatic/phrenic nerve stimulator to undergo premarket approval.

Benefits of the Device

The implanted diaphragmatic/phrenic nerve stimulator has been reported to be beneficial in providing ventilatory assistance in some patients with chronic ventilatory insufficiency, central in origin, who are dependent upon mechanical ventilation and in whom function of the phrenic nerves, lungs, and diaphragm is adequate to sustain ventilation by electrical stimulation. Patients treated with this device have included quadriplegics, patients with central alveolar hypoventilation from various causes (e.g., encephalitis, brain stem infarct or tumor, Pickwickian syndrome), and one patient with chronic obstructive lung disease.

Final Rule

Under section 515(b)(3) of the act, FDA is adopting the proposed findings as published in the preamble to the proposed rule and is issuing a final rule to require premarket approval of the generic type of device, the implanted diaphragmatic/phrenic nerve stimulator.

Under the final rule, a PMA or a notice of completion of a PDP is required to be filed on or before July 7, 1986, for any implanted diaphragmatic/phrenic nerve stimulator that was in commercial distribution before May 28, 1976, or that has been found by FDA to be substantially equivalent to such a device on or before July 7, 1986. An approved PMA or a declared completed PDP is required to be in effect for any such device on or before January 5, 1987. (If FDA finds that continued availability of an implanted diaphragmatic/phrenic nerve stimulator for which a PMA has been timely filed is necessary for the public health, FDA may, under section 515(d)(1)(B)(i) of the act, extend the 180-day period for taking action on the PMA.) Any implanted diaphragmatic/phrenic nerve stimulator that was not in commercial distribution before May 28, 1976, or that has not on or before July 7, 1986 been found by FDA to be substantially equivalent to an implanted diaphragmatic/phrenic nerve stimulator that was in commercial distribution before May 28, 1976, is required to have an approved PMA or a declared completed PDP in effect before it may be marketed.

If a PMA or a notice of completion of a PDP for an implanted diaphragmatic/phrenic nerve stimulator is not filed on or before July 7, 1986, that device will be deemed adulterated under section 501(f)(1)(A) of the act (21 U.S.C. 351(f)(1)(A), and commercial distribution of the device will be required to cease. The device may, however, be distributed for investigational use, if the requirements of the investigational device exemption (IDE) regulations (21 CFR Part 812) are met.

Under § 812.2(d) of the IDE regulations, FDA hereby stipulates that the exemptions from the IDE requirements in § 812.2(c) (1) and (2) will no longer apply to clinical investigations of the implanted diaphragmatic/phrenic nerve stimulator. Further, FDA concludes that investigational implanted diaphragmatic/phrenic nerve stimulators are significant risk devices as defined in § 812.3(m), and advises that as of the effective date of § 882.5830(c) the requirements of the IDE regulations regarding significant risk devices will apply to any clinical investigation of an implanted diaphragmatic/phrenic nerve stimulator. For any such device, therefore, an IDE submitted to FDA, under § 812.20, is required to be in effect under § 812.30 before an investigation is initiated or continued on or after July 7, 1986. FDA advises all persons who intend to sponsor any clinical investigation involving the implanted diaphragmatic/phrenic nerve stimulator to submit an IDE application to FDA not later than June 9, 1986 to avoid the interruption of ongoing investigations.

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

FDA has examined the economic consequences of this final rule in accordance with the criteria in section 1(b) of Executive Order 12291 and found that the rule will not be a major rule as specified in the Order. The agency believes that only one small firm will be affected by this rule. Therefore, the agency certifies under the Regulatory Flexibility Act (Pub. L. 96–354) that the rule will not have a significant economic impact on a substantial number of small entities. An assessment of the economic impact of this final rule has been placed on file in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 882

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 882 is amended as follows:

PART 882—NEUROLOGICAL DEVICES

1. The authority citation for 21 CFR Part 882 is revised to read as follows:

Authority: Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)); 21 CFR 5.10; § 882.5830(c) also is issued under secs. 501, 515, and 520(g), 52 Stat. 1049–1050 as amended, 90 Stat. 552–559, 569–571 (21 U.S.C. 351, 360e, 360j(g)).

2. In § 882.5830 by adding new paragraph (c), to read as follows:

§ 882.5830 Implanted diaphragmatic/phrenic nerve stimulator.

* * * * *

(c) *Date premarket approval application (PMA) or notice of completion of a product development protocol (PDP) is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before July 7, 1986 for any implanted diaphragmatic/phrenic nerve stimulator that was in commercial distribution before May 28, 1976, or that has on or before July 7, 1986 been found to be substantially equivalent to an implanted diaphragmatic/phrenic nerve stimulator that was in commercial distribution before May 28, 1976. Any other implanted diaphragmatic/phrenic nerve stimulator shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

Dated: March 26, 1986.

M.D. Kinslow,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–7722 Filed 4–7–86; 8:45 am]

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federal register

Tuesday
April 8, 1986

Part IV

Commodity Futures Trading Commission

17 CFR Part 30

Foreign Options and Foreign Futures Transactions; Notice of Proposed Rulemaking

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Options and Foreign Futures Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing to adopt regulations governing the domestic offer and sale of options and futures contracts traded on or subject to the rules of a foreign board of trade. The proposed rules are intended to implement the provisions of sections 2(a)(1)(A), 4(b) and 4c of the Commodity Exchange Act ("Act"), which vest the Commission with exclusive jurisdiction over the offer and sale of such instruments in the United States.

DATE: Comments must be submitted on or before July 8, 1986.

ADDRESS: Comments should be submitted to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq., or Robert H. Rosenfeld, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 2(a)(1)(A) of the Act, the Commission has exclusive jurisdiction over the offer and sale, in the United States, of options and futures contracts traded on or subject to the rules of a board of trade, exchange or market located outside the United States.[1] Pursuant to this authority, the Commission, in 1975, promulgated rule 30.02, 17 CFR 30.02 (1985), to prohibit fraud in the domestic offer and sale of foreign futures contracts.[2] Concurrently, pursuant to its authority under sections 2(a)(1)(A) and 4c of the Act, the Commission adopted rule 30.01, later redesignated rule 32.9, to prohibit fraud in connection with all commodity option transactions.[3] In 1978, following a period of marketing which was replete with unsound practices, all option transactions, with limited exceptions, were prohibited by the Commission.[4] This ban subsequently was codified by Congress by the adoption of section 4c(c) of the Act.[5]

In 1982, Congress added section 4(b) to the Act to reaffirm and to clarify the Commission's existing authority to prohibit fraud in the offer and sale of foreign futures and its authority to develop, if needed, a more formal regulatory program with respect to the domestic offer and sale of foreign futures contracts.[6] As enacted, section 4(b) authorizes the Commission to adopt, in its discretion, rules "proscribing fraud and requiring minimum financial standards, the disclosure of risk, the filing of reports, the keeping of books and records, the safeguarding of customers' funds, and registration with the Commission by any person located in the United States" who engages in the offer or sale of foreign futures contracts.

On July 25, 1984, the Commission published in the **Federal Register** an advance notice of proposed rulemaking raising a series of issues relevant to the potential regulation of the offer and sale of foreign futures in the United States (49 FR 29963). In the advance notice, the Commission sought public comment to assist in determining the need for a more formal regulatory program with respect to such activities in the United States and to assess whether rules need to be promulgated at this time. The Commission specifically requested comments on the following:

(1) Should the Commission adopt a rule requiring the reporting of domestic sales of foreign futures contracts by futures commission merchants and by persons who are not also soliciting or accepting orders for the purchase and sale of domestic futures contracts?

(2) Should vendors of foreign futures contracts be made subject to Commission rules such as:

(a) Registration with the Commission;
(b) Minimum financial standards;
(c) Safeguarding of customers' funds;
(d) Risk disclosure; and
(e) Recordkeeping.

(3) Should the Commission's commodity trading advisor rules be amended expressly to include persons giving advice with respect to foreign futures?

(4) Should the Commission's existing commodity pool operator rules be made applicable to commodity pools which trade exclusively in foreign futures contracts?

(5) Should the Commission require that the offer and sale of foreign futures contracts be effected by or through domestic entities?

(6) If a regulatory scheme is proposed, should the Commission impose different requirements upon vendors depending upon the particular foreign board of trade, exchange or market on which the foreign futures contract is traded?

(7) Whether or not the Commission itself attempts to regulate such transactions, should the Commission permit the application of other federal and state laws, in addition to the Act, to transactions conducted on or subject to the rules of a board of trade, exchange, or market located outside the United States?

(8) To what extent could a regulatory structure developed for foreign futures transactions serve as a model for the regulation of foreign exchange-traded commodity options in the United States?

In posing the last question, the Commission noted that it was not then considering the general expansion of its options program to include foreign exchange-traded commodity options. Rather, the Commission indicated that any decision in this regard would have to await the conclusion and evaluation of the present pilot program in domestic exchange-traded options.[7] Nonetheless, as a result of its review and evaluation of the comments received and its separate consideration of the issues presented, the Commission has determined to propose a regulatory

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[1] Section 2(a)(1)(A) of the Act, 7 U.S.C. 2(a)(1)(A), vests the Commission with exclusive jurisdiction with respect to transactions involving futures contracts "traded or executed on a contract market designated pursuant to section 5 of this Act *or any other board of trade, exchange or market*. . . ." (emphasis added). This language reflects the fact that Congress intended to provide the Commission with jurisdiction over the offer and sale in the United States of futures contracts executed on a foreign board of trade or market as well as those executed on a contract market. *See* 120 Cong. Rec. 34907 (1974).

