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

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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.

WASHINGTON, DC

WHEN: September 29, at 9 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: Janice Booker, 202-523-5239

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

Cotton Marketing Services; Regulatory Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS), in compliance with the requirements for the periodic review of existing regulations, has reviewed the regulations regarding the classification of cotton under the United States Cotton Standards Act, cotton linters classification and cotton classification and market news services for producers. As a result of the review, certain changes in the regulations are being made. These changes amend the wording of the regulations to conform with organizational changes within the Cotton Division of AMS and update terms and definitions.

EFFECTIVE DATE: September 17, 1987.

FOR FURTHER INFORMATION CONTACT: Paul Dickson, Chief, Grading Branch, Cotton Division, AMS, USDA, 4841 Summer Avenue, Memphis, Tennessee 38122, telephone (901) 521–2921.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in accordance with Executive Order 12291 and Secretary's Memorandum 1512–1 and has been determined not to be a "major rule" since it does not meet the criteria for a major regulatory action as stated in the Order. No new costs or additional requirements are being imposed on the affected industry or others.

The Administrator of the Agricultural Marketing Service has determined that this final rule does not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 6701 *et seq.*) because: (i) The amendments reflect AMS organizational changes and other changes made for clarification purposes; (ii) costs of compliance are not increased; (iii) recordkeeping burdens are not increased; (iv) the changes in the regulations do not affect the competitive position or market access of small entities in the cotton industry.

The information collection requirements contained in subparts A, B, and D of 7 CFR Part 28 of the regulations have been previously assigned Office of Management and Budget (OMB) Control Numbers 0581–0008 and 0581–0009 under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Background

Part 28 of Title 7 of the Code of Federal Regulations is divided into five subparts containing regulations governing cotton classing, testing, and standards.

Subpart C—Standards, and Subpart E—Cotton and Fiber Processing Tests, have previously been reviewed and updated by AMS (Subpart C—48 FR 16873, April 20, 1983 and 51 FR 23037, June 25, 1986; and Subpart E–46 FR 30073, June 5, 1981).

Subpart A sets forth in detail the procedures and requirements for cotton classification under the United States Cotton Standards Act. Other regulations in Subpart A provide for the preparation and sale of practical forms of cotton standards, for the establishment of Universal Cotton Standards, and for the classification of cotton linters.

Regulations covering the classification of foreign growth cotton under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) are in Subpart B.

Pursuant to the authority of the Cotton Statistics and Estimates Act of 1927 (7 U.S.C. 471 *et seq.*), Subpart D provides for cotton classification and market news service for cotton producers.

The regulations described above also establish the fees to be charged for such services and delineate the responsibilities and duties of the Cotton Division of AMS in administering these cotton marketing service programs.

Regulation Review

The Cotton Division of AMS has undertaken a general review of existing regulations in Subparts A, B, and D or Part 28. The review was conducted in accordance with the requirements of Executive Order 12291 and under Departmental Regulation 1512–1.

The regulations have been examined for their effectiveness. It is determined that the procedures currently in effect are useful and efficient methods of providing cotton classification, practical forms of cotton standards, market news, and other cotton marketing services. The fees for services provided under Part 28 have been reviewed and have been revised as appropriate, effective July 1, 1986 (51 FR 22059). These fees are periodically reviewed by AMS and adjusted as necessary. Accordingly, no changes to fees are proposed in this rulemaking.

Changes to Regulations

A proposed rule was published in the May 5, 1987, **Federal Register** (52 FR 16394). Comments were to be received on or before May 26, 1987. No comments were received. Based upon all available information, AMS makes the following changes to Part 28 of the regulations.

The changes made by AMS in Subparts A, B, and D of Part 28 do not affect the services provided or the procedures for providing those services. AMS is eliminating masculine references in favor of gender neutral language. Also, to reflect the nomenclature changes made when the Cotton Division was reorganized in 1978 and in 1986, AMS is substituting the terms "Classing Office" for "Board of Cotton Examiners," substituting the term "Quality Control Section" for "Appeal Board of Review Examiners," substituting the term "Area Director" for "Chairman of the Board of Cotton Examiners," substituting the term "Quality Control Section" for Board of Cotton Linters Examiners," and substituting the term "cotton classer" for "cotton examiner."

Specifically, AMS is amending the following sections:

1. Sections 28.2, 28.15, 28.16, 28.25, 28.29, 28.36, 28.45, 28.56, 28.60, 28.105, 28.117, 28.138, 28.146, 28.177, 28.178, and 28.182 by eliminating masculine references in favor of gender neutral language.

2. Sections 28.2, 28.4, 28.7, 28.8, 28.15, 28.17, 28.18, 28.25, 28.26, 28.27, 28.28, 28.32, 28.37, 28.40, 28.47, 28.55, 28.56, 28.59, 28.60, 28.66, 28.115, 28.117, 28.178,

28.180, and 28.181 by substituting the term "Classing Office" for "Board of Cotton Examiners."

3. Sections 28.6, 28.7, 28.18, 28.19, 28.25, 28.36, 28.37, 28.59, 28.60, 28.115, 28.177, 28.178, 28.180, and 28.182 by substituting the term "Area Director" for "Chairman of the Board of Cotton Examiners."

4. Sections 28.66, 28.177, and 28.181 by substituting the term "Quality Control Section" for "Appeal Board of Review Examiners."

5. Sections 28.139, 28.140, 28.142, and 28.146 by substituting the term "Quality Control Section" for "Board of Cotton Linters Examiners."

6. Section 28.8 by substituting the term "cotton classers" for "cotton examiners."

The term "Quality Control Section" is added to the list of terms defined in § 28.2. This new term is designated paragraph (j) in § 28.2, and the present paragraphs (j) through (u) is redesignated paragraphs (k) through (v) respectively.

The term "cotton examiner", also defined in § 28.2, is changed to "cotton classer" and the definition is revised to reflect the requirement that classers must pass the practical cotton classing examination.

Section 28.4 is condensed to delete the obsolete term "Board of Supervising Cotton Examiners," the duties of which had been previously transferred to the "Appeal Board of Review Examiners" which under this final rule is renamed the "Quality Control Section" and defined in § 28.2.

Sections 28.5 and 28.6 describe the duties of the secretary of the board of cotton examiners and the acting secretary. In the 1978 Cotton Division reorganization, secretaries were reclassified as office assistants and the responsibilities of the office assistants were transferred to the Area Directors of the then Marketing Services Offices. Under this final rule the boards are renamed Classing Offices in accordance with a 1986 Cotton Division reorganization. Accordingly, §§ 28.5 and 28.6 are removed and § 28.7 is revised to reflect these changes. References to secretaries in §§ 28.17 and 28.178 are also deleted. Duplicative language in § 28.17 is also deleted.

Additional conforming changes are also made. Section 28.19 is amended to reflect that authority to reject classification requests is with Area Directors and the Head of the Quality Control Section instead of with the Chairman of the Board or the Director. Section 28.28 is amended to state that the Area Director instead of the secretary of the board is responsible for informing applicants of lost or damaged samples. Section 28.36 is changed to reference Area Directors instead of the Chairman of the Board and permits Area Directors more discretion than the present emergency criteria in assigning classification priority. With the new definition of the Quality Control Section in § 28.2, § 28.137 becomes unnecessary and it is removed in this final rule.

Obsolete references to the Board of Cotton Linter Examiners and its secretary are deleted. Their duties are added to the "Quality Control Section" defined in § 28.2. Accordingly, all references to the secretary and the board are removed from §§ 28.139, 28.142, and 28.146.

Section 28.105 is amended to substitute the term "Administrator" for all references to the term "Secretary" in this section including with regard to signatures on practical forms. Presently practical forms are to be certified under the Seal of the United States Department of Agriculture and under the Secretary's own signature or some other official or employee of the Department duly authorized by the Secretary.

Section 28.107 is amended by removing the requirement that the Second Reserve Set of each Universal Cotton Standards Conference be retained by the Cotton Division until a new or revised set of standards is adopted. This requirement is not necessary since the First Reserve Set will continue to be retained, along with the original Universal Standards. The First Reserve Set is sufficient as a true copy of the standards approved at each of the Universal Cotton Standards Conferences, and recent practice has been to refer directly to the original standards when revisions to the standards are at issue. The Second Reserve Set would be retained, if that set is used in place of the First Reserve Set.

Section 28.165, Publications media, was proposed to be deleted from the regulations. This section stated that publications under the U.S. Cotton Standards Act would be made through service and regulatory announcements. Service and regulatory announcements are no longer issued by AMS. However, the final rule provides for a new § 28.165 that will collect and display the control numbers assigned to information collection requirements by OMB in Part 28 under the Paperwork Reduction Act of 1980. The information collection requirements contained in 7 CFR Part 28 have been previously assigned OMB control numbers 0581–0008 and 0581–0009.

List of Subjects in 7 CFR Part 28

Cotton, Samples, Standards, Cotton linters, Grades, Staple, Market news, Testing.

For the reasons set forth in the preamble, Subparts A, B, and D of Part 28, Chapter 1, Title 7 of the Code of Federal Regulations are amended as follows. The Table of Contents is amended accordingly.

PART 28—[AMENDED]

1. The authority citation for Subpart A of Part 28 is revised to read as follows:

Authority: Sec. 5, 50 Stat. 62, as amended (7 U.S.C. 55); Sec. 10, 42 Stat. 1519 (7 U.S.C. 61).

2. The authority citation for Subpart B of Part 28 continues to read as follows:

Authority: Sec. 205, 60 Stat. 1090, as amended (7 U.S.C. 1624).

3. The authority citation for Subpart D of Part 28 is revised to read as follows:

Authority: Sec. 3a, 50 Stat. 62, as amended (7 U.S.C. 473a); Sec. 3c, 50 Stat. 62 (7 U.S.C. 473c).

4. Section 28.2 is amended by redesignating paragraphs (j) through (u) as paragraphs (k) through (v) respectively, by adding a new paragraph (j), and by revising paragraphs (d), (f), (h), (i), and the redesignated paragraph (k) to read as follows:

§ 28.2 Terms defined.

* * * * *

(d) *Secretary.* The Secretary of Agriculture of the United States, or any officer or employee of the Department who has been delegated, or who may hereafter be delegated the authority to act for the Secretary.

* * * * *

(f) *Administrator.* The Administrator of the Agricultural Marketing Service, or any officer or employee of the Service, who has been delegated, or who may hereafter be delegated the authority to act for the Administrator.

* * * * *

(h) *Director.* The Director of the Cotton Division, or any officer or employee of the Division who has been delegated, or who may hereafter be delegated the authority to act for the Director.

(i) *Classing Office.* A facility of the Cotton Division established under the act at any point.

(j) *Quality Control Section.* The national classing supervision office at Memphis, Tennessee performing final review of cotton classification and the classification of cotton linters.

(k) *Cotton classer.* An employee of the Department so designated by the

Director after having passed the prescribed practical cotton classing examination.