[2] 40 FR 26504 (June 17, 1975). As promulgated, rule 30.02 prohibits fraud in connection with any futures transaction executed on any board of trade, exchange or market other than a contract market designated pursuant to section 5 of the Act. Therefore, by its terms, rule 30.02 could be interpreted to apply to transactions other than those executed on a foreign exchange. The Federal Register release accompanying the rule, however, makes clear its intent was to prohibit fraud in connection with the offer and sale of futures contracts executed on a foreign exchange. As discussed in more detail below, the Commission is proposing to amend rule 30.02 to clarify the scope of the rules.

[3] *Id. See also* 41 FR 51808 (November 24, 1976).

[4] 43 FR 16153 (April 17, 1978).

[5] 7 U.S.C. 6c(c) (1982). Pursuant to section 4c(c), the Commission may lift the ban on options transactions, with respect to individual commodities, any class of commodities or to transactions on specific boards of trade upon adoption of regulations governing such transactions and the submission of documentation to the appropriate committees of Congress of its ability to regulate successfully such transactions. Pursuant to its authority under this section, the Commission in 1981 adopted regulations to permit under a pilot program commodity option transactions conducted or executed on or subject to the rules of a designated contract market. 17 CFR Part 33 (1985). The offer and sale of commodity option transactions conducted or executed on a foreign board of trade, however, were not addressed and are generally prohibited.

[6] *See* S. Rep. No. 384, 97th Cong., 2d Sess. 45 (1982).

[7] 49 FR 29963, 29966 (July 25, 1984).

program at this time to govern the offer and sale of both foreign options and futures in the United States.[8]

The Commission cautions that its decision to include foreign exchange-traded options in this proposed rulemaking should not be interpreted as a final decision on its part that the domestic offer and sale of such options should be permitted. Before implementing rules to lift the ban with respect to such transactions, the Commission must determine, and must be able to document to Congress, that it can successfully regulate such transactions and, thus, adequately protect the public from the abuses that formerly had been associated with the offer and sale of commodity options in the United States. The Commission specifically seeks comment on the capacity of the regulatory framework proposed to achieve this end.

Moreover, although the Commission expects that it will have completed its evaluation of the pilot program governing exchange-traded options by the time the Commission is prepared to consider final rules in this matter, the Commission wishes to emphasize that no decisions with respect to the pilot program have been made. Because the issues raised by the possible expansion of its option program to foreign exchange-traded options, in general, and its proposed rulemaking, in particular, are difficult, the Commission has determined to seek comment on these issues at this time in order to be in a position to move expeditiously should it determine to proceed. In addition, it is the Commission's belief that the offer and sale of foreign options and foreign futures should be governed by essentially the same regulatory scheme. Therefore, it is appropriate to consider contemporaneously the applicability of these proposed rules to foreign options as well as foreign futures.

The Commission's plenary authority under section 4c of the Act to regulate all commodity option transactions provides ample authority for the regulatory program being proposed herein, in particular as that program may apply to persons physically located outside the of the United States who solicit U.S. customers to trade options on a foreign exchange.[9] Moreover, this regulatory scheme is consistent with the Commission's statutory authority under section 2(a)(1)(A), with section 4(b) of the Act, to regulate the offer and sale of foreign futures "to protect the interests of United States residents against fraudulent or other harmful practices by a vendor of foreign futures."[10]

The Commission also recognizes, however, that both the provisions of section 4(b) and the legislative history surrounding its adoption contemplate that the Commission "draw distinctions under its regulations between exchanges that pose no significant dangers to customers in the United States and others that do."[11] In this connection, the Commission believes it may be appropriate to exempt from all or part of the provisions of this regulatory scheme those individuals and entities that are subject to comparable regulation in the country in which they are located.[12] At the present time, the Commission believes it would be necessary to address such exemptions on a case-by-case basis. To this end, as discussed below, the Commission is proposing a rule pursuant to which such exemption requests would be considered. *See* proposed § 30.10.

The proposed regulations seek to balance the Commission's desire to ensure adequate customer protection with its recognition that its ability to provide such protection to U.S. residents who elect to trade on foreign exchanges is necessarily more limited than its ability to do so with respect to customers who trade on those U.S. markets regulated by the Commission. In addition, the regulations recognize the development of international markets. The Commission invites comment on the adequacy of its proposed rules to protect the public, especially as these rules relate to persons who solicit business in the United States from outside the United States, and whether there are alternative approaches with respect to such persons that might more effectively accomplish this goal without imposing unnecessary burdens.

The Commission further notes that the ability to determine whether or not a particular trade has been transmitted to and executed on a foreign exchange is critical if the Commission is to authorize foreign exchange-traded options. The Commission, therefore, also requests comment from each foreign exchange that wishes to offer options in the United States on its willingness to share information with the Commission in this regard and the effect that any blocking statute may have on the ability of the exchange to share this and other relevant information with respect to trading such interests.[13] It is contemplated that agreements governing the sharing of such information with the Commission would be a necessary antecedent to a decision by the Commission to authorize the domestic offer and sale of foreign exchange-traded options.

II. Summary of Comments on the Advance Notice of Proposed Rulemaking

The United States contract markets, one foreign exchange, NFA and a private law firm expressed the view that the Commission should exercise its authority in section 4(b) of the Act, 7 U.S.C. 6(b) (1982), to expand the regulation of the offer and sale of foreign futures beyond the general antifraud provisions of Commission rule 30.02, 17 CFR 30.02 (1985). These commenters generally agreed that United States participants in foreign futures transactions should be afforded protections substantially similar to those afforded customers whose transactions are executed on domestic contract markets. Two of the United States exchanges also commented, however, that foreign exchanges that have entered into an agreement with a domestic contract market permitting positions in a commodity interest established on one of two markets to be liquidated on the other market, *i.e.*, a link agreement, should be excluded from

[8] The Commission received fifteen comment letters on the advance notice of proposed rulemaking: Four from futures commission merchants (one of which submitted two separate letters stating the same basic positions), three from United States contract markets, five from foreign boards of trade, exchanges or markets (hereinafter "foreign exchanges"), one of which represented the views of four separate London exchanges, and one letter each from the National Futures Association ("NFA"), Futures Industry Association and a private law firm.

[9] As discussed in more detail below, the Commission is proposing that any person engaged in the offer and sale of foreign options or foreign futures to U.S. customers be required to be registered with the Commission in an appropriate capacity. With respect to those persons located outside of the United States that solicit business from United States customers, however, the Commission is proposing as an alternative to this registration requirement that a non-domestic person enter into an agreement with the FCM carrying the accounts solicited by that person designating the FCM as the agent for service of process to receive any communication from the Commission or any customer of the non-domestic person. Moreover, if that person deposits $50,000 with the FCM, its accounts may be carried by the FCM on an omnibus rather than fully-disclosed basis. *See* proposed § 30.5.

[10] H.R. Rep. No. 565, 97th Cong. 2d Sess. 85 (1982).

[11] Id.

[12] For example, the proposed regulatory system in Great Britain and the existing systems in the provinces of Canada appear to be comparable to that in the United States and, therefore, it would not appear to be necessary that the individuals and entities subject to such regulation be subject as well to regulation by the Commission.

[13] In this connection, the Commission is sending a copy of this **Federal Register** release to each foreign exchange that submitted comments in response to the Commission's advance notice of proposed rulemaking.

any such rules or that less stringent rules should apply.

One of these commenters, NFA, agreed that the Commission should promulgate rules governing registration and minimum financial rules affecting firms soliciting or accepting orders for foreign futures. It expressed the view, however, that any additional requirements applicable to such transactions should be imposed through rulemaking by NFA rather than Commission rulemaking, since NFA would be in a position to form arrangements with equivalent regulatory organizations in other countries, which would allow cooperative enforcement and auditing efforts and which would avoid the application of conflicting regulatory schemes to firms doing an international futures business.[14]

The futures commission merchant community, on the other hand, generally opposed the promulgation of rules regulating foreign futures transactions in the United States. One industry organization commented that, based on an informal survey, its members had no knowledge of abuse in the domestic offer and sale of such contracts. That survey had further indicated that the amount of such business conducted by futures commission merchants was *de minimis*.[15] In addition, these commenters stated that the small percentage of foreign futures which is handled originates from institutional as opposed to individual clients, and that this segment of the industry is better informed, more sophisticated and less in need of the full scope of the Commission's regulatory umbrella.

These commenters also agreed, however, that, should the Commission decide to promulgate rules regulating the offer and sale of foreign futures in the United States, the Commission should delegate its regulatory responsibility to NFA on the ground that NFA is the appropriate organization to police retail sales practices in this country and is in a unique position to establish cooperative auditing and enforcement programs with self-regulatory organizations in other countries. Inasmuch as the various exchanges and self-regulatory agencies have an interest in seeing that all foreign futures transactions are entered into on the appropriate exchange, these commenters argued NFA should have little problem in working out such joint auditing arrangements.

In general, the foreign exchanges that submitted comments were uniformly against developing a regulatory framework for the regulation of foreign futures sold in the United States, at least at the present time. These commenters noted that nothing has occurred in recent years to indicate a need for such regulations or to question the sufficiency of current Commission rules to protect customers with respect to the sale of foreign futures. In addition, these exchanges pointed to the safeguards in the laws of their respective countries to protect all investors, including investors who reside in the United States. These exchanges also expressed concern that the cumulative effect of regulation of the areas identified for comment could have a significant discriminatory and anticompetitive effect.

On this last issue, while the opponents of regulations governing the offer and sale of foreign futures in the United States expressed fear that the unwarranted regulation of such transactions may inhibit the growth of international futures markets, have a chilling effect upon ongoing legitimate business practices, and have an anticompetitive effect upon foreign futures transactions in the United States, one proponent of regulations expressed the view that the adoption of regulations with respect to the offer and sale of foreign futures in the United States similar to those which apply to domestic futures transactions would bolster public confidence both in the entities soliciting foreign futures business and in the foreign futures markets for which that business is solicited.

Finally, on the extent to which a regulatory structure for foreign futures transactions could serve as a model for the regulation of foreign exchange-traded options, two United States exchanges, one foreign exchange and a private law firm expressed the view that, from a regulatory perspective, there is no distinction between an option and a futures transaction and, thus, the same regulatory structure could apply equally to both. These commenters were divided, however, with respect to whether the authorization of foreign options should be delayed pending experience with the regulation of foreign futures. Two other foreign exchanges stated that the regulation of foreign futures should not be a prerequisite to foreign options. Rather, these exchanges argued that regulations permitting the sale of foreign exchange-traded options in the United States should be considered by the Commission and adopted on their own merits.

III. The Proposed Regulations

A. In General

As discussed above, section 4c(c) of the Act requires the Commission, in authorizing the offer and sale of any options transactions in the United States, to first document to Congress its ability to regulate successfully such transactions. In addition, the legislative history of section 4(b) of the Act reflects the concern of Congress that adequate protection for United States residents that are solicited to trade foreign futures contracts be provided.[16] To most effectively and efficiently implement these Congressional directives, the Commission is proposing that, except as described in more detail below, the domestic offer and sale of foreign options and foreign futures be effected through Commission registrants, or comparably regulated entities, under a regulatory framework similar to that governing domestic futures and options. The Commission believes its proposed rules will impose no significant additional burdens on existing Commission registrants and, to the extent these rules will offset current non-registrants, they will ensure parity of regulation between those persons soliciting or accepting foreign futures and options who are presently registered with the Commission and those who are not.

The Commission wishes to emphasize that the proposed regulations discussed herein govern only the offer and sale in the United States of options and futures to be executed on or subject to the rules of a foreign exchange.[17] The proposed regulations do not in any way affect the terms and conditions of foreign options or futures contracts, apply to the activities of the foreign exchanges themselves or seek to ensure the integrity of foreign markets or transactions.

B. Synopsis of the Regulations

As discussed above, at present the Commission's antifraud rule with respect to the domestic offer and sale of foreign futures is set forth in § 30.02 of the Commission's rules and is the only rule contained in part 30. The Commission's proposal would essentially create a new part 30, which

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[14] As noted above and discussed in more detail below, the Commission may be willing, in cooperation with NFA and the relevant foreign government and self-regulatory organization, to permit exemptions from its regulations in appropriate cases.

[15] Because the domestic offer and sale of foreign futures is essentially unregulated, however, it is difficult to determine more precisely the extent to which U.S. customers participate in foreign markets.

[16] S. Rep. No. 384, 97th Cong., 2d Sess. 45–46 (1982).

[17] The domestic offer and sale of off-exchange futures contracts, whether foreign or domestic, of course is prohibited under section 4(a) of the Act.

would contain the existing antifraud rule, with a conforming amendment, as well as the substantive regulations being proposed herein.[18]

Definitions. The proposed rules set forth definitions of the terms "foreign futures", "foreign options", "foreign futures or foreign options customer" and "foreign futures or foreign options customer funds". Proposed § 30.1. With one exception, these definitions are drawn from similar definitions relating to domestic exchange-traded futures and options. Thus, the definitions of "foreign futures or foreign options customer funds" and "foreign options" parallel the definitions of "customer funds" and "commodity option" at Commission rule 1.3(gg) and 1.3(hh), respectively. 17 CFR 1.3(gg), (hh) (1985). Similarly, the term "foreign futures" is drawn from the definition of the same term at section 761(11) of the Bankruptcy Code, which previously had been incorporated by reference in the Commission's own bankruptcy rules. *See* Commission rule 190.01(t), 17 CFR 190.01(t) (1985). The term "foreign futures", therefore, is defined to include a "contract for the purchase or sale of any commodity for future delivery made, or to be made, on or subject to the rules of any board of trade located outside the United States, its territories or possessions." [19]

The Commission understands that not all foreign commodity exchanges may operate in the same manner as domestic exchanges and, therefore, a question may arise as to whether a particular transaction is a foreign futures contract or option under these proposed rules. In this connection, the Commission believes that these terms should be interpreted broadly in order to effectuate the intent of Congress. For example, the London Metals Exchange ("LME") is often referred to as a principals' spot and forward market rather than a futures market. Nonetheless, it is the intent of this proposal that to the extent the members of the LME execute transactions for future delivery for or on behalf of U.S. customers, such transactions would be foreign futures transactions for purposes of part 30. Notwithstanding the foregoing, however, the Commission specifically requests comment on whether the term "foreign futures" and "foreign options" may be defined more precisely.

Unlike the broad definition of a "customer" for purposes of domestic exchange transactions,[20] the Commission is proposing to exclude from the definition of a "foreign futures or foreign options customer" "a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the foreign futures contract or foreign options transaction, or the products or byproducts thereof, when such foreign futures contracts or foreign options transactions are entered into solely for purposes related to its business as such." The Commission is proposing this exclusion based upon its belief that any person who has determined to use transactions on foreign exchanges in connection with its business has taken the time to investigate those markets and the brokers with which such person will be dealing. As a result, except for the prohibitions on fraud that in any event are applicable to the offer and sale of all transactions on foreign exchanges,[21] such persons do not require the special protections afforded by the Commission's proposed regulatory scheme for the domestic offer and sale of such foreign products. This proposed exclusion also recognizes that many commercial entities that deal in world commodities have established trade relationships in connection with transactions on foreign exchanges during a period of no substantive regulation by the Commission and has preliminarily determined that these relationships be affected to the least degree possible.[22] The Commission, however, specifically requests comment on whether this exclusion is appropriate.

Applicability of the Act and regulations. As described earlier, it is the Commission's intent that domestic customers of all commodity options and futures products wherever they originate receive substantially the same protections against improper sale practices. It is also the Commission's intent to limit any additional burden on currrent Commission registrants as the result of the adoption of a regulatory scheme to affect the marketing by them of these products. To effectuate both purposes, the Commission has determined not to propose an entirely new regulatory structure. Rather, the Commission is proposing that, except as specified or unless the context otherwise requires, the Act and the existing regulations thereunder be deemed applicable to the persons and transactions subject to the requirements of part 30 as though they were set forth therein. Proposed § 30.2. Thus, the regulations governing the conduct of Commission registrants, including the recordkeeping and reporting requirements of such registrants, would be applicable to the persons required to be registered in the same capacities under part 30 in connection with the transactions subject to regulation under this part.[23]

The Commission's existing rules governing the minimum financial requirements of futures commission merchants do not require that foreign futures customer funds be taken into account in computing the firm's minimum net capital requirement, although an FCM is required to take a charge against its captial for undermargined house proprietary accounts or customer futures accounts (including foreign futures accounts) carried by the FCM. Commission rule 1.17(c)(5)(viii)–(x), 17 CFR 1.17(c)(5)(viii)–(x) (1985). The Commission is proposing no changes to Commission rule 1.17 and, therefore, with respect to entities currently registered as FCMs, this proposal will not increase the present capital requirements. For entities which register as FCMs and engage exclusively in foreign futures or option transactions, an adjusted minimum net capital of no less than $50,000 would be required under Commission rule 1.17(a).[24] The Commission specifically requests comment on whether this approach to the minimum net capital requirements of

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[18] Should the Commission determine to authorize the offer and sale in the United States of foreign exchange-traded options, the Commission will at that time adopt technical and conforming amendments to rules 32.1 and 32.11 in part 32 of the Commission's regulations relating to the regulation of commodity option transactions to clarify the relationship between proposed part 30 and 32.

[19] A "board of trade" is defined at section 2(a)(1)(A) of the Act and § 1.3(a) of the Commission's rules to include "any exchange or association, whether incorporated or unincorporated, of persons who shall be engaged in the business of buying or selling any commodity or receiving the same for sale on consignment." As discussed below, the provisions of the Act and the regulations thereunder are proposed to be applicable generally to the persons and transactions subject to regulation under part 30.

[20] Commission rule 1.3(k), 17 CFR 1.3(k) (1985), essentially defines a "customer" as any person, other than an owner or holder of a proprietary account as defined in Commission rule 1.3(y), 17 CFR 1.3(y) (1985), that trades in any commodity.

[21] *See* proposed § 30.9.

[22] In this connection, the Commission notes that commercial entities are able to purchase options on a foreign exchange pursuant to the trade option exemption in section 4c(c) of the Act. *See* Interpretative Letter No. 84–7 [192–1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,025 (February 22, 1984).