* * * * *

5. Section 28.4 is revised to read as follows:

§ 28.4 Classing Offices.

Classing Offices shall be maintained at points designated by the Administrator. Requests for the review of the classification and/or comparison of cotton performed by Classing Offices may be referred to the Quality Control Section.

§§ 28.5 and 28.6 [Removed]

6. Sections 28.5 and 28.6 are removed.

7. Section 28.7 is revised to read as follows:

§ 28.7 Area Director, Classing Office; responsibility.

Subject to this subpart and the instructions of the Director, the Area Director of each Classing Office shall be responsible for the proper performance of the duties imposed on such office and on the persons connected therewith. The Area Director shall be responsible for receiving all correspondence relating to the classification of cotton under the act and for providing that all samples are prepared for classification and/or comparison in such manner that the name of the owner and/or the custodian shall be unknown to the cotton classers until after the samples are classified.

8. Section 28.8 is revised to read as follows:

§ 28.8 Classification of cotton; determination.

For the purposes of the act, the classification and comparison of any cotton, samples, or types submitted to the Department shall be determined or made only by cotton classers properly qualified and designated as such by the Director, and the certificate of a Classing Office or the Quality Control Section with respect to any cotton shall be deemed to be the certificate of the Department.

9. Section 28.15 is amended by revising paragraphs (a) and (c) to read as follows:

§ 28.15 Classification and comparison; requests.

* * * * *

(a) *Form A determination.* The classification or comparison of samples freshly drawn and submitted to a Classing Office direct from a licensed warehouseman, at the request of the owner of the cotton or the owner's agent. Such classification or comparison shall be evidenced by a Form A memorandum which shall be subject to review as provided in § 28.66.

* * * * *

(c) *Form D determination.* The classification or comparison of samples submitted by the owner of the cotton or the owner's agent. Such classification or comparison shall be evidenced by a Form D memorandum which shall be subject to review as provided in § 28.66.

* * * * *

10. Section 28.16 is revised to read as follows:

§ 28.16 Request for return of samples.

Any applicant desiring return of the samples after classification or comparison is completed, at the applicant's expense, shall indicate this service on the form used for requesting such classification or comparison.

11. Section 28.17 is revised to read as follows:

§ 28.17 Filing of requests for classification or comparison.

All requests for classification or comparison leading to Form A, Form D memoranda or, Form C certificates shall be filed with the Classing Office which serves the territory in which the cotton is located. Samples which are submitted to any Classing Office for classification or comparison may be referred by such Classing Office to another Classing Office for classification or comparison.

12. Section 28.18 is revised to read as follows:

§ 28.18 One request only for classification.

Not more than one request for a Form A determination, or a Form C determination, or a Form D determination of the same cotton, except a request for a review determination, shall be filed by the same owner within any 30-day period. Any subsequent request shall be accomplished by redrawn samples and the Area Director may require that any Form A or Form D memoranda, Form C certificates, or other classification data previously issued by a Classing Office with respect to samples purporting to represent the same cotton shall be returned before such redrawn samples are classed.

13. Section 28.19 is revised to read as follows:

§ 28.19 Withdrawal or rejection of classification request.

Any classification request may be withdrawn by the applicant at any time before the classification of the cotton covered thereby, subject to the payment of such fees, if any, as may be prescribed in these regulations. Any classification request may be rejected by the Area Director or the Head of the Quality Control Section for noncompliance with the act or this subpart.

14. Section 28.25 is amended by revising the introductory text and paragraphs (f), (g), and (h) to read as follows:

§ 28.25 Samples for Form A determination.

Samples for Form A determination shall be drawn, handled, identified, and shipped by a licensed warehouse according to the methods and procedures specified in this section. Any samples or set of samples which do not meet these specified requirements may be rejected by the Area Director.

* * * * *

(f) Samples shall be indentified and sacked immediately after they are cut without further handling prior to shipment to the Classing Office.

(g) Samples shall be addressed to and mailed, shiped, or delivered direct to the Classing Office serving the territory in which the warehouse is located. Samples shall in no case be consigned or routed through the owner or custodian of the cotton. Samples mailed or shipped shall be prepaid.

(h) The Area Director may require that any licensed warehouse shall provide the crop year, gin name and gin bale number for each sample submitted whenever the Area Director deems that such information is necessary in order to assure that each sample is properly identified with the correct bale of cotton.

* * * * *

15. Section 28.26 is revised to read as follows:

§ 28.26 Samples for Form C determination.

Samples submitted for Form C determination shall be drawn under the supervision of a Division employee who shall retain custody or control of the samples until they are shipped prepaid or delivered at the applicant's expense to the Classing Office serving the territory in which the bales of cotton are located.

16. Section 28.27 is revised to read as follows:

§ 28.27 Samples for Form D determination.

Samples for Form D determination shall be shipped or delivered at the owner's expense to the Classing Office serving the territory in which the samples are located. A tag or coupon showing the bale number of the bale from which the sample was drawn, or other identification, shall be placed between the two portions of each sample.

17. Section 28.28 is revised to read as follows:

§ 28.28 Lost or damaged samples.

If any samples are lost, damaged, or mutilated, the Area Director shall inform the applicant.

18. Section 28.29 is revised to read as follows:

§ 28.29 Return of samples.

When so stipulated in the classification request for Form A, C or D detemination, the samples submitted shall be returned to the applicant at the applicant's expense, at the time the memorandum is issued or when the request for classification is withdrawn or rejected.

19. Section 28.32 is amended by revising paragraph (a) to read as follows:

§ 28.32 Misrepresentation; deceptive or fraudulent acts or practices; violations.

* * * * *

(a) Any knowing misrepresentation or deceptive or fraudulent act or practice made or committed, or attempted to be committed, by any person in connection with (1) any request for classification, (2) the drawing, handling, identifying, or submitting of any samples for classification, (3) the making, issuing, or using of any memorandum or certificate of classification issued by a Classing Office or the Quality Control or (4) the changing of any warehouse bale tags or numbers after the cotton has been sampled for classification.

* * * * *

20. Section 28.36 is revised to read as follows:

§ 28.36 Order of Classification.

All samples for which classification requests are pending shall be classified, as far as practicable, in the order in which the samples are delivered for classification. When in the opinion of the Area Director there is a need to deviate from this order of classification, the Area Director shall designate which samples will be given priority in classification.

21. Section 28.37 is revised to read as follows:

§ 28.37 Exposing of samples for classification.

Classification shall not proceed until the samples, after being delivered to the Classing Office, shall have been exposed for such length of time as in the judgment of the Area Director shall be sufficient to put them in proper condition for the purpose.

22. Section 28.40 is amended by revising paragraph (b) to read as follows:

§ 28.40 Terms defined; cotton classification.

* * * * *

(b) *Micronaire (mike) reading.* The measurement of the fiber fineness and maturity, in combination, of cotton as determined by an airflow instrument. For any cotton that has a micronaire reading of 2.6 or lower, the Classing Office will enter the micronaire reading on all classification memoranda issued for such cotton.

* * * * *

23. Section 28.45 is revised to read as follows:

§ 28.45 Scope of comparison; requests.

A comparison of cotton samples with a type may be requested with respect to grade, or to staple, including any of the component qualities embodied in the grade, or to all these factors. The classification of the type and the samples in accordance with the official cotton standards of the United States may also be requested. The applicant must specify in a written request the scope of service desired.

24. Section 28.47 is revised to read as follows:

§ 28.47 Statement of finding of Classing Office in comparisons.

For each quality factor (grade, staple, etc.) of the samples that the applicant has requested to be compared to the type, the Classing Office shall state in its findings whether such quality factor for each sample is "better," "equal," or "deficient" in comparison with the type. When appropriate, the findings of the Classing Office may also show the amount of difference in grade and in length between the sample and the type as measured by the official cotton standards of the United States, and other explanatory notations as needed.

25. Section 28.55 is revised to read as follows:

§ 28.55 Issuance of memoranda and certificates.

As soon as practicable after the classification of cotton has been completed by a Classing Office, there shall be issued a cotton class memorandum or certificate of the appropriate kind showing the results of such classification. Upon request from an applicant, classification results may be issued in preliminary form on record sheets.

26. Section 28.56 is amended by revising paragraphs (a) and (b) to read as follows:

§ 28.56 Form A and Form D memorandum.

(a) When a classification and/or comparison has been made of any samples submitted to a Classing Office direct from a public warehouse, the results of such classification and/or comparison may be stated in a Form A memorandum.

(b) When a classification and/or comparison has been made of any samples submitted by the owner of the cotton or the owner's agent, the results of such classification and/or comparison may be stated in a Form D memorandum.

* * * * *

27. Section 28.59 is revised to read as follows:

§ 28.59 Lost memorandum or certificate may be replaced by duplicate.

Upon the written request of the last holder of a valid Form A or Form D memorandum, or Form C Certificate and a showing to the satisfaction of the Area Director of the Classing Office which issued such memorandum or certificate that it has been lost or destroyed and, if lost, that diligent effort has been made to find it without success, a new memorandum or certificate shall be issued without the reclassification of the cotton. Such new memorandum or certificate shall bear the same number and date of issuance as the lost or destroyed memorandum or certificate and shall include a statement to the effect that it is a duplicate issued in lieu of the lost or destroyed original, as the case may be.

28. Section 28.60 is revised to read as follows:

§ 28.60 Surrender of memoranda or certificates.

For good cause, any memorandum or certificate issued under this subpart shall be surrendered to the Area Director of the Classing Office which issued it, upon the Area Director's request or upon the request of the Director. A new memorandum or certificate complying with this subpart may be issued in substitution therefor. If such memorandum or certificate be not surrendered upon such request, it shall nevertheless be invalid for the purposes of the act and this subpart.

29. Section 28.66 is revised to read as follows:

§ 28.66 Review procedure.

A review of any Form A, C, or D determination may be requested by the owner or custodian of the cotton from which the sample was drawn within 30 days after the issuance of the original memorandum. Such review shall cover all of the quality factors for which the original determination was made. Requests for reviews of Form A or D

determinations may be filed with, and the review made by, the Classing Office which issued such memorandum or the Quality Control System. Requests for reviews of Form C determinations shall be filed with, and the reviews made by, the Quality Control System. Redrawn samples shall be required for reviews of Form A and Form C determinations except in cases where the original samples have remained, identity preserved, in the custody of the Division. When redrawn samples are necessary, they shall be drawn and submitted as prescribed in this subpart. As evidence of a review determination, a Form A or D memorandum or Form C certificate appropriately marked to indicate that it represents a review determination shall be issued to the applicant requesting the review. The applicant may be required by the Classing Office or the Quality Control Section issuing such review determination to surrender the original classification memorandum or certificate. In any event the review determination shall supersede and invalidate the original determination.

30. Section 28.105 is amended by revising paragraphs (a), (b)(2), and (b)(3) to read as follows:

§ 28.105 Practical forms of cotton standards.