[23] The regulations governing designated contract markets and their respective clearing organizations, of course, would not be applicable to foreign boards of trade and their clearing organizations, if any.

[24] An entity required to register as an introducing broker under part 30 must, of course, maintain an adjusted net capital of at least $20,000 or be guaranteed bya registered futures commission merchant. Commission rule 1.17(a), (j), 17 CFR 1.17(a), (j) (1985).

FCMs that carry foreign futures or options is appropriate and whether it is sufficient in the case of certain foreign markets that do not have explicit margin requirements.

The general application of the Commission's recordkeeping and reporting requirements is intended, in part, to create the necessary records to assist the Commission in ensuring that foreign futures or options are in fact entered into on behalf of customers. In addition, the proposed rules are intended to ensure that the Commission would be able to obtain current information, through the special call provisions of part 21 of the Commission's regulations, on the extent of foreign futures and options activities on behalf of U.S. customers.[25] In this connection, the Commission notes that, in the past, many FCMs have been unable to disclose this information to the Commission.

Proposed rule 30.2(b) sets forth certain provisions of the Commission's regulations which specifically would not be applicable under part 30. In particular, the Commission wishes to note that rule 1.20, requiring the segregation of customer funds would not be applicable. The Commission recognizes that it cannot impose upon members of foreign exchanges, or the foreign exchanges themselves, the same obligations that are imposed upon U.S. clearing member fims and clearing organizations. Therefore, it is proposing a separate segregation rule to govern the treatment of foreign futures or foreign options customer funds. As discussed in more detail below, however, proposed rule 30.7 would impose upon FCMs carrying foreign futures or options customer funds virtually the same obligations with respect to funds in their possession as they have with respect to U.S. futures or option customer funds as long as such funds are held in the United States.

Prohibited transactions. Proposed rule 30.3 generally would prohibit the offer and sale in the United States of any foreign futures contract or foreign options transaction except in accordance with the provisions of part 30. More specifically, except for persons not located in the United States that elect the alternative to registration contained in proposed rule 30.5, any person engaging in the domestic offer and sale of foreign futures or options would be required to be registered in an appropriate capacity as required under proposed rule 30.4 and to be a member of a registered futures association that has provided for the regulation of the foreign futures and options-related activities of its members in a manner equivalent to that governing the domestic futures and options-related activities of its members. Proposed § 30.3(b). Moreover, except for persons not located in the United States that elect the alternative to registration contained in proposed rule 30.5 and that, in addition, deposit $50,000 with an FCM, foreign futures or options solicited from a foreign futures or options customer in the United States would be required to be carried on a fully-disclosed basis by or through an FCM. Proposed § 30.3(c). The purpose of proposed rule 30.3(c) is to create a domestic record of foreign futures and options transactions entered into by U.S. customers and to ensure that any funds deposited by a foreign futures or option customer prior to transmission abroad would be deposited with an FCM subject to the segregation requirements of proposed rule 30.7 referred to above.[26] The Commission specifically requests comment on whether depositories other than FCMs may be as appropriate to achieve this purpose.

The only foreign futures or options transactions entered into by foreign options or foreign futures customers that would not be subject to regulation, other than antifraud regulation, under part 30 would be those transactions"executed on a board of trade located outside the United States, its territories or possessions, subject to an agreement with a contract market that permits positions in a commodity interest which have been established on one of two markets to be liquidated on the other market", [27] *i.e.,* a link agreement such as that which presently exists between the Chicago Mercantile Exchange and the Singapore International Monetary Exchange ("SIMEX") and that which is proposed between the Commodity Exchange, Inc. and the Sydney Futures Exchange.[28] Since transactions under such link agreements generally are effected pursuant to contract market rules that have been approved by the Commission under section 5a(12) of the Act and rule 1.41 and are for virtually all purposes treated as contracts entered into on or subject to the panoply of the Commission's regulations, including the requirement that such transactions may be solicited or accepted only by Commission registrants.

Registration. At the present time, persons who act in the capacity of a futures commission merchant, an introducing broker, a commodity pool operator and a commodity trading advisor with respect to foreign futures contracts or options are not required to register as such, nor are they subject to any of the regulatory requirements which apply to such persons. An essential element of the Commission's statutory and regulatory scheme governing domestic options and futures transactions, however, it the registration of those firms and individuals that deal with customers, and the Commisison believes those firms and individuals that deal with foreign options and foreign futures customers similarly should be subject to registration. Therefore, except as described below with respect to persons located outside of the U.S., [29] the Commisison is proposing to require that persons who act in the capacity of a futures commission merchant, an introducing broker, a commodity pool operator or a commodity trading advisor in the United States with respect to foreign futures or options customers register in the appropriate capacity with the Commission.[30] Proposed § 30.4. This registration requirement will serve to identify those who are lawfully engaged in the offer and sale of foreign options and futures and, thus, will assist those states that may wish to apply their laws to those who are unlawfully engaged in such activity.[31]

As Commission registrants, such entities, as noted above, will be subject generally to all of the regulatory requirements which currently apply to each category of registrant, including the Commission's recordkeeping and reporting requirements and, to the extent discussed above, the Commission's rules imposing minimum net capital requirements upon futures commission merchants and introducing brokers. Similarly, commodity pool

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[25] As discussed below, the Commission is also proposing monthly reporting requirements by all FCMs with respect to their foreign futures and option activities.

[26] This restriction, of course, is not applicable with respect to the accounts and funds of those entities excluded from the definitions of a foreign futures or foreign options customer under proposed rule 30.1(c).

[27] *See* proposed rule 1.59(a)(5). 50 FR 24533 (June 11, 1985).

[28] In an earlier interpretative letter concerning the treatment of customer funds under the Chicago Mercantile Exchange's agreement with SIMEX, the Commission's staff clarified that any trades executed on the SIMEX *outside* of the agreement would be treated as foreign futures. Interpretative Letter No. 84-19, 2 Comm. Fut. L. Rep. (CCH) ¶ 22,389 (Aug. 9, 1984).

[29] *See* proposed § 30.5.

[30] In this connection, the only persons required to register as a commodity trading advisor under proposed rule 30.4 would be those persons who solicit or manage discretionary accounts in foreign options or foreign futures.

[31] *See* proposed § 30.11.

operators and commodity trading advisors that engage in foreign options or futures transactions on behalf of their customers would be required to comply with the Commission's part 4 rules, including the requirement that a Disclosure Document be provided to such customers. Of course, if these regulations are promulgated as proposed, the Commission will afford those entitles presently unregistered sufficient time to comply with these requirements.

Section 4k of the Act essentially requires any individual associated with a registrant in any capacity that involves the solicitation of customers or the supervision of such individuals to be registered with the Commission as an associated person. Because section 4k would be applicable under proposed rule 30.2, the Commisison has concluded, therefore, that an additional regulatory provision would not be necessary to provide for the registration of associated persons. Nonetheless, the commission wishes to make clear that individuals associated with a registrant in a capacity that would require registration as an associated person in connection with U.S. options and futures customers are required under part 30 to be registered as associated persons in connection with their activities with respect to foreign options and futures customers.[32] An individual associated with a person located outside the United States that elects the alternative to registration in proposed rule 30.5 and who is also located outside the United States would not be required to be registered as an associated person, however, as there would be no registrant to sponsor the individual.

Alternative procedures for non-domestic persons. Notwithstanding its belief that registration with the Commission is a critical element of this regulatory program, the Commission is aware that non-domestic entities may find this requirement and the concommitant requirement to establish and maintain an office in the U.S. unjustified based on the extent of its activities here. In particular, the Commission is aware that requiring an entity's presence in the U.S. may subject that entity to the jurisdiction of federal and state authorities for all purposes, not simply for purposes of the Commodity Exchange Act. The Commission, therefore, is proposing to exempt from registration any non-domestic person that solicits United States residents to trade foreign options or futures, if the person otherwise qualifies to do business by entering into an agreement with an FCM through which the foreign futures or options that erson solicits in the United States are carried,[33] designating that FCM as the agent for the service of process for communications both from the Commission and from the customers of the non-domestic person. Proposed § 30.5. A non-domestic person that would otherwise be required to be registered as a futures commission merchant and would be exempt from registration under this proposed rule generally would not be able to accept customer funds except through a registered FCM on a fully-disclosed basis. However, that person would be able to carry its foreign futures and foreign options customer accounts with an FCM on an omnibus basis if it deposits with that FCM money, securities or property in the amount of $50,000.[34]

The Commission believes that any person authorized to accept funds from U.S. residents to trade options and futures on a foreign excange should make a deposit in the U.S. equal to that of the minimum net capital requirement for FCMs to demonstrate that such persons have the resources to remain economically viable and accountable for their conduct. Upon making this deposit, a non-domestic person may accept foreign futures and foreign options customer funds and may transmit orders, with the funds to margin, guarantee or secure such orders, through a registered FCM on an omnibus basis. Proposed § 30.5(c). Such persons, however, must comply with the requirements on the treatment of these funds as set forth in proposed rule 30.7, discussed below, as long as such funds are held in the United States. Proposed § 30.5(d). As noted above, the Commission is specifically requesting comment on the adequacy of this proposed alternative to registration to protect the public.

Risk disclosure. Although many commenters expressed the view that a separate risk disclosure statement would be unwarranted in view of the fact that any additional risk which exists will vary depending on the foreign exchange in question, the Commission believes that there are certain risks associated with foreign futures and options common to all such transaction. It is these risks which the Commission proposes be set forth in the risk disclosure statement required under proposed rule 30.6.

Under the proposed rule, a futures commission merchant or introducing broker may not open or introduce a foreign futures or options account for a customer without first obtaining written authorization from the customer, which authorization includes a written risk disclosure statement containing only the language set forth in the proposed rule. The authorization may be contained either in the customer account agreement or on a separate form. However, if the FCM, introducing broker or an associated person or either has discretionary authority over the customer's account, the FCM or introducing broker must receive from the customer a signed and dated acknowledgment to the effect that he has received and understood the risk disclosure statement. This disclosure is required whether the customer has already been provided with the risk disclosure statement required in rules 1.55 and 33.7 of the Commission's regulations.[35]

Commodity pool operators and commodity trading advisors who direct or guide a customer's commodity interest trading in foreign futures or option contracts similarly must provide customers and prospective customes with the disclosure statement referred to above and receive the required acknowledgment prior to engaging in foreign futures or option transactions on behalf of foreign futures or option customers. The commodity pool operator or commodity trading advisor may make the disclosure language part of the Disclosure Document itself by inserting it as the only language on the

[32] In this connection, the Commission notes that it currently requires registration as an associated person of any individual who solicits or accepts orders for options or futures to be traded or executed on a domestic exchange from any person residing within the United States even if that individual does so from a location outside the United States *See, e.g.*, 48 FR 35248, 35261 (August 3, 1983).

[33] *See* proposed § 30.3(c).

[34] As discussed above, the Commission is specifically requesting comment on whether other depositories may be as appropriate in achieving the purposes of the Commission's regulatory scheme. In this connection the Commission understands that the International Commodity Clearing House ("ICCH") has established a United States subsidiary, among other things, to serve as a depository for margin and other payments from member firms located in the U.S. with respect to transactions on or subject to the rules of foreign boards of trade for which ICCH is the clearing house. This subsidiary, or the domestic branch of a foreign bank, could serve as an appropriate depository under proposed rule 30.5, if the Commission received appropriate acknowledgments and could be assured of prompt notification in the event the deposit is withdrawn.

[35] In addition, the options disclosure statement required under Commission rule 33.7 must also be furnished to a foreign options customer, unless the customer had previously received that disclosure statement in connection with opening a domestic exchange-trade options account under part 33. *See* proposed § 30.6(d).

page(s) immediately following the disclosure required to be made by Commission rules 4.21(a)(17) and 4.31(a)(8). Otherwise, a separate disclosure statement must be provided. In either case, an acknowledgment must be received from such person and maintained in accordance with Commission rule 1.31.

In drafting the language of the proposed risk disclosure statement and the requirements with respect to obtaining customer authorization to enter into foreign futures or options on behalf of such customer, the Commission attempted to limit any additional regulatory burden that would be placed on Commission registrants as a result. Therefore, the Commission determined to adopt, to the extent possible, the language and procedures set forth in NFA's Compliance Rule 2-28, governing disclosure to customers in connection with transactions entered into pursuant to link agreements. Upon receipt of comments on these proposed rules, the Commission would expect to coordinate with NFA to determine whether a uniform disclosure statement with respect to both linked and non-linked foreign futures and options transaction may be appropriate.

Treatment of customer funds. With respect to the issue of whether the Commission should require the segregation of foreign futures or option customer funds, several of the foreign exchanges noted that requiring segregation in the United States of all customer funds margining foreign exchange positions would be tantamount to "double segregation." As the Commission does not intend to so increase the cost of entering into transactions on foreign exchanges, the Commission has determined not to propose that all such funds be subject to the requirements of section 4d of the Act and Commission rule 1.20 thereunder. Rather, as noted above, the Commission is proposing a modified segregation requirement in proposed rule 30.7. Under this rule, FCMs must deposit foreign futures or options customer funds in a bank located in the United States [36] or with another FCM and separately account for and segregate such funds as belonging to foreign futures or option customers. However, such funds subsequently may be deposited with a member of a foreign exchange, with the clearing organization of such foreign exchange or with their respective designated depositories to purchase, margin, guarantee, secure, transfer, adjust or settle foreign futures contracts or options on behalf of the foreign futures or options customer. Because of the availability of bank and FCM records, the proposed rule would help establish that such funds have indeed been transferred on behalf of customers.

The Commission believes that the limited segregation requirement proposed herein will impose no undue hardship on any person subject to regulation under this part. Nonetheless, as previously noted, Congress intended that the Commission, to the extent necessary, draw distinctions between exchanges that poses no significant danger to customers in the United States. Specifically, the legislative history of the Act contains express language to the effect that the Commission should not routinely require the segregation of customer funds with respect to foreign futures contracts under the authority of section 4(b) "when there is adequate evidence that such funds have been transferred to a bona fide foreign market, clearinghouse, or market principal and are adequately safeguarded for the protection of U.S. residents." [37] Therefore, as discussed above, with respect to the segergation requirement proposed herein as well as any other requirement imposed by these proposed rules, the Commission may, if appropriate, grant exemptions from such requirements. *See* proposed § 30.10.

Proposed rule 30.7 also provides that such funds may, for convenience, be commingled with the funds of other foreign futures or options customers and deposited in the same account or accounts with a bank or trust company located in the United States or with another futures commission merchant, but under no circumstances may such funds be commingled with customer funds required to be segregated under section 4d of the Act and Commission rule 1.20. To permit such commingling would possibly dilute the pool of funds available to U.S. futures customers in the event of a bankruptcy of the FCM.

The Commission's bankruptcy rules provide that for purposes of determining the pro rata distribution of property to customers who hold claims against a debtor, all property segregated on behalf of, or otherwise traceable to, a particular account class is to be allocated to that particular class. Commission rule 190.08(c)(1), 17 CFR 190.08(c)(1) (1985). All other property is allocated among all account classes using a formula intended to equalize the percentage of each claim for each account class. Commission rule 190.08(c)(2), 17 CFR 190.08(c)(2) (1985). In the advance notice of propoosed rulemaking, the Commission expressed concern that the current absence of a segregation requirement in the United States with respect to foreign futures accounts placed customers holding such unregulated accounts in a potentially disadvantageous position with respect to the allocation of property held by a bankrupt vendor of foreign futures contracts. Since foreign futures account funds are not presently required to be segregated, such funds would not be allocated to the foreign futures account class unless otherwise readily traceable thereto.

By requiring foreign futures and foreign options customer funds to be segregated, therefore, proposed rule 30.7, in conjunction with the Commission's recordkeeping requirements, should permit that portion of the funds to be traceable to such foreign futures or options account class. Provided these funds are on deposit in the United States or may be recovered, foreign futures or options customers should receive the same priority with respect to their funds as U.S. futures and options customers. Nonetheless, because foreign futures or options customer funds would not receive the same segregation protections even under the proposed rule, if such funds were commingled with customer funds required to be segregated under section 4d and a shortfall in foreign futures or options customer funds were to occur, the pool of U.S. customer funds available for distribution could be diluted. The Commission requests comment on whether, in the alternative, this segregation requirement should be eliminated and foreign futures and foreign options customer funds continue to receive a lower priority.

Monthly reporting requirements. The Commission is also proposing to require that FCMs file with the Commission on a monthly basis, separately by foreign exchange and commodity, long and short, customer and proprietary, a report containing data for the total volume of foreign futures contracts effected on such foreign exchange and the open interest at month-end. With respect to foreign options, the Commission is proposing to require that FCMs report, on a monthly basis, separately by underlying futures contracts for options on futures contracts or by underlying physical for options on physicals, by put, by call, and by customer or proprietary, the total volume and the open interest at month end. The

[36] In this connection, the Commission wishes to make clear that this is a current requirement for domestic FCMs and that a United States branch of a foreign bank may be an acceptable depository. *See* Commodity Exchange Authority Administrative Determination No. 238 (September 4, 1974).

[37] S. Rep. No. 384, 97th Cong. 2d Sess 46 (1982).

Commission is also proposing that FCMs report, on a monthly basis, the total amount of foreign futures and foreign options customer funds forwarded to each member of a foreign exchange, a clearing organization of such exchange or their respective designated depositories to purchase, margin or otherwise secure foreign futures or foreign options positions.[38] Proposed § 30.8. The Commission requests comment on whether these reports should be filed with NFA rather than with the Commission.

Antifraud. As noted earlier, the Commission is also proposing to redesignate rule 30.02 as rule 30.9, modified to reflect the definitions set forth in the related part 30 rules. Specifically, existing rule 30.02 is applicable to fraudulent conduct involving a contract "traded or executed on any board of trade, exchange or market other than an contract market designated pursuant to section 5 of the Act. * * *" As proposed to be amended, rule 30.9 prohibits fraudulent conduct involving "any foreign futures contract or foreign options transaction." This amendment is proposed for the purpose of making the provisions of rule 30.9 consistent with the provisions of the other rules proposed to be set forth in part 30.[39]

Requests for exemption. As noted earlier, the Commission is proposing rule 30.10 to permit persons to petition the Commission for an exemption from any requirement in these rules. Such petition must set forth with particularity the reason why that person believes an exemption for such requirement is appropriate. Under the proposed rule, the Commission may grant such a request if the person demonstrates that the exemption is not contrary to the public interest or the purposes of the provision from which exemption is sought.