(a) Practical forms of the cotton standards of the United States prepared in physical form, each certified under the seal of the U.S. Department of Agriculture and under the signature of the Administrator, thereto affixed by the Administrator or by some other official or employee of the Department duly authorized by the Administrator, and in the case of the standards for grade accompanied by photographs representing the cotton in such practical forms on the date of certification, are available for sale to any person requesting the same, subject to the other conditions of this section.

(b) * * *

(2) That said practical forms and the photographs accompanying them shall be subject to inspection on any business day, between the hours of 9 a.m. and 4 p.m., by the Administrator or by an officer or agent of the Department authorized by the Administrator for that purpose.

(3) That the signature of the Administrator certifying to any practical form, or any photograph of said practical form accompanying the same, or both, may be cancelled if it be found, upon such inspection, either that copy of said forms for any reason misrepresents the cotton standards or that any such photographs have been altered or mutilated.

31. Section 28.107 is amended by revising paragraph (d) to read as follows:

§ 28.107 Original cotton standards and reserve sets.

* * * * *

(d) The First Reserve Set of each conference or the Second Reserve Set, if it has been used in place of the First Reserve Set, as provided in paragraph (c) of this section shall be retained by the Division until the currently adopted standards which they represent have been superseded by new or revised standards.

32. Section 28.115 is revised to read as follows:

§ 28.115 Fees and costs; payment.

All charges for practical forms of cotton standards and all fees and expenses for services of inspection of bales and supervision of sampling, classification, comparison, or review by a Classing Office shall be paid at the time of filing the request for the service desired, except that in the discretion of the Director bills may be delivered to persons from whom payment or charges or fees may become due. Such bills shall be rendered as soon as practicable after the last day of each month for amounts due and unpaid on such dates. When necessary, in the discretion of the Area Director, any bill may be rendered at an earlier date for any charges or fees then due from the person to whom such bill may be rendered. Payment of any such bill shall be made as soon as possible after the rendition thereof, but in any event not later than the expiration of 2 weeks thereafter.

33. Section 28.117 is revised to read as follows:

§ 28.117 Fee for new memorandum or cerificate.

For each new memorandum or certificate issued in substitution for a prior memorandum or certificate at the request of the holder thereof, on account of the breaking or splitting of the lot of cotton covered thereby or otherwise for the holder's business convenience, the person requesting such substitution shall pay a fee of $3.00 per sheet.

§ 28.137 [Removed]

34. Section 28.137 is removed.

35. Section 28.138 is amended by revising the introductory text to read as follows:

§ 28.138 Classification and comparison; requests, memorandums and certificates.

For each lot or mark of linters which the applicant desires classified or compared separately the applicant shall make a separate written request specifying which of the following forms of service is desired. Only one request within a 30-day period shall be made by the same owner for the classification or comparison of the same linters, except a request for a review determination. If the applicant desires that the samples be returned at the applicant's expense, this must be indicated in the request for classification or comparison. If the return of samples is not requested they shall become the property of the Government and shall be disposed of in accordance with law and applicable regulations.

* * * * *

36. Section 28.139 is revised to read as follows:

§ 28.139 Filing of requests.

All requests for classification or comparison leading to Form D memoranda or Form C certificates shall be filed with the Quality Control Section unless otherwise directed by the Director.

37. Section 28.140 is amended by revising the introductory text to read as follows:

§ 28.140 Samples; weight; drawing.

Each sample submitted to the Quality Control Section shall weigh not less than 8 ounces; shall be wrapped separately; shall contain a coupon or tag showing the bale number or identity of bale from which drawn; and shall be drawn in the following manner:

* * * * *

38. Section 28.142 is revised to read as follows:

§ 28.142 Submission of samples.

All samples submitted to the Quality Control Section for classification or comparison under this subpart shall be delivered or sent to the Quality Control Section with all transportation charges thereto prepaid.

39. Section 28.146 is revised to read as follows:

§ 28.146 Reviews.

A review of any Form C or Form D determination may be requested by the owner of the linters from which the sample was drawn, or the owner's agent, within 30 days after the issuance of the original certificate. Such request shall be filed with the Quality Control Section and shall be accompanied by the original classification memorandum or certificate or a statement explaining why the original classification document cannot be submitted. Redrawn samples will be required for reviews except in

cases where the original samples have remained in the custody of the Quality Control Section. When redrawn samples are necessary, they shall be drawn and submitted in accordance with the applicable provisions of §§ 28.138, 28.140, and 28.142. A Form C certificate or Form D memorandum appropriately marked to indicate that it represents a review determination, shall be issued to the applicant requesting the review. The review classification document shall supersede the original classification document.

40. Section 28.165 and the undesignated title preceeding that section are revised to read as follows:

Publications Media

§ 28.165 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection requirements of the Office of Management and Budget contained in 7 CFR Part 28 under the Paperwork Reduction Act of 1980.

(b) *Display.*

7 CFR sections where identified and described	Current OMB control No.
28.15-28.19	0581-0008
28.20-28.24	0581-0008
28.25	0581-0009
28.66	0581-0008
28.105	0581-0008
28.115	0581-0008
28.120	0581-0008
28.122	0581-0008
28.139	0581-0008
28.146	0581-0008
28.177	0581-0008
28.181-28.184	0581-0008
28.904	0581-0009
28.906	0581-0009
28.911	0581-0008

41. Section 28.177 is revised to read as follows:

§ 28.177 Request for classification and comparison of cotton.

The applicant shall make a separate written request, on a form supplied by the Division, for each lot or mark of cotton which the applicant desires classified or compared separately. The same applicant shall not file more than one request for the classification or comparison of the same cotton within any 30-day period except for a review classification or comparison as provided in § 28.181. All requests for classification or comparison in the United States shall be filed with the Classing Office which serves the territory in which the samples are located. If the cotton is stored outside the United States the request shall be filed with the Classing Office designated by the Director. The Area Director of any Classing Office may refer any request and the samples submitted to another office or to the Quality Control Section for classification or comparison.

42. Section 28.178 is revised to read as follows:

§ 28.178 Submission of cotton samples.

Samples of cotton submitted to a Classing Office for classification and/or comparison shall be drawn from both sides of the bale and shall be delivered to the Classing Office with which the request was filed, as soon as possible after the filing of such request. All such samples shall be enclosed in one or more wrappers, which shall be labeled or marked, or both, in such manner as to show the name and address of the owner, the lot number or marks, if any, the number of bales represented by the samples in each wrapper, and such other information as may be necessary in accordance with the instructions of the Area Director. All transportation charges incident to the submission of samples shall be prepaid by the party making the request or the requester's agent.

43. Section 28.180 is amended by revising the introductory text and paragraph (e) as follows:

§ 28.180 Issuance of cotton classification memoranda.

As soon as practicable after the classification or comparison of cotton has been completed by a Classing Office, there shall be issued a cotton classification memorandum which shall embody within its written or printed terms:

* * * * *

(e) The signature of the Area Director of the Classing Office, the location of the office, and the date of issuance of the memorandum.

44. Section 28.181 is revised to read as follows:

§ 28.181 Review of cotton classification.

A review of any classification or comparison made pursuant to this subpart may be requested by the owner or custodian of the cotton from which the sample was drawn within 30 days after the issuance of the original memorandum. Such request, accompanied by the original memorandum, may be filed with either the Classing Office which issued the original memorandum or the Quality Control Section. Redrawn samples shall be required except in cases where the original samples have remained, identity preserved, in the custody of the Classing Office which issued the original memorandum. As evidence of any review determination, a classification memorandum marked to indicate that it represents a review determination shall be issued to the applicant requesting the review.

45. Section 28.182 is revised to read as follows:

§ 28.182 Surrender of memoranda.

For good cause, any memorandum issued under this subpart shall be surrendered to the Area Director which issued it, upon the Area Director's request or upon the request of the Director, and a new memorandum complying with this subpart issued in substitution therefor. If the memorandum be not surrendered upon such request, it shall nevertheless be invalid for the purpose of this subpart.

Dated: August 11, 1987.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 87-18571 Filed 8-17-87; 8:45 am]

BILLING CODE 3410-02-M

Agricultural Stabilization and Conservation Service

7 CFR Part 713

Farm Marketing Quotas, Acreage, Allotments, and Production Adjustment; Feed Grain, Rice, Cotton, and Wheat

AGENCY: Commodity Credit Corporation ("CCC"), and Agricultural Stabilization and Conservation Service ("ASCS"), USDA.

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule amends the regulations found at 7 CFR Part 713 effective for the 1987 crops of feed grains, rice, upland cotton, and wheat. Various minor changes are necessary to implement provisions of the Farm Disaster Assistance Act of 1987 (the "1987 Act") with respect to: (1) Making available deficiency payments to producers of winter wheat who plant to wheat less than 50 percent of a farm's permitted wheat acreage ("0/92 provision"); (2) a 0/92 provision, under certain conditions, for producers of other types of wheat; (3) a 0/92 provision, under certain conditions, for producers of feed grains, rice, and upland cotton.

EFFECTIVE DATE: May 27, 1987.

Comments must be received on or before September 17, 1987, in order to be assured of consideration.

ADDRESS: Submit Comments to: Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service,

USDA, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Raymond K. Aldrich, Program Specialist, Cotton, Grain, and Rice Price Support Division, ASCS, P.O. Box 2415, Washington, DC 20013, (202) 447–6688.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified "not major". It has been determined that this rule will not 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 governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that Regulatory Impact Analyses are not required for the changes which are made in this interim rule.

The titles and numbers of the Federal assistance programs to which this interim rule applies are: Cotton Production Stabilization—10.052; Feed Grain Production Stabilization—10.055; Wheat Production Stabilization—10:058; Rice Production Stabilization—10.065 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since neither the Agricultural Stabilization and Conservation Service ("ASCS") nor the Commodity Credit Corporation ("CCC") is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

A draft environmental impact statement pertaining to agricultural acreage adjustment programs has been prepared. Further information is available from Phillip Yasnowsky, Program Analysis Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013; (202) 447–7887.

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

The Office of Management and Budget has approved the information collection requirements contained in these regulations under the provisions of 44 U.S.C. Chapter 35 and OMB Numbers 0560–0030, 0560–0071, 0560–0091, and 0560–0650 have been assigned.

Discussion of Changes

In order to receive benefits under the annual Commodity Credit Corporation ("CCC") price support and production adjustment programs, which are authorized by the Agricultural Adjustment Act of 1949, as amended (the "1949 Act"), a producer may be required to reduce the planting of certain crops on the producer's farm. This acreage must be devoted to uses which have been approved by CCC. With respect to the 1987 crop year, a portion of this acreage must be devoted to "conserving uses", as defined in 7 CFR 713.2.