As discussed above, the Commission believes that this procedure would be an appropriate means to exempt from some or all of the requirements under this part individuals and entities that are subject to regulations comparable to the Commission's requlations in the country in which they are located. In this connection, however, the Commission expects that it may be necessary to obtain not only the cooperation of the self-regulatory organizations involved, but also mutually acceptable understandings between the Commission and its counterparts in the foreign government.

Applicability of state law. Finally, pursuant to its authority under the "open season" provisions of section 12(e)(2) of the Act, the Commission is proposing to authorize the application of any state law to transactions on a foreign exchange entered into by U.S. customers through any person not registered with the Commission or exempt from registration in accordance with this part. This authority will complement the existing authority of the states under section 12(e)(3) of the Act to apply any state statute, including any rule or regulations thereunder, "to any person required to be registered or designated under this Act who shall fail or refuse to obtain such registration or designation." Thus, once those who are legitimately offering foreign products are indentified pursuant to this part, the states would be free to take action against those firms and individuals that are unlawfully engaged in such conduct.

IV. Related Matters

A. Paperwork Reduction Act

The Commission has submitted to the Director of the Office of Management and Budget ("OMB"), pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), an explanation and details of the information collection and recordkeeping requirements which would be necessary to implement these proposals. Any person wishing to comment on the information collection requirements should contact Katie Lewin, Office of Management and Budget, Room 3235, NEOB, Washington, DC 20503. Telephone: (202) 395–7231. Copies of the information collection submission to OMB are available from Joseph G. Salazar, Commodity Futures Trading Commission Clearance Officer, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–9735.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously determined that neither futures commission merchants nor commodity pool operators should be considered small entities for purposes of the RFA. Specifically, the Commission found that with respect to FCMs, based upon the fiduciary nature of FCM/customer relationships, as well as the requirement that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of a small entity. With respect to CPOs, Commission rule 4.13(a), 17 CFR § 4.13(a) (1985), already exempts small entities from the regulatory requirements imposed on CPOs.[40] Accordingly, the requirements of the RFA do not apply to those entities. For the same reasons, those entities that will be required to be registered as futures commission merchants or commodity pool operators under this part should not be considered small entities.

With respect to introducing brokers and commodity trading advisors, and those that would be required to be registered as such under these rules, the Commission has stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all CTAs and introducing brokers should be considered to be small entities and, if so, to analyze the economic impact of such entities at that time. In this regard, the Commission notes that the regulations being proposed herein with respect to CTAs and introducing brokers are essentially the same as those governing these categories of registrant in connection with their activities relating to futures contracts and options traded or executed on or subject to the rules of a contract market designated by the Commission. Further, the Commission has previously found that its regulations governing these categories of registrant will not have a significant economic impact on a substantial number of small entities.[41] Therefore, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission specifically requests comment on the impact these proposed rules may have on small entities.

List of Subjects in 17 CFR Part 30

Commodity futures, financial requirements, reporting and recordkeeping requirements, consumer protection, definitions, foreign futures, foreign options, registration requirements, risk disclosure statements, segregated funds, introducing brokers.

[38] By definition, information requested with respect to foreign futures and foreign options customer transactions would not include the transactions of those commercial entities excluded from the definition of foreign futures and foreign options customer. *See* proposed § 30.1(c), (d).

[39] The Commission also notes that the statutory authority of the rule has been revised. The statutory authority of rule 30.02 is section 2(a)(1)(A) and section 8a(5) of the Act. Upon promulgation sections 4(b) and 4(c) of the Act would be additional statutory authority for rule 30.9.

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

[41] 48 FR 35248 (August 3, 1983).

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1)(A), 4, 4c and 8a thereof, 7 U.S.C. 2, 6, 6c, and 12a (1982) and pursuant to the authority contained in 5 U.S.C. 552 and 552b (1982), the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 30—FOREIGN OPTIONS AND FOREIGN FUTURES TRANSACTIONS

1. The authority citation for Part 30 is proposed to be revised to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 4, 6, 6c and 12a (1982).

2. 17 CFR Part 30 is proposed to be amended by revising the Part heading, by revising and redesignating § 30.02 as § 30.9 and by adding §§ 30.1–30.8 and 30.10–30.11 to read as follows:

PART 30—FOREIGN FUTURES AND FOREIGN OPTIONS TRANSACTIONS

§ 30.1 Definitions.

For the purposes of this part:

(a) "Foreign futures" means any contract for the purchase or sale of any commodity for future delivery made, or to be made, on or subject to the rules of any board of trade located outside the United States, its territories or possessions.

(b) "Foreign option" means any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty" and which is subject to regulation by any board of trade located outside the United States, its territories or possessions.

(c) "Foreign futures or foreign options customer" means any person located in the United States, its territories or possessions who trades in foreign futures or foreign options: *Provided, however,* That the term "foreign futures or foreign options customer" shall not include a producer, processor or commercial user of, or a merchant handling the commodity which is the subject of the foreign futures contract or foreign options transaction or the products or byproducts thereof, when such foreign futures contracts or foreign options transactions are entered into solely for purposes related to its business as such: *And, provided further,* That an owner or holder of a proprietary account as defined in paragraph (y) of § 1.3 of this chapter shall not be deemed to be a foreign futures or foreign options customer within the meaning of §§ 30.6 and 30.7 of this part.

(d) "Foreign futures or foreign options customer funds" means all money, securities and property received by a futures commission merchant from, for, or on behalf of foreign or foreign options customers:

(1) In the case of foreign futures customers, to margin, guarantee, or secure foreign trades or futures contracts and accruing to such customers as a result of such trades or contracts; and

(2) In the case of foreign options customers, in connection with a foreign options transaction—

(i) To be used as a premium for the purchase of a foreign option for a foreign options customer;

(ii) As a premium payable to a foreign options customer;

(iii) To guarantee or secure the performance of a foreign option by a foreign options customer; or

(iv) Representing accruals (including, for purchasers of a foreign option, the market value of such foreign option) to a foreign options customer.

§ 30.2 Applicability of the Act and rules.

(a) Except as otherwise specified in this part or unless the context otherwise requires, the provisions of the Act and the Commission's regulations thereunder shall apply to the persons and transactions that are subject to the requirements of this part as though they were set forth herein and included specific references to foreign futures, foreign options, foreign futures and foreign options customers, and foreign futures and foreign options customer funds, as appropriate.

(b) The provisions of §§ 1.20, 1.38, 1.39, 1.41 through 1.45, 1.46 through 1.55, 1.58, 1.61, and 33.2 through 33.6 and parts 15 through 20 of this chapter shall not be applicable to the persons and transactions that are subject to the requirements of this part.

§ 30.3 Prohibited transactions.

(a) It shall be unlawful for any person to engage in the offer and sale of any foreign futures contract or foreign options transaction, except in accordance with the provisions of this part: *Provided, however,* That, with the exception of the antifraud provisions set forth in § 30.9 of this part, the provisions of this part shall not apply to transactions executed on a board of trade located outside the United States, its territories or possessions, subject to an agreement with and rules of a contract market which permit positions in a commodity interest which has been established on one of two markets to be liquidated on the other market.

(b) Except as otherwise provided in this part, it shall be unlawful for any person to engage in the offer and-sale of any foreign futures contract or foreign options transaction for or on behalf of any foreign futures or foreign options customer unless such person (1) shall have registered, under the Act, with the Commission in an appropriate capacity as required under § 30.4 of this part and (2) is a member of a futures association registered under section 17 of the Act, which has provided for the regulation of the foreign futures and foreign options-related activities of its members in a manner equivalent to that governing the domestic futures and options-related activities of its members.

(c) Except as otherwise provided in this part, it shall be unlawful for any person, including any person exempt from registration under § 30.5 of this part, to engage in the offer and sale of any foreign futures contract or foreign options transaction for or on behalf of any foreign futures or foreign options customer except other than by or through a futures commission merchant on a fully-disclosed basis in accordance with this part.

§ 30.4 Registration required.

(a) Except as provided in § 30.5 of this part, it shall be unlawful for any person to solicit or accept orders for or involving any foreign futures contract or foreign options transaction and, in connection therewith, to accept any money, securities or property (or extend credit in lieu thereof) to margin, guarantee or secure any trades or contracts the result or may result therefrom unless such person shall have registered, under the Act, with the Commission as a futures commission merchant and such registration shall not have expired nor been suspended nor revoked.

(b) Except as provided in § 30.5 of this part, it shall be unlawful for any person, except an individual who elects to be and is registered as an associated person of a futures commission merchant, to solicit or accept orders for or involving any foreign futures contract or foreign options transaction, and who in connection therewith, does not accept any money, security, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trade or contracts that result or may result therefrom, unless such person shall have registered, under the Act, with the Commission as an introducing broker and such registration shall not have expired nor been suspended nor revoked.

(c) Except as provided in § 30.5 of this part, it shall be unlawful for any person to engage in a business which is of the nature of an investment trust, syndicate, or similar form of enterprise, and, in connection therewith, to solicit, accept, or receive from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading, directly or indirectly, in any foreign futures contract or foreign options transaction unless such person shall have registered, under the Act, with the Commission as a commodity pool operator and such registration shall not have expired nor been suspended nor revoked.

(d) Except as provided in § 30.5 of this part, it shall be unlawful for any person to solicit or enter into an agreement with any other person to direct, or to guide by means of a systematic program that recommends specific transactions, the trading for or on behalf of such person in any foreign option or foreign futures contract unless such person shall have registered, under the Act, with the Commission as a commodity trading advisor and such registration shall not have expired nor been suspended nor revoked: *Provided*, That the term "commodity trading advisor" does not include (1) any bank or trust company or any person acting as an employee thereof, (2) any news reporter, news columnist, or news editor of the permit or electronic media, or any lawyer, accountant, or teacher, (3) the publisher or producer of any print or electronic data or general and regular dissemination, including its employees, (4) the named fiduciary, or trustee, of any defined benefit plan which is subject to the provisions of the Employee Retirement Income Security Act of 1974, or any fiduciary whose sole business is to advise that plan, (5) any board of trade located outside the United States, its territories or possessions or clearing organizations of such board of trade, and (6) such other persons not within the intent of the term "commodity trading advisor" as the Commission may specify by rule, regulation, or order *Provided further*, That the furnishing of such services by the foregoing persons is solely incidental to the conduct of their business or profession. Registration as a commodity trading advisor shall not be required if such person is registered with the Commission as a futures commission merchant, introducing broker or associated person.

(e) Any person required to be registered under this section and who does not elect the alternative procedure for non-domestic persons under § 30.5 of this part must maintain an office in the United States which is managed by a person domiciled in the United States and registered with the Commission as an associated person.

(f) All records, or copies thereof, required to be maintained by a registrant in accordance with this part shall be maintained at a location identified in paragraph (e) of this section.

§ 30.5 Alternative procedures for non-domestic persons.

(a) *Agent for service of process*. Any person not located in the United States, its territories or possessions, who is required in accordance with the provisions of this part to be registered with the Commission as a futures commission merchant, introducing broker, commodity pool operator, or commodity trading advisor and, in connection therewith, to be a member of a registered futures association, will be exempt from such registration and membership requirement if such person enters into and files with the Commission an agreement with the futures commission merchant through which foreign futures contracts or foreign options transactions are entered into in accordance with the provisions of § 30.3(c) of this part, pursuant to which agreement such futures commission merchant is authorized to serve as the agent of such person for purposes of accepting delivery and service of communications from the Commission and any foreign futures or foreign options customer, or representative of any foreign futures or foreign options customer, of such person. Service or delivery of any communication issued by or on behalf of the Commission or any foreign futures or foreign options customer, or representative of such foreign futures or foreign options customer, pursuant to such agreement shall constitute valid and effective service or delivery upon such person. Unless otherwise specified by the Commission, the agreement required to be filed with the Commission shall be filed with the Secretary of the Commission at 2033 K Street, NW., Washington, DC 20581. A copy of such agreement shall also be filed with the Vice President-Compliance, National Futures Association, 200 West Madison Street, Chicago, Illinois 60606. For the purposes of this section, the term "communication" includes any summons, complaint, order, subpoena, request for information, or notice, as well as any other written document or correspondence.

(b) *Termination of agreement*. Whenever the agreement referred to in paragraph (a) of this section is terminated or is otherwise no longer in effect, the futures commission merchant which is party to the agreement shall notify the Secretary of the Commission and the Vice President-Compliance of the National Futures Association immediately and shall not accept from the person with whom the futures commission merchant has entered into such agreement foreign futures or foreign options customer funds. Notwithstanding the termination of the agreement referred to in paragraph (a) of this section, service or delivery of any communication issued by or on behalf of the Commission, or any foreign futures or foreign options customer, or any representative of such foreign futures or foreign options customer, pursuant to the agreement shall nonetheless constitute valid and effective service or delivery upon such person with respect to any transaction entered into through such futures commission merchant on or before the date of the termination of the agreement.

(c) *Authority to act as a futures commission merchant*. (1) Notwithstanding the provisions of paragraph (a) of this section, any person who would otherwise be required to be registered as a futures commission merchant in accordance with the provisions of this part, and who is exempt from such registration requirement in accordance with the provisions of paragraph (a) of this section, may not accept foreign futures or foreign options customer funds, unless such person deposits and maintains with the futures commission merchant with which the agreement referred to in paragraph (a) of this section is entered into, money, securities or property in the amount of $50,000.

(2) Notwithstanding the provisions of § 30.3(c) of this part, any person exempt from registration as a futures commission merchant in accordance with the provisions of paragraph (a) of this section who makes the deposit required under paragraph (c)(1) of this

section with a registered futures commission merchant may carry its accounts for or on behalf of foreign futures or foreign options customers through such futures commission merchant on an omnibus basis.

(d) *Applicability of other rules.* Any person who is located outside of the United States, its terrorities or possessions, and who, in accordance with the provisions of paragraph (a) of this section, is exempt from registration as a futures commission merchant, introducing broker, commodity pool operator or commodity trading advisory under this part, shall nonetheless comply with the provisions of §§ 30.6 and 30.7 of this part and § 1.37 of this chapter as if registered in such capacity.

§ 30.6 Disclosure

(a) *Futures commission merchants and introducing brokers.* (1) No futures commission merchant or, in the case of an introduced account, no introducing broker may open a foreign futures or foreign options account for a foreign futures or foreign options customer unless the futures commission merchant or introducing broker first receives written authorization executed by the customer to enage in such transactions. The authorization may be either in the customer account agreement or on a separate form and must include the following risk disclosure statement set in bold-face type or print:

Risk Disclosure Statement

Foreign Futures and Foreign Options

The risk of loss in trading foreign futures and foreign options can be substantial. Therefore, you should carefully consider whether such trading is suitable for you in light of your financial condition. In considering whether to trade foreign futures or foreign options, you should be aware of the following:

(1) Participation in foreign futures and foreign options transactions involves the execution and clearing of trades on a foreign board of trade, exchange or market.

(2) The Commodity Futures Trading Commission does not regulate activities subject to the rules of any foreign board of trade, exchange or market, including the execution, delivery and clearing of transactions on such foreign board of trade, exchange or market.

(3) Accordingly, the Commission does not have the power to secure enforcement from the foreign board of trade, exchange or market, or from its members, or to compel enforcement of any applicable foreign laws by the foreign governmental authorities if there are violations of, or noncompliance with, the laws of the foreign country or rules of the foreign board of trade, exchange or market. Moreover, such laws or regulations will vary depending on the foreign country in which the foreign futures or foreign options transaction occurs.

(4) For these reasons, to the extent transactions actually occur outside the United States, its terrorities or possessions, customers who trade foreign futures or foreign options contracts will not be afforded certain of the protective measures provided by the Commodity Exchange Act and the Commission's regulations. In particular, funds received from customers to margin foreign futures or foreign options transactions are not provided the same protections as funds received to margin futures or options transactions on United States futures exchanges.

(5) Therefore, before entering into any foreign futures or foreign options transaction, you should obtain as much information as possible from your account executive concerning the foreign rules which will apply to your particular transaction.

(6) Finally, you should also be aware that the price of any foreign futures or foreign options contract and, therefore, the potential profit and loss resulting therefrom, will be affected by any variance in the foreign exchange rate between the time the order is placed and the foreign futures contract is liquidated or the foreign options contract is liquidated or exercised.

(2) If a futures commission merchant or introducing broker, or any associated person of such futures commission merchant or introducing broker, has received discretionary authority to engage in foreign futures or foreign options transactions on behalf of a foreign futures or foreign options customer without the specific consent of such customer, the futures commission merchant or introducing broker must receive a separate acknowledgment signed and dated by the customer that the customer has received and understood the risk disclosure statement.

(b) *Commodity pool operators and commodity trading advisors.* (1) No commodity pool operator registered or required to be registered under this part, or exempt from registration pursuant to § 30.5 of this part, may, directly or indirectly, solicit, accept or receive funds, securities or other property from a prospective participant in a foreign pool that it operates or that intends to operate or, in the case of a commodity trading advisor, no commodity trading advisor registered or required to be registered under this part, or exempt from registration pursuant to § 30.5 of this part, may solicit or enter into an agreement with a prospective client to direct or to guide the client's foreign commodity interest trading by means of a systematic program that recommends specific transactions, unless the commodity pool operator or commodity trading advisor, at or before the time it engages in such activities, first complies with the provisions of paragraph (a)(1) of this section.

(2) The disclosure required to be made in paragraph (b)(1) above may be given as a separate document or, if a part of the Disclosure Document required to be furnished customs or potential customers pursuant to §§ 4.21(a) or 4.31(a) of this chapter, must be the only language on the page(s) or 4.31(a) of this chapter, must be the only language on the page(s) immediatley following the disclosure required to be made by §§ 4.21(a)(17) and 4.31(a)(8) of this chapter.

(c) The acknowledgment required by paragraphs (a) and (b) of this section must be retained by the futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor in accordance with § 1.31 of this chapter.

(d) This section does not relieve a futures commission merchant or introducing broker from its obligation under § 33.7 of this chapter to furnish a foreign options customer with a separate written disclosure statement as set forth in paragraph (b) of that section: *Provided, however,* That such disclosure statement is not required to be furnished if the foreign options customer has recieved that disclosure statement in connection with the opening of a commodity option account under part 33 of this chapter.