One of the benefits made available to producers is a deficiency payment. A deficiency payment is made if certain market prices are not attained during the marketing year which has been established for a crop. Prior to May 27, 1987, the 1949 Act provided that a producer would be eligible to receive a deficiency payment with respect to the acreage of a program crop which had been planted for harvest so long as the quantity planted did not exceed the "permitted acreage" established by CCC for the crop for the farm. The 1949 Act also provided that if a producer planted less than 92 percent but more than 50 percent of the permitted acreage to a program crop, a deficiency payment would be made as if the producer had planted 92 percent of such amount if the "non-planted" acreage was devoted to conserving uses (the "50/92" provision).

On May 27, 1987, the President signed the Farm Disaster Assistance Act of 1987 (the "1987 Act"). The 1987 Act amended the 1949 Act to provide that producers of wheat, feed grains, upland cotton, and rice may, under certain conditions, designate as conserving use acreages, an acreage up to 100 percent of the permitted acreage of a crop, and receive deficiency payment with respect to 92 percent of such acreage. Accordingly, in order to implement these provisions, it is necessary to amend the regulations found at 7 CFR Part 713.

Section 107D of the 1949 Act was amended by the 1987 Act to provide that producers of winter wheat do not have to plant at least 50 percent of the farm's permitted wheat acreage to wheat in order to be eligible to receive a deficiency payment for the 1987 crop of wheat. This interim rule will enable a winter wheat producer to designate as conserving uses an acreage in an amount not to exceed 100 percent of the farm's permitted wheat acreage and thus receive a deficiency payment with respect to 92 percent of the farm's permitted wheat acreage ("0/92 provision"). Other producers of wheat may utilize the 0/92 provision if they were prevented from planting an intended acreage of wheat for harvest in 1987 because of a natural disaster in 1986 and the farm is located in a county in which producers were eligible to receive disaster emergency loans under the Consolidated Farm and Rural Development Act, as amended, as a result of such disaster. Producers of the 1987 crops of wheat, feed grains, upland cotton, and rice also may utilize the 0/92 provision if they were prevented from planting a minimum of 50 percent of the farm's permitted acreage of such a crop as a result of damage to a levee from flooding that occurred in 1986 and the farm is located in a county in which producers were eligible to receive disaster emergency loans under the Consolidated Farm and Rural Development Act, as amended, as a result of such disaster.

It has been determined that, with respect to producers who utilize the 0/92 provision for such a crop, conserving use acreages in an amount in excess of 50 percent of the respective permitted program crop acreage may be hayed or grazed, since this determination was made applicable to producers utilizing the 50/92 provision. However, it has been further determined that, after July 15, 1987, producers using the 0/92 provision may not hay or graze designated conservation use acreage that represents less than 50 percent of the respective permitted program crop acreage.

It has also been determined that land, otherwise eligible to be designated as conserving use acreage, that is flooded in 1987, but which has been planted or considered planted in at least 2 of the last 5 years, will be eligible for designation.

Since producers wishing to utilize the 0/92 provision may already have hayed or grazed the balance of the farm's acreage which is eligible to be designated as ACR, 7 CFR 713.63(a) is amended to include a provision whereby land designated as ACR for acreages designated as conserving uses may have been hayed or grazed prior to July 15, 1987. Haying of such acreage after that date will be prohibited and grazing will be allowed except during the 5-month non-grazing period established by the State Agricultual Stabilization and Conservation committee.

Since the amendments made herein are necessary to implement the Farm Disaster Assistance Act of 1987, which became effective on May 27, 1987 it has

been determined that the interim rule shall be effective May 27, 1987.

List of Subjects in 7 CFR Part 713

Cotton, Feed grains, Wheat and Rice price support programs.

Interim Rule

Accordingly, the regulations found at Part 713 of Chapter VII of Title 7 of the Code of Federal Regulations are amended as follows:

PART 713—[AMENDED]

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

Authority: Secs. 101A, 103A, 105C, 107C, 107D, 107E, 109, 113, 401, 403, 503, 504, 505, 506, 507, 508, and 509 of the Agricultural Act of 1949, as amended; 99 Stat. 1419, as amended, 1407, as amended, 1395, as amended, 1444, 1383, as amended, 1448; 91 Stat. 950, as amended, 63 Stat. 1054, as amended, 99 Stat. 1461, 1461, as amended, 1462, 1463, 1463, 1464, 1464 (7 U.S.C. 1441–1, 1444–1, 1444b, 1445b–2, 14445b–3, 1445b–4, 1445d, 1445h, 1421, 1423, and 1461 through 1469); sec. 1001 of the Food Security Act of 1985, as amended, 99 Stat. 1444 (7 U.S.C. 1308); Sec. 1001 of the Food and Agriculture Act of 1977, as amended, 91 Stat. 950, as amended (7 U.S.C. 1309); Sec. 1009 of the Food Security Act of 1985, 99 Stat. 1453 (7 U.S.C. 1308a).

2. Section 713.63 is amended by revising paragraph (a) to read as follows:

§ 713.63 Use of ACR Acreage.

(a) *State committee determination.* The State committee, after consulting with interested parties, may authorize grazing of ACR acreage, except that:

(1) With respect to ACR acreage designated for the 1987 through 1990 crops of wheat, feed grains, upland cotton, ELS cotton, and rice, grazing shall not be permitted during any 5-consecutive-month period, as determined by the State committee, during the applicable calendar year.

(2) With respect to the 1987 crop year, haying and grazing of ACR, prior to July 15, 1987, is permitted if the ACR is designated for a conserving use acreage credited as the program crop representing less than 50 percent of the respective permitted program crop acreage.

* * * * *

3. Section 713.97 is amended by revising (e) (1) and (2) and adding (3) to read as follows:

§ 713.97 Ineligible land.

* * * * *

(e) * * *

(1) Before any flooding occurred, the land was planted or could have been planted to a crop for harvest in the current crop year.

(2) After flooding, such land could be planted in the current year by no later than the final reporting date for spring planted crops.

(3) Such land has been planted or considered planted in at least 2 of the last 5 years.

* * * * *

4. Section 713.102(f) is revised to read as follows:

§ 713.102 Determination of farm program acreage.

* * * * *

(f) *Haying and grazing.* (1) Haying and grazing of approved nonprogram crops and conserving use acreages credited as the program crop shall only be permitted if haying and/or grazing is requested by the State committee and the Secretary approves such request.

(2) With respect to the 1987 crop year only, haying and grazing of conserving use acreages credited as the program crop that represents less than 50 percent of the respective permitted program crop acreage shall not be hayed or grazed after July 15, 1987. Haying or grazing of such acreage prior to that date shall not affect the eligibility of such land for designation as conserving use acreage.

5. Section 713.108(b)(2)(i) is revised to read as follows:

§ 713.108 Deficiency payments.

* * * * *

(b) * * *

(2) * * *

(i) If the acreage of the crop planted for harvest is less than 50 percent of the permitted acreage of the crop for the farm, the farm program acreage shall not be increased, unless, for the 1987 crop year:

(A) The farm is one on which winter wheat is produced; or

(B) For farms on which other types of wheat are produced, it is determined that at least 50 percent of the permitted wheat acreage was prevented from being planted due to a natural disaster in 1986 or flooding caused by damage to a levee in 1986 and the farm is located in a county in which producers were eligible to receive disaster emergency loans as a result of such disaster; or

(C) For other program crops, it is determined that at least 50 percent of the permitted acreage of the crop was prevented from being planted due to flooding caused by damage to a levee in 1986 and the farm is located in a county in which producers were eligible to receive disaster emergency loans as a result of such disaster.

(D) The farm program acreage for farms which are subject to subclause (A), (B), or (C) shall be determined in accordance with clause (ii);

* * * * *

Signed at Washington, DC, on August 11, 1987.

Vern Neppl,

Acting Executive Vice President, Commodity Credit Corporation, and Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 87-18693 Filed 8-17-87; 8:45 am]

BILLING CODE 3410-05-N

Agricultural Marketing Service

7 CFR Parts 1033, 1036, 1040

[Docket Nos. AO-166-A56, AO-179-A51, AO-225-A38]

Milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Southern Michigan Marketing Areas; Order Amending Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action modifies the classification provisions of the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Southern Michigan milk orders based on industry proposals considered at a public hearing held October 28, 1986. These modifications will eliminate raw product cost differences for certain uses of milk between regulated handlers in the three specified order markets and nearby markets by providing the same classified price structure for skim milk and butterfat used in the production of ice cream and other related frozen dessert products, eggnog, and buttermilk biscuit mixes throughout the region.

The action also makes several changes in the Southern Michigan order only that makes it easier to qualify milk for pool status. In this regard, the pooling standards for a cooperative-operated plant and unit are relaxed. Also, less-restrictive diversion provisions are adopted. These changes are necessary to reflect current marketing conditions and assure orderly marketing of the Southern Michigan market's reserve milk supplies.

More than the required percentage of the producers in each of the three markets have approved the issuance of the amended orders.

EFFECTIVE DATE: September 1, 1987.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States

Department of Agriculture, Washington, DC 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued October 14, 1986; published October 17, 1986 (51 FR 37037).

Recommended Decision: Issued May 1, 1987; published May 11, 1987 (52 FR 17586).

Final Decision: Issued July 14, 1987; published July 20, 1987 (52 FR 27205).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing areas; and the minimum prices specified in the orders as hereby amended, are such prices as well reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, marking agreements upon which a hearing has been held.

(b) Additional findings. It is necessary in the public interest to make this order amending the orders effective not later than September 1, 1987. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The recommended decision of the Administrator, Agricultural Marketing Service, was issued May 1, 1987 (52 FR 17586), and the decision of the Assistant Secretary containing all amendment provisions of this order was issued July 14, 1987 (52 FR 27205). The changes effected by this order will not require extensive preparation or substantial alteration in method of operations for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the orders effective September 1, 1987, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the **Federal Register.** (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551-559.)

(c) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c (9) of the Act) of more than 50 percent of the milk, which is marketed within each of the respective marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending each of the specified orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the respective orders; and

(3) The issuance of this order amending each of the specified orders is approved by more than the necessary two-thirds of the producers who were engaged in the production of milk for sale in the respective marketing areas during the determined representative period, or who participated in a referendum.

List of Subjects in 7 CFR Parts 1033, 1036, and 1040

Milk marketing orders, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered that on and after the effective date hereof, the handling of milk in the Ohio Valley, Eastern Ohio-Western Pennsylvania, and Southern Michigan marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby further amended, as follows:

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

1. The authority citation for Parts 1033, 1036, and 1040 continues to read as follows:

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

2. Section 1033.41 is amended by revising paragraphs (b)(3) and (c)(1) to read as follows:

§ 1033.41 Classes of utilization.

* * * * *

(b) * * *

(3) Used to produce yogurt, sour cream, sour mixtures (such as dips and dressings), cottage cheese, cottage cheese curd, pancake mixes, puddings, frozen cream, milk shake and ice milk mixes containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, and any concentrated milk product in bulk, fluid form other than that used to produce a Class III product; and

* * * * *

(c) * * *

(1) Skim milk and butterfat used to produce butter, nonfat dry milk, dry whole milk, dry whey, dry buttermilk, buttermilk biscuit mixes, casein, cheese (except cottage cheese and cottage cheese curd), dietary products and infant formulas in hermetically sealed metal or glass containers, evaporated or condensed milk or skim milk (plain or sweetened) in a consumer-type package, any concentrated milk product in bulk, fluid form used to produce Class III products, any product containing six percent or more nonmilk fat (or oil), and any product that contains by weight less than 6.5 percent nonfat milk solids.

* * * * *

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

3. Section 1036.15 is revised to read as follows:

§ 1036.15 Fluid milk product.

"Fluid milk product" means the following products or mixtures in either fluid or frozen form, including such products or mixtures that are flavored, cultured, modified (with added nonfat milk solids), concentrated, or reconstituted: Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, milk shake mixes containing less than 20 percent total solids, and mixtures of cream and milk or skim milk containing less than 10.5 percent butterfat. The term "fluid milk product" shall not include those products and mixtures

listed in § 1036.40(b) (1) and (3), and (c)(1).

4. Section 1036.40 is amended by revising paragraphs (b)(3) and (c)(1) to read as follows:

§ 1036.40 Classes of utilization.

* * * * *

(b) * * *

(3) Used to produce eggnog, yogurt, sour cream, sour cream products (e.g., dips), cottage cheese, cottage cheese curd, frozen cream, milk shake and ice milk mixes containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, and any concentrated milk product in bulk, fluid form other than that used to produce a Class III product; and

* * * * *

(c) * * *

(1) Skim milk and butterfat used to produce butter, cheese (excluding cottage cheese and cottage cheese curd), evaporated or condensed milk or skim milk (plain or sweetened) in a consumer-type package, any concentrated milk product in bulk, fluid form used to produce Class III products, nonfat dry milk, dry whole milk, dry whey, condensed or dry buttermilk, any product containing six percent or more nonmilk fat (or oil), and sterilized products (except fluid cream products and those products listed in paragraph (b)(3) of this section) in hermetically sealed glass or metal containers;

* * * * *

PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

5. Section 1040.40 is amended by revising paragraphs (b)(3), (c)(1)(ii), (c)(1)(iv), (c)(1)(v) and (c)(1)(vii) to read as follows:

§ 1040.40 Classes of utilization.

* * * * *

(b) * * *

(3) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Frozen cream, milk shake and ice milk mixes containing 20 percent or more total solids, frozen desserts (including frozen yogurt), and frozen dessert mixes (including frozen yogurt mixes);

(iii) Any concentrated milk product in bulk, fluid form other than that used to produce a Class III product;

(c) * * *

(1) * * *

(ii) Butter, plastic cream, and anhydrous milkfat;

* * * * *

(iv) Any concentrated milk product in bulk, fluid form used to produce Class III products;

(v) Custards, puddings, pancake mixes, and buttermilk biscuit mixes;

* * * * *

(vii) Evaporated or condensed milk or skim milk (plain or sweetened) in a consumer-type package;

* * * * *

6. In § 1040.7, the introductory text of paragraph (b) and paragraphs (b) (1), (b) (2), (b)(3), and (b)(4) are revised and a new paragraph (b)(6) is added to read as follows:

§ 1040.7 Pool plant.

* * * * *

(b) A supply plant which during the month meets one of the performance requirements specified in paragraph (b) (1), (2), (3) or (4) of this section. All supply plants which are operated by one handler, or all the supply plants for which a handler is responsible for meeting the preformance requirements of this paragraph under a marketing agreement certified to the market administrator by both parties, may be considered as a unit for the purpose of meeting the performance requirements of paragraph (b) (1), (2), (3) or (4) of this section upon written notice to the market administrator specifying the plants to be considered as a unit and the period during which such consideration shall apply. Such notice and notice of any change in designation, shall be furnished on or before the fifth working day following the month to which the notice applies. In any months of March through August a unit shall not contain any plant which was not qualified under this paragraph either individually or as a member of a unit during the previous September through February.

(1) A supply plant from which each month not less than 30 percent of the total quantity of Grade A milk received at such plant from producers and from a handler described in § 1040.9(c), or diverted therefrom by the plant operator or a cooperative association (as described in § 1040.9(b)) pursuant to § 1040.13, less any Class I disposition of fluid milk products which are processed and packaged in consumer-type containers in the plant, is transferred to plants described in paragraph (b)(5) of this section. Not more than one-half of the shipping percentage specified in this paragraph may be met through the diversion of producer milk from the supply plant to pool distributing plants.

(2) A plant operated by a cooperative association which supplies distributing plants qualified under paragraph (a) of this section, if the amount of producer milk of members of the association delivered by transfer from such association's plant to plants described in paragraph (b)(5) of this section and by direct delivery from the farm to plants qualified under paragraph (a) of this section is as follows:

(i) During the month, is not less than that percentage which is designated by the market administrator for the current month pursuant to paragraph (b)(6) of this section; or

(ii) During the second through thirteenth preceding months, was not less than that percentage which was designated by the market administrator for the second through thirteenth preceding months pursuant to paragraph (b)(6) of this section, if such plant was qualified under this paragraph in each of the preceding 13 months.

(3) A plant located in the State of Michigan which has been a pool plant for twelve consecutive months, but is not otherwise qualified under this paragraph, if it has a marketing agreement with a cooperative association and it fulfills the following conditions:

(i) The aggregate monthly quantity supplied by all parties to such an agreement as a percentage of the producer milk receipts included in the unit during the month is not less than that percentage designated by the market administrator for the current month pursuant to paragraph (b)(6) of this section; and

(ii) Shipments for qualification purposes shall include both transfers from supply plants to plants described in paragraph (b)(5) of this section, and deliveries made direct from the farm to plants qualified under paragraph (a) of this section.

(4) A supply plant that qualifies as a pool plant pursuant to paragraph (b) (1), (2), or (3) of this section in each of the months of September through February shall be a pool plant for the following months of March through August. The automatic pool qualification of a plant can be waived if the handler or cooperative requests in writing to the market administrator the nonpool status of such plant. The request must be made prior to the beginning of any month during the March through August period. The plant shall be a nonpool plant for such month and thereafter until it requalifies under paragraph (b)(1) of this section on the basis of actual shipments therefrom. To requalify as a pool plant

under paragraph (b) (2) or (3) of this section or on a unit basis, such plant must first have met the shipping requirements of paragraph (b)(1) of this section for 6 consecutive months.

* * * * *

(6) The shipping percentage that applies to a handler described in paragraphs (b)(2) and (b)(3) of this section shall be determined in the following manner:

(i) The market administrator shall calculate the percentage that producer deliveries used in Class I represent of the total producer milk in that months' pool.

(ii) The following table shall be used in determining a cooperative's delivery requirement in qualifying its balancing plant or a unit of such plants as pool plants for the same month of the following year:

Producer deliveries used in class I as a percent of total producer milk	Applicable delivery percentage
Below 34.99	30
35–39.99	35
40–44.99	40
45–49.99	45
50+	50

* * * * *

§ 1040.50 [Amended]

7. In § 1040.50(b)(1), "15 cents" is revised to read "10 cents".

8. Section 1040.13 is amended by revising paragraphs (d)(1) and (d)(2) to read as follows:

§ 1040.13 Producer milk.

* * * * *

(d) * * *

(1) During each of the months of September through February, not less than one day's production of a producer must be physically received at a pool plant;

(2) The total quantity of producer milk diverted by a cooperative association or by the operator of a pool plant may not exceed 60 percent during each of the months of September through February of the total quantity of producer milk for which it is the handler;

* * * * *

Effective date: September 1, 1987.

Signed at Washington, DC, on August 12, 1987.

Kenneth A. Gilles,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 87–18861 Filed 8–17–87; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 2054

Election of County Committee Members

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: By this final rule, the Farmers Home Administration (FmHA) revises and finalizes its interim rule published May 22, 1986. This action is needed to comply with section 1311 of the Food Security Act of 1985 (Pub. L. 99–198). The intended effect of this action is to give farmers an opportunity to choose two persons from their area as County Committee Members.

EFFECTIVE DATE: August 18, 1987.

FOR FURTHER INFORMATION CONTACT: Robert A. Miller, Chief, Personnel Programs and Evaluation Branch, Personnel Division, Farmers Home Administration, USDA, Room 6442, Washington, D.C. 20250, Telephone: (202) 382–1061.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined to be nonmajor because it will not 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 United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

FmHA implemented certain provisions of the "Food Security Act of 1985" (Pub. L. 99–198) upon publication by interim rule in the **Federal Register** (51 FR 18763) on May 22, 1986. That rule provided for a 30 day comment period ending June 23, 1986. Fourteen written comments were received. All were considered in developing the final rule. The following is a discussion of comments received.

Five respondents commented on the provision which prohibited members of advisory boards or committees for Agricultural Stabilization and Conservation Service (ASCS), Extension Service (ES), or Soil Conservation Service from serving on FmHA county committees. FmHA reviewed this provision, and determined that it was overly restrictive. These committees and boards do not rule on issues which directly affect the loan making activities of FmHA. Hence the Agency eliminated this restriction in the final rule.

Three respondents commented that bank employees and individuals serving on Boards of Directors of Banks and Savings and Loans be excluded from serving on county committees because of potential conflicts of interest of such individuals. One respondent also wanted members of families of bank or savings and loan association boards of directors prohibited from serving. FmHA reviewed these comments and agreed that such a restriction is supportable because of the financial interests that such individuals have in FmHA loan making activities. Therefore, the Agency adopted this restriction.

Four respondents commented on the provision that excludes borrowers and their spouses and dependent children from serving on county committees. They requested that this provision be revised to permit such individuals to serve. Under the interim rule, borrowers and their immediate families, with the exception of those with Section 502 Rural Housing loans and Emergency Actual Loss loans were excluded from serving on the county committee. The exclusion of borrowers and immediate family members from serving on county committees is based on the requirement that Federal Government employees refrain from engaging in activities that have the appearance of conflict of interest. Decisions of the county committee must be made by disinterested parties in order to ensure confidence in those decisions by loan applicants and the general public. Therefore, the restrictions on borrowers and their immediate family members from serving is maintained in the final rule and is strengthened to permit only borrowers with Section 502 Rural Housing loans to serve because the county committees do not pass on eligibility for Section 502 loans. Borrowers with Emergency Actual Loss loans are no longer eligible for service on the county committee because the county committee does have to certify eligibility for such loans.

One respondent commented that former FmHA borrowers and members of their families whose debts were settled by debt settlement release provisions or by discharge in bankruptcy be prohibited from serving unless the failure to pay the indebtedness was beyond control of the individual. Another respondent stated that former borrowers who have had their FmHA debt charged off or discharged by a bankrupcy court not be

permitted to serve at all. The Agency does not believe that failure to repay FmHA loans reflects on the character of former borrowers. Neither is a conflict of interest or appearance of conflict of interest possible once a borrower is released from indebtedness. Therefore, the Agency does not favor establishing such a restriction.

One respondent commented that county committee members should be barred from accepting contracts from FmHA. The Agency regulations covering conflict of interest specifically exempt Special Government Employees; e.g., county committee members, from prohibitions related to engaging in business with the Agency. The Agency does not believe that broadening the conflict of interest provisions to cover county committee members is necessary.

One respondent commented that alternates to the county committee should be determined through election with those individuals being designated in the order of the number of votes they receive. State Directors would only be permitted to name alternates when there were no other candidates than the elected member(s). The Agency found that a number of individuals were only willing to serve on the county committee if they did not have to stand for election. The Agency believes that if this provision were to be adopted that fewer individuals would be willing to serve and that many of its county committees would not be able to appoint alternates. Since the legislation does not require election of alternates, the Agency does not wish to adopt this provision.

One respondent commented that it was too restricted to prohibit individuals from serving on the county committee who have served on other committees which make recommendations for approval of Federal Land Bank or Production Credit Association loans. The Agency agrees that this is too restrictive and has amended this provision to include only those individuals who are currently serving on such committees. However, in order to be consistent a provision was added to prohibit employees of the Federal Land Banks and Production Credit Associations of the Farm Credit System from serving on the committees.

One respondent suggested that a provision be added to prohibit a county committee member from participating in a decision on his or her own FmHA loan application or upon an application or a relative or a person with which the committee member has joint operations or business associations which would or can be construed to create a conflict of interest. The Agency has modified the regulations to eliminate county committee members or their families from eligibility for any farm loans. Consequently, they would not be ruling on such loans under the revised regulations. With respect to ruling on loans with those individuals with whom they have business associations, existing conflict of interest provisions, which cover all employees, would require county committee members to recuse themselves from such deliberations.

One respondent commented that voters for county committee elections be of legal voting age. The Agency believes that the stipulation that voters be farmers deriving the principal part of their income from farming ensures that voters will be responsible members of the farm community. There is no legislative requirement for voters being of legal voting age, and the Agency does not feel such an additional requirement is necessary.

One respondent commented that the Agency should adopt the ASCS practice of mailing ballots to eligible farmers. The Agency believes that the system of publishing ballots in publications serving the area and mailing ballots to those individuals who request them provides eligible voters with ample opportunity to vote. The system is also considerably more cost-effective than the ASCS system.

One respondent suggested that language prohibiting discrimination against voters because of race, color, sex, religion, national origin, age, or handicap be specifically added to the section of the regulations covering voter eligibility. The Agency has stated the policy of nondiscrimination as an overriding principle in the regulation. In addition, posters developed to advertise the election carry an equal opportunity statement that covers both voters and candidates. Consequently, the Agency believes that the addition of another such statement for voters in the regulations would be redundant.

One respondent commented that the prohibition on signing more than one nominating petition is too restrictive. The Agency believes that the prohibition is appropriate since it adds protection against small groups of individuals dominating the process. Since the only requirement under the regulations for being placed on the ballot is having three eligible voters (and the candidate may be one of those three) sign a candidate's nominating petition, the Agency does not believe that the current process is too restrictive.

One respondent commented that the law requiring an election process should be repealed since there is little public interest in such a law, and the former process was sufficient and more cost-effective. The Agency has attempted to construct a relatively simple and cost-effective system within the confines of the new law. The Agency has no plan to ask Congress to revoke these provisions.

Two respondents commented that voter eligibility for spouses of farmers was unclear. One of the respondents indicated that clarification should be added to cover situations where members of families were engaged in joint operations that were not legal entities. The Agency has added language to the voter eligibility statement to clarify that all members of the family farm engaged in agricultural production are eligible. We believe that this further clarifies that spouses and other family members may vote if otherwise eligible.

One respondent suggested that loan applicants be prohibited from serving on the county committee. The Agency finds this too restrictive. While county committee members certainly would not be permitted to be involved in any decision relating to their own loan application with FmHA, there is no appearance of conflict of interest in permitting such individuals to run. The regulation has been revised to make it clear that if the applicant's loan is approved and he or she is subsequently elected, he or she will have to resign from the committee.

Four respondents commented on the provision which restricts individuals from being active in the management or affairs of any political club, organization, or committee. These respondents stated that this was overly restrictive since such rules should only apply to those in the civil service covered by the Hatch Act. This statement assumes that county committee members are not Federal employees. This is incorrect. County committee members are intermittent Federal employees and as such are covered by the provisions of the Hatch Act which circumscribe activities in partisan politics. These provisions are necessary to protect the county committee deliberation process from the conflict, or appearance of conflict, of interest.

One respondent commented on the interpretation of the income requirement that elected county committee members earn more than 50 percent of their gross income from farming. The respondent believed that this eligibility requirement was not a proper interpretation of Congress' intent. The respondent argued that this interpretation created an "income" or "means" test which would

be too restrictive and difficult to administer. The Agency believes that the law's requirement that elected members earn the "principal part of their income from farming," left no choice but to establish an income test for serving on the committee. Verification of qualifications is done prior to appointment to the committee through the use of standard appointment documents all Federal employees complete. The Agency is satisfied that these checks are sufficient to ensure compliance with law and regulation.

One respondent commented on the provision that eligible voters must earn more than 50 percent of their gross income from agricultural production. The respondent stated that this would eliminate many farmers from participation in the election process. FmHA has written the voting criteria to coincide with the language of the law. The Agency has no authority to expand the definition of eligible voters beyond that written by Congress.

Two respondents commented on the provision of the regulations which permits the designation of a non-farmer to the county committee. One of these respondents stated that permitting a non-farmer to serve violated the intent of Congress to have loan applicants "judged by a jury of their peers." The law established no criteria whatsoever in determining the eligibility of the non-elected member of the county committee. The Agency determination that this person did not have to be a farmer was a reasonable one given the fact that the Agency has always permitted one county committee member to be a non-farmer. Thus this provision resulted in no diversion from past practice and did not violate any stated or implied requirement of the law.

One respondent commented that the provision restricting former felons from serving on the county committee was too harsh and one respondent thought that those individuals who received a dishonorable discharge from the military should be excluded. The Agency has always barred former felons and dishonorably discharged veterans from serving on the county committee. This provision is retained to ensure that county committee members be of good character and have the confidence of the public.

One respondent stated that the exclusion of any employee, even a clerical employee, of an organization financed by FmHA from serving on the county committee was overly broad and should be dealt with by conflict of interest policy. The Agency believes that a blanket prohibition on such individuals is justified on the basis of the administrative burden in making a case-by-case determination for such individuals.

Two respondents commented that alternate county committee members should not be permitted to serve out the unexpired terms of the elected members that they may replace. They recommended that alternates only serve until the next regular election. FmHA believes that permitting alternates who succeed elected members to serve out the respective terms of those members is consistent with generally accepted political practices of most jurisdictions. Therefore no change is made to this provision.

Two respondents commented on the provision that FmHA State Directors and their designees are permitted to solicit nominations for county committees. One respondent asked that the language be clarified to ensure that State Directors not have any advantage over the public in terms of the deadlines for making nominations. The other respondent objected to any FmHA solicitation of nominations. In the first instance, FmHA has clarified the language regarding solicitation of nominees to ensure that all nominations be completed at the same time. In the second instance, FmHA disagrees that the solicitation of nominees by FmHA constitutes a conflict of interest. In many parts of the country, it is difficult to get farmers to run for the county committee. If Agency personnel did not solicit nominations many committees could not be properly constituted. Also, the regulations are clear that once individuals have been nominated, no further action for or against candidates can be taken by FmHA personnel. The Agency is satisfied that this provision does not limit the freedom of choice of voters.

One respondent commented that the regulations should contain a provision for notifying all rejected nominees advising them of the reasons for disqualification. Under the regulations, election materials, excluding ballots, are to be retained for a period of three years. Interested parties may, under the Freedom of Information Act, request review of these materials. Since the slate of successful candidates is published in the county or area in which the elections take place, unsuccessful candidates will be aware of the decision and may inquire as to the reasons, if they have an interest.

One respondent commented that the language of the regulation governing the filing of nominating petitions was unclear, and could be interpreted as requiring nominees to second their own petitions. The regulation requiring the nominee to sign his or her own petition makes clear reference to only requiring the signature to certify the nominee's willingness to serve if elected. Since the block on the petition where the signature is made is clearly identified, we see no need for further clarification of the point.

One respondent commented that the procedure for retaining invalid voter ballots was unclear, and further recommended that all ballots be retained for 60 days. The Agency has reviewed this proposal, and has adopted it to provide for a greater opportunity for review of elections.

One respondent commented that the determination of voting area be revised to provide for farmers voting where they reside, rather than where there principal farming operation is located. Although the Food Security Act of 1985 makes reference to voters residing in the county or area in which they vote, the terms "reside" or "residence" have been given many different interpretations by the courts and are broader terms than just "domicile," which refers to a person's actual home. "Residence" can mean "domicile," but it can also mean something other than just "domicile." In order to provide for entity voting; e.g., corporations, the Agency interpreted the term residence more broadly. Entities have no "residence" in the strict sense of the word. They would thus be disenfranchised from voting if the interpretation were too strict. In order not to disenfranchise entities and to avoid the confusion that would arise if "reside" was defined as meaning one thing for individuals and another for entities, the Agency established the concept of voting where the farmer's principal farming operation is located.

Four respondents commented that the regulations were insufficiently clear in describing prohibited political activity which could lead to removal of county committee members. The Agency has amended the regulations to specify that county committee members are covered by FmHA Instruction 2045–BB, including Exhibits A and B, "Employee Responsibilities and Conduct" (available in any FmHA office). These regulations provide specific guidance on political activity covering all FmHA employees, including county committee members. The same respondents also commented that provisions in the regulations for removal of county committee members for "personal conduct adverse to FmHA and USDA" was too vague and could be misused. As in the previous response, the Agency believes that the responsibilities and conduct regulations covering county

committee members is clear and is not more restrictive than those covering other FmHA employees. Additionally, the regulations specify that any removals of county committee members for personal conduct will be made only after a full report has been made by the State Director to the Administrator, and a decision is made at that level. The Agency believes that this provides sufficient protections against unwarranted removals.

One respondent commented that county committee salary of $21 per day is too low and should be raised to the Federal minimum wage. FmHA requested and received permission from the Secretary of Agriculture for raising the salary of county committee members to $30 per day. The county committee members, in addition to salary, also receive compensation for travel to and from their home to the meetings. The compensation they receive is in compliance with Federal pay requirements. One respondent transmitted another respondent's comments with a recommendation that the Agency act favorably on the comments. The Agency has done so, and responses to those comments are incorporated in the foregoing responses to commenters.

Several respondents made editorial suggestions relating to use of various personnel forms used by the Agency in the appointment process. Changes were incorporated, as indicated.

In addition to the specific recommendations for changes to the regulations, four respondents commented on the implementation of the regulations and general conduct of the elections, including publicity. The commenters stated that the Agency had improperly published the regulations as interim final without permitting prior public comment, had violate its own regulations by shortening the period for nominations, and had generally not provided sufficient opportunity for farmer participation in the elections. The Agency believes that it acted properly in publishing the regulations as interim final. The Food Security Act of 1985, which contains the law covering the county committee elections, was passed on December 23, 1985. FmHA did not participate in the development, nor was it consulted in the writing of the language dealing with the county committee election process. There was no certainty that the Bill would become law. Thus, no prior work on developing the regulations was done before enactment. Since the new law required a nationwide election process to be developed under a law unique to FmHA, the Agency needed time to consider all the options prior to establishing such a system. Consideration was given to the ASCS model, but this ultimately had to be rejected because of the irreconcilable differences between the laws the two Agencies operate under. At the same time as FmHA was working on the county committee regulations, it was also in the process of rewriting 87 other regulations that were changed as a result of the Food Security Act of 1985. Consequently, FmHA does not believe that the five months it took to publish the regulations were unreasonable. Although Pub. L. 99–198 did not specify that the county committee elections had to occur in 1986, FmHA made it a priority to conduct the elections in that year to permit public participation in the election process at the earliest opportunity. Under the regulations that formerly governed the Employment, Pay, and Functions of the county committee, FmHA instruction 236.1, the terms of one appointed member of each committee was to expire on June 30, 1986. With 2018 committees functioning, that meant that 2018 committee members' terms were expiring. FmHA made a determination to implement the regulations to permit elections to take place in time to maintain the continuity of the committees. Had FmHA gone with a proposed rule instead of an interim rule, this would have seriously delayed the elections, and would have meant permanently following a later schedule than the Agency felt was optimum; i.e., non-disruptive to normal farm activities. Given this situation, the Agency made every attempt to publish the regulations expeditiously. The compressed schedule for nominations in this first election was an unavoidable consequence. FmHA denies, however, that compression of the nomination period from a normal 25 day period to a 5 day period violated its own regulations. The language of the regulation stated that the period for nominations "should" begin 45 days and end 20 days before the election date. The language of the regulation was advisory, rather than mandatory. As previously stated, FmHA felt strongly that it had to get the elections off to a timely start in 1986 in order to fulfill its mission with regard to making farm loans. Therefore, the Agency used a compressed nomination period for this one election. Even with the shortened nomination period, the Agency was successful in holding over 1,700 elections on this schedule, and required only approximately 300 special elections in cases where a full slate of candidates could not be fielded. This generally successful result indicates that even given the shortened timeframes many farmers from across the country did hear about and participate in the elections.

In addition to changes made to the regulation as a result of public comments, the Agency has made several changes to the regulation as a result of experience gained in the first round of elections. The following are the specific changes:

The revised regulation permits State Directors to solicit resignations from elected members where a consolidation of two or more county committees results in more than two elected members resulting from the consolidation. The regulation further requires that the members draw lots, where necessary, to determine who will serve on the consolidated committee.

For consistency, FmHA added a prohibition on service on county committees to employees and agents of Rural Electrification Administration and Federal Crop Insurance Corporation.

The Agency provided for extensions of pro tem appointments beyond the initial 120 day appointment if special elections fail to produce sufficient candidates to complete a slate. Review of such requests would be made by the Personnel Director of FmHA.

The agency has added a policy statement that membership on county committees reflect, to the extent practicable, the diversity of the individuals served by the Farmer Programs. Eligible minorities and females will be designated wherever possible to serve on the committees. Language was also added requiring State Directors and/or County Supervisors to engage in outreach and information activities designed to educate minorities and women on the county committee nomination, election, selection, and appointment process.

In addition to the policy changes described above, the Agency also is taking the opportunity to clear up other sections of the rule that have confusing or misleading language or need further clarification. The principal changes are summarized below:

All individuals elected under special elections serve out the remainder of the term of the position for which the election was called.

To prevent conflict of interest county committee members are prohibited from counseling prospective borrowers regarding loan documents.

A provision was added for the election of a Chairperson for the county committee.

To further attract women and minorities to participating in the county

committee elections, County Supervisors are encouraged to publicize the elections in publications serving women and racial and ethnic minorities.

Language was added to clarify that individuals may run for election to the county committee while temporarily ineligible so long as they sign a statement indicating that they will be eligible prior to taking office.

Language was added to clarify the county supervisors' responsibility to challenge voters they reasonably believe are ineligible.

A provision was added to permit County Supervisors to take verbal as well as written argument for proof of voting eligibility.

The seven day time frame for permitting the ballot count after an election was changed to a seven work-day requirement to permit more time to obtain information on questionable ballots.

Only those candidates who receive votes may be elected.

Corrections were made to several sections relating to the processing of Federal appointments for committee members that related to differentiation between elected and designated members, the need for obtaining DD-214's for military veterans as part of the appointment documents, and the proper completion of forms relating to appointment.

Elected members will lose their eligibility to serve on the county committee if they no longer maintain their principal farming operation in the county.

Designated members will lose their eligibility to serve on the county committee if they move their residence from the county.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." FmHA has determined that his action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, P.L. 91-190, an Environmental Impact Statement is not required.

Intergovernmental Consultation Statement

This action affects the following Catalog of Federal Domestic Assistance numbers and programs:

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.416 Soil and Water Loans
10.421 Indian Tribes and Tribal Corporation Loans

For the reasons set forth in the final rule related Notice to 7 CFR 3015 Subpart V, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

List of Subjects in 7 CFR Part 2054

Agriculture, County committee members.

Therefore, Chapter XVIII, Title 7 of the Code of Federal Regulations, is amended by revising Subpart W of Part 2054 as follows:

PART 2054—EMPLOYMENT

1. The authority citation for Part 2054 continues to read as follows:

Authority: 7 USC 1989; 5 USC 301; 7 CFR 2.23; 7 CFR 2.70.

2. Subpart W, consisting of §§ 2054.1101 through 2054.1150, is revised to read as follows:

Subpart W—Employment, Pay, and Functions of County and/or Area Committees

Sec.
2054.1101 General.
2054.1102 Establishment and composition of county and/or area committees.
2054.1103 Function of the county committee.
2054.1104 Eligibility to hold office.
2054.1105 Election requirements.
2054.1106 Voting eligibility.
2054.1107–2054.1110 [Reserved]
2054.1111 Conduction elections.
2054.1112–2054.1114 [Reserved]
2054.1115 Prohibition of employee participation in committee elections.
2054.1116 Ballots.
2054.1117 Absentee ballots.
2054.1118 Ballot boxes and safekeeping of returned ballots.
2054.1119 Basic requirements for ballot count.
2054.1120 Counting ballots and announcing results.
2054.1121–2054.1122 [Reserved]
2054.1123 Notifying condidates of election results.
2054. 1124 Safekeeping and disposition of election records.
2054.1125 [Reserved]
2054.1126 Appointment.
2054.1127 Compensation.
2054.1128 Certification of services.
2054.1129 Termination of services.
2054.1130–2054.1149 [Reserved]
2054.1150 OMB Control Number.

Subpart W—Employment, Pay, and Functions of County and/or Area Committees

§ 2054.1101 General.

This subpart provides instructions of selections of county committee members. Nomination, election, or designation of county committee members are made without regard to race, color, sex, religion, national origin, age, political affiliation, marital status, and/or handicap.

§ 2054.1102 Establishment of composition of county and/or area committees.

(a) *General.* In each county or area in which Farmers Home Administration (FmHA) activities are carrier out, there shall be a county or area committee composed of three members:

(1) Two members shall be elected, by farmers deriving the principal part of their income from farming and have their principal farming operation within the county or area. "Principal part of their income" means more than 50 percent of their gross income must come from agricultural production. One member, who shall reside within the county or area, shall be designated by the State Director. Designations may also be made for alternates for each member of the county committee and will be subject to all other requirements contained in this subpart.

(2) In selecting designated members of the county committee, care should be taken to ensure, to the greatest extent practicable, that the committee is fairly representative of farmers in the county or area. Designated committee members must be in sympathy and accord with the family farm concept, be familiar with the problems of farmers and residents of rural communities, and be in general agreement with the objectives of FmHA. Designated committee members and alternates may be nonfarmers engaged in local business or professional work who reside in the county or area in which the activities of the county committee are carried out. Designated committee members and alternates may also be farmers. However, if they are farmers, they need not meet the criteria in § 2054.1102(a)(1).

(3) It is FmHA policy that membership on county committees reflect, to the extent practicable, the diversity of the individuals served by the Farmer Programs. Eligible minorities and females will be designated wherever possible, to serve on county and/or area committees. Therefore, State Directors and/or County Supervisors will:

(i) Engage in community outreach and information activities designed to educate minorities and women on the nomination, election, selection, or appointment process for FmHA county committees.

(ii) Make efforts to obtain recommendations from civil rights and women's organizations.

(b) *Area committees.* A county committee will normally be established in each county. Area committees may be established by State Directors to serve a part of a county, parts of two or more counties, or a combination of two or more counties when:

(1) Topography and communications make it impractical to establish county committees according to county boundaries;

(2) The workload in an individual county is extremely low;

(3) More than one county office is necessary to service the workload of an individual county; or

(4) It has been determined that there are insufficient interested individuals to create a county committee in a single County Office's jurisdiction.

(c) *Action to create area committees.* When a State Director establishes an area committee, he or she must issue a State supplement designating the boundaries that the committee will serve. The State Director shall give public notice of boundary changes to county or area committees in official county newspapers or publications serving the area at least 30 days before a county committee election takes place. If the establishment of an area committee will result in the elimination of a county committee and a surplus of elected county committee members, the State Director will take the following steps:

(1) Terminate one of the designated members of the two committees, if necessary.

(2) Poll the elected members of the committees as to their continued desire to serve, and accept resignations from those who voluntarily wish to resign in inverse order as to their remaining terms; i.e., 1 year, 2 years, 3 years.

(3) If a surplus of elected members still remain after taking step (2), the County Supervisor should have the members draw lots for the positions.

(d) *Temporary absence of committee members.* When committee members are not available to attend meetings, the County Supervisor can call alternates to become acting members of the committee with the same duties and authorities as regular members. A quorum of at least two members or alternates is needed to have a county committee meeting.

(e) *Permanent vacancies.* In cases of permanent vacancies, alternates may be used to complete the unexpired terms of either elected or designated members. Alternates should be designated in order of succession at the State Director's discretion; e.g., first alternate, second alternate, and third alternate. Alternates succeeding to members' unexpired terms will serve out the remainder of the term. If an alternate is not available to fill the county committee vacancy, the State Director will review the prevailing circumstances and determine the best course of action as follows:

(1) Continue with existing members until the next regular election.

(2) Designate additional alternates.

(3) Call a special election to fill vacancies.

(f) *Special elections.* The State Director may set the date for special elections that might be necessary in filling permanent vacancies or vacancies caused by inability to complete a slate of nominees during a regular election. Vacancies created by the inability to complete a slate of nominees to fill an expired term of an elected member must be filled through special elections held not later than 120 days after the regular elections. Committee members elected through special elections will serve out the remainder of the term of the position for which the election was called.

§ 2054.1103 Functions of the county committee.

(a) The major functions to be performed by FmHA county committees, which are more specifically set out in the FmHA regulations relating to various program activities, consist of:

(1) Determining the eligibility of applicants for certain types of loans, including farmer program loans, irrigation and drainage loans and loans to grazing associations;

(2) Making recommendations on resolving problem cases;

(3) Conferring with the County Supervisor on the servicing of FMHA loans with respect to borrowers who should be referred to other credit sources, including graduation;

(4) Making recommendations regarding applications for compromise or adjustment or cancellation of debts owed to FmHA;

(5) When requested by the County Supervisor, advising the County Supervisor, debtors, and their creditors in connection with voluntary debt adjustment; and

(6) Attending appeal hearings authorized under Subpart B of Part 1900 of this chapter.

(b) Members will not be assigned to perform service as individuals and will be paid for service only when requested to attend county committee meetings, make certain field visits with the County Supervisor, and attend appeal hearings and training meetings in accordance with FmHA regulations. They may not counsel prospective borrowers regarding preparation of loan documents. This will not prohibit a county committee member from making inquiries concerning applicants and borrowers during the normal contacts in his or her county or area.

(c) The County Supervisor is authorized to convene the county committee subject to the limitations specified in § 2054.1127(a)(1) of this subpart. Form FmHA 2006–9, "Notice of Visit or Meeting," may be used to notify county committee members of meetings. The County Supervisor serves without extra compensation as Executive Secretary of the county committee.

(d) At the first meeting after July 31 of each year, the members of the county committee will elect one member to serve as Chairperson for that year.

(e) The County Supervisor will prepare Form 2054–7, "Record of County/Area Committee Meetings," and maintain such files and records as may be required to reflect actions taken by the committee. The County Supervisor may designate the Assistant County Supervisor to represent him or her at county committee meetings, when it is not possible for the County Supervisor to attend. Such designations may be made orally. In these instances, the Assistant County Supervisor will prepare and sign minutes of the meetings as Executive Secretary and other records necessary to reflect actions taken by the committee.

§ 2054.1104 Eligibility to hold office.

Elected committee members must be persons who have their principal farming operation within the county or area in which activities of the county committee are carried out, and derive the principal part of their income from farming (as defined in § 2054.1102(a)(1) of this subpart). Criteria for selection of the designated member and alternates are found in § 2054.1102(a)(2) of this subpart. In addition, the elected and/or designated members and alternates must meet all of the following requirements to hold office as a county committee member:

(a) Be a citizen of the United States, or an alien lawfully admitted to the United States for permanent residence.

(b) Not have been removed for cause from any public office, or have ever been convicted of fraud, larceny, embezzlement, or any felony.

(c) Not have been dishonorably discharged from any branch of the armed services.

(d) Not currently be an officer or employee of a partisan political party, or be active in the management or affairs of any political club, organization, or committee. The general rules are contained in FmHA Instruction 2045–CC

(available in any FmHA office). See especially §§ 2045.1402(b) (Coverage), 2045.1407 (Prohibited activities), and 2045.1410 (Accepting and holding State and local offices). Committee members are also subject to the prohibitions contained in Executive Order 11222 and Department of Agriculture (USDA) policy contained in Part 735, Departmental Personnel Manual (DPM) Supplement 990–1, with respect to holding public office.

(e) Not be employees of FmHA, Agricultural Stablilization and Conservation Service (ASCS), Soil Conservation Service (SCS), Extension Service (ES), Rural Electrification Administration (REA), Federal Crop Insurance Corporation (FCIC), or agents of these agencies.

(f) Not currently be an employee of the Federal Land Bank, Production Credit Association or Farm Credit System or serve on committees which make recommendations for approval of loans to these organizations since FmHA may be involved in participation loans with such Farm Credit System loans.

(g) Not be an individual or the spouse or family member of such an individual living in the same household, or a stock holder of a corporation, member of a cooperative, joint operator of a joint operation, or a partner in a partnership, with an outstanding loan insured or guaranteed by FmHA, except a Section 502 Rural Housing loan as provided in FmHA Instruction 2045–BB (available in any FmHA office). FmHA loan applicants are *not* ineligible to hold office, but must be informed that if the loan is approved and they are elected. they will have to resign from the committee.

(h) Not perform any of the following functions for an FmHA-financed association or organization after appointment:

(1) Serve as an official;

(2) Perform administrative or employee functions including performing clerical services, maintaining financial or other records, preparing financial reports, or developing operating budgets.

(i) Not currently be an employee or serve on Boards of Directors of Banks or Savings and Loan Associations or be the spouse or family member living in the same household of an individual serving on the board of such organizations in the county or area over which the county committee has jurisdiction, since FmHA may be involved in participation loans with such banks.

(j) Meet the legal or regulatory requirements for appointment to Federal employment. (See § 2054.1126 of this subpart.) This determination will be made subsequent to nomination but prior to the committee member taking office.

§ 2054.1105 Election requirements.

(a) *Election dates.* All regular elections of county committee members shall be held in those years that an elected member's term expires. This date must be in June but not either a Saturday or Sunday or a federally or State-recognized holiday. It shall be selected by the State Director and announced to the public.

(b) *Length of terms.* Elected and designated members of the county committee shall serve for a term of three years.

(c) *Beginning dates of terms.* County committee members begin their terms as follows:

(1) For regular elections, no later than July 31.

(2) For special elections, no later than 30 days after the election was held.

(d) *Notice to the public.* Information concerning county committee elections shall be made available to the general public through the use of official county newspapers or publications in general circulation serving the area, through notices prominently posted in FmHA offices within the area, and, if possible, in ASCS and/or ES newsletters, and through public service announcements on radio and/or television stations serving the area. To ensure participation of women and racial and ethnic minorities, publications in circulation serving the area that serve these groups should also be utilized to provide information concerning the elections.

§ 2054.1106 Voting eligibility.

An individual farmer is entitled to one vote. A "Farmer" who is a legal entity such as a corporation, partnership, cooperative, joint operation, association or other legal entity is entitled to one vote by its duly authorized representative. A farmer may vote in only one county or area election. In order to vote in the election of a county committee member, voters must:

(a) Be farmers; e.g., one or more members of a family farm engaged in agricultural production or be representatives of a legal entity engaged in agricultural production.

(b) Derive the principal part of their income from farming (as defined in § 2054.1102(a)(1) of this subpart).

(c) Have their principal farming operation within the county or area for which the election is being held.

§§ 2054.1107–2054.1110 [Reserved]

§ 2054.1111 Conducting elections.

(a) *Election calendar.* An election calendar is provided as Exhibit C of this subpart (available in any FmHA office).

(1) The election calendar provides a sequence of events for conducting the election.

(2) If the final date for any event is a nonworkday, it is automatically extended to the next workday.

(b) *Developing slates of nominees.* Nomination by petition shall be the method used for developing slates of nominees.

(1) The period for nominating by petition will begin at least 45 days and end 20 days before the election date.

(2) The opportunity to nominate by petition shall be announced in official county newspapers or other publications in general circulation serving the county or area and, if possible, in ASCS and/or ES newsletters and through public service announcements on radio and television stations serving the area. In addition, notices shall be posted in all FmHA offices within the area. The Notice of Right to Nominate By Petition shall be completed by the County Supervisor and read as set forth in Exhibit A of this subpart (available in any FmHA office).

(3) The minimum number of eligible nominees for a slate is one per vacant elected committee member position. The State Director or designated staff may solicit nominations during the nominating period.

(4) At least three eligible voters (including the nominee) within the county or area must sign a nominating petition in order for it to be valid. No one may sign more than one nominating perition.

(5) All eligible nominees nominated by valid petition shall be included on the slate for county committee.

(c) *Approval and processing of nominations by public petitions.* The County Supervisor shall review all petitions and verify their validity, including the eligibility of the nominee to hold office. In order to be valid, petitions must be:

(1) Limited to one nominee each.

(2) Signed by the nominee certifying that he or she is willing to serve if elected.

(3) Received in the County Office no later than 20 days before the election date, whether delivered in person or by mail.

(4) Accompanied by a signed statement by the nominee certifying that he or she either currently meets the criteria to hold office, or will do so prior

to taking office. If all the criteria are not met at the time the nomination is filed, the candidate must specify how he or she will meet the criteria; e.g., resign from a position listed in § 2054.1104 (d), (e), (f), (g), (h), or (i).

(d) *Action to complete slate of nominees.* The State Director or designated staff may solicit nominations during the nominating period.

(1) The petitions will be returned to the County Office for execution of Form FmHA 2054–5, "Nominating Petition."

(2) The completed Form FmHA 2054–5 must be in the County Office no later than 20 days before the election.

(3) The County Supervisor will send a letter to all eligible nominees explaining the duties of county committee member and will retain a copy in the County Office files. See FmHA Guide Letter No. 2054–1, "Letter to Nominees" (availabile in any FmHA Office).

(4) If less than the required minimum number of valid nominations are made by petition, the regular election will be cancelled, and the State Director will designate the necessary number of pro tem county committee members to have a full committee. These pro tem designees must meet all the requirements of this subpart concerning designated members and may serve only until a special election can be held and elected members appointed. Pro tem appointments may be made not-to-exceed 120 days. If special election fails to produce a sufficient slate of candidates, requests for extensions of pro tem appointments, with supporting justification, may be made to the Director, Personnel Division.

§§ 2054.1112—2054.1114 [Reserved]

§ 2054.1115 Prohibition of employee participation in committee elections.

FmHA employees shall not campaign for or against any county committee candiate or nominee, or actively participate in the election except as necessary to:

(a) Perform their official duties.

(b) Vote, if eligible.

§ 2054.1116 Ballots.

Ballots shall be published at the time an election is announced in official county newspapers or publications serving the area. The Notice of Election, which contains the ballot, shall be completed by the County Supervisor and read as set forth in Exhibit B to this subpart (available in any FmHA office). Each State may distribute additional ballots through means other than publications, as necessary. The announcement must be made at least 10 days prior to the date of the election. There shall be a statement in the announcement as to where and when the ballots shall be returned. Ballots shall also be available at the County Office. Ballots should be mailed as set forth in § 2054.1117 of the subpart to any person who requests one even though the person's eligibility has not been determined. The names of voters who vote in person will be verified against an ASCS list of producers and checked from that list. A separate list must be maintained manually by the County Supervisor of those individuals voting in person or by absentee ballot in the county committee election. The ASCS producer list will be used by FmHA only as an indicator that the prospective voter has an interest in farming. Presence or absence of an individual from the ASCS list does not automatically qualify or disqualify an individual. The County Supervisor can challenge anyone presenting themselves to vote, if there is a reasonable basis to believe that the voter is not eligible to cast a ballot. However, the County Supervisor should count the vote of a prospective voter if his or her name is found on the ASCS list, is not otherwise