(e) This section does not relieve a futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor from any other disclosure obligation it may have under applicable law or regulation.

§ 30.7 Treatment of foreign futures or foreign options customer funds.

(a) Except as provided in paragraph (b) of this section, all foreign futures and foreign options customer funds shall be separately accounted for and segregated as belong to foreign futures and foreign options customers. Such foreign futures and foreign options customer funds when deposited with any bank or trust company located in the United States, or another futures commission merchant, shall be deposited under an account name which clearly identifies them as such and shows that they are segregated as required by this section. Each registrant shall obtain and retain in its files for the period provided in § 1.31 of this chapter an acknowledgment from such bank, trust company, or futures commission merchant, that it was informed that the foreign futures and foreign options customer funds deposited therein are those of foreign futures and foreign options customers and are being held in accordance with the provisions of these regulations. Under no circumstances shall any portion of foreign futures or foreign options customer funds be obligated to a futures commission merchant, any depository, any member of a board of trade located outside the United States, its territories or possessions, a clearing organization of such board of trade or their designated depositories except to purchase, margin, guarantee, secure, transfer, adjust or settle trades or foreign futures or foreign options transactions of foreign futures or foreign options customers. No bank or trust company located in the United States or other futures commission merchant that has received foreign futures or foreign options customer funds for deposit in a segregated account, as provided in this section, may hold, dispose of, or use any such funds as belonging to any person other than the foreign futures or foreign options customers of the futures commision merchant which deposited such funds.

(b) Each futures commission merchant shall treat and deal with the foreign futures and foreign options customer funds of a foreign futures or foreign options customer as belonging to such customer. All foreign futures and foreign options customer funds shall be separately accounted for, and shall not be commingled with the money, securities or property of a futures commission merchant or of any other person, or be used to secure or guarantee the trades or foreign futures or foreign options, or to secure or extend the credit, of any person other than the one for whom the same are held: *Provided, however,* That foreign futures and foreign options customer funds treated as belonging to the foreign futures or foreign options customers of a futures commission merchant may for convenience be commingled and deposited in the same account or accounts with any bank or trust company located in the United States or with another person registered as a futures commission merchant and that such share thereof as in the normal course of business is necessary to purchase, margin, guarantee, secure, transfer, adjust or settle the trades or foreign futures or options of such foreign futures or foreign options customers or resulting market positions, with the clearing organization of a board of trade located outside the United States, its territories or possessions, or with any member of such board of trade may be withdrawn and applied to such purposes, including the payment of commissions, brokerage, interest, taxes, storage and other fees and charges, lawfully accruing in connection with such trades or foreign futures or foreign options: *Provided further,* That in no event may foreign futures or foreign options customer funds be held or commingled and deposited in the same account or accounts with customer funds required to be separately accounted for and segregated pursuant to section 4d of the Act and the regulations thereunder.

§ 30.8 Monthly reporting requirements.

(a) Each futures commission merchant required to be registered under this part shall file written monthly reports on a form specified by the Commission at the Commission's headquarters office in Washington, D.C. by the tenth business day of the month following the month covered by the reports.

(b) Each report shall contain the following information separately for each board of trade located outside the United States, its territories, or possessions on which foreign futures contracts or foreign options transactions were effected:

(1) The total number of foreign futures contracts, separately by contract, long and short, customer or proprietary, executed during the month on such board of trade on behalf of the futures commission merchant or its foreign futures customers;

(2) The total number of foreign futures contracts, separately by contract, long and short, customer or proprietary, open on such board of trade on behalf of the futures commission merchant or its foreign futures customer as of the close of business on the last business day of the month;

(3) The total number of foreign options, separately by underlying futures contracts for options on futures contracts or by underlying physical for options on physicals, by put, by call, and by customer or proprietary, executed during the month on such board of trade on behalf of the futures commission merchant or its foreign options customer;

(4) The total number of foreign options, separately by underlying futures contracts for options on futures contracts or by underlying physical for options on physicals, by put, by call, and by customer or proprietary, open on such board of trade on behalf of the futures commission merchant or its foreign options customer as of the close of business on the last business day of the month; and

(5) The total amount of foreign futures and foreign options customer funds forwards during the month to each member of such board of trade, a clearing organization of such board of trade or their designated depositories to margin or otherwise secure foreign futures or foreign options positions.

§ 30.9 Fraudulent transactions prohibited.

It shall be unlawful for any person, by use of the mails or by any means or instrumentality of interstate commerce, directly or indirectly, in or in connection with any account, agreement or transaction involving any foreign futures contract or foreign options transaction:

(a) to cheat or defraud or attempt to cheat or defraud any other person;

(b) to make or cause to be made to any other person any false report or statement thereof or to enter or cause to be entered for any person any false record thereof;

(c) to deceive or attempt to deceive any other person by any means whatsoever in regard to any such account, agreement or transaction or the disposition or execution of any such account, agreement or transaction or in regard to any act of agency performed with respect to such account, agreement or transaction; or

(d) to bucket any order, or to fill any order by offset against the order or orders of any other person or without the prior consent of any person to become the buyer in respect to any selling order of such person, or become the seller is respect to any buying order of such person.

§ 30.10 Petitions for exemption.

Any person adversely affected by any requirement of this part may file a petition with the Secretary of the Commission, which petition must set forth with particularity the reasons why that person believes that he should be exempt from such requirement. The Commission may, in its discretion, grant such an exemption if that person demonstrates to the Commission's satisfaction that the exemption is not otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought. The petition will be granted or denied on the basis of the paper filed. The petition may be granted subject to such terms and conditions as the Commission may find appropriate.

§ 30.11 Applicability of State law.

Pursuant to section 12(e)(2) of the Act, the provisions of any state law, including any rule or regulation thereunder, may be applicable to any person required to be registered under this part who shall fail or refuse to obtain such registration, unless such person is exempt from such registration in accordance with the provisions of §§ 30.5 or 30.10 of this part.

Issued in Washington, DC on April 2, 1986, by the Commission.

Jean A. Webb,

Secretary of the Commission.

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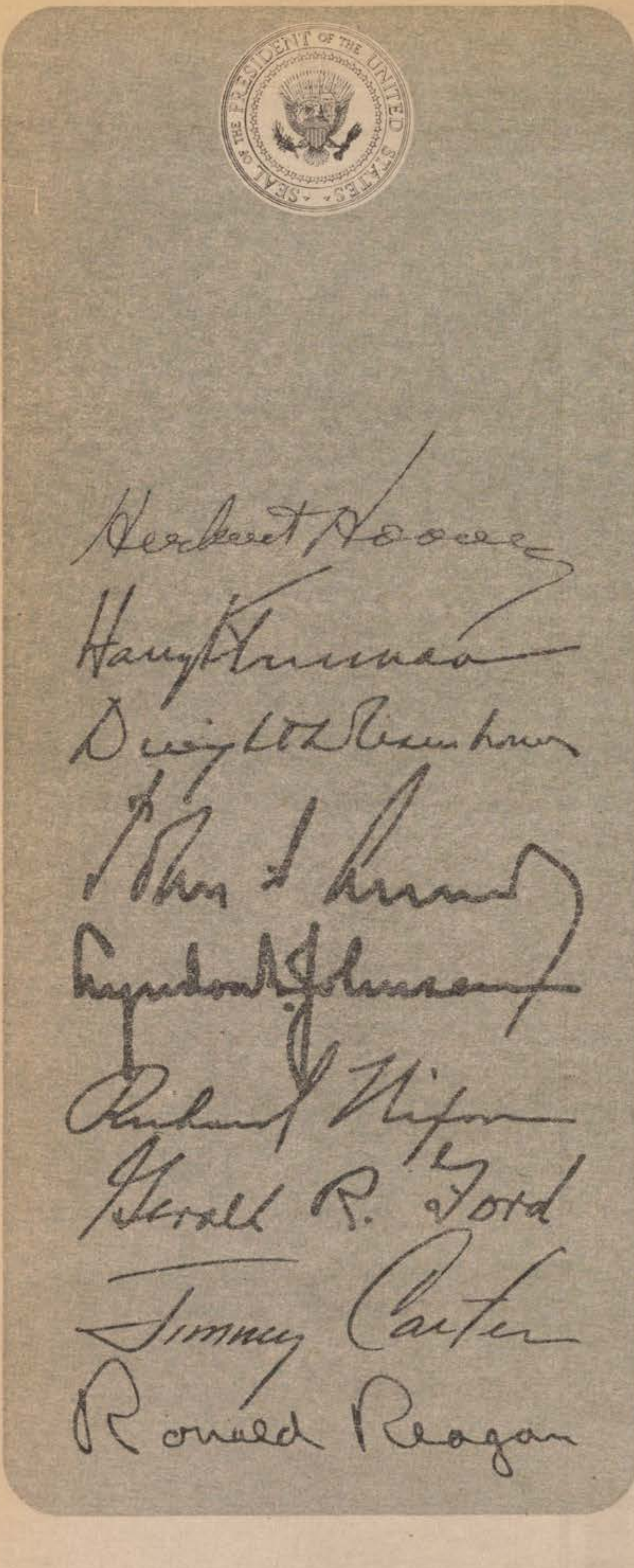

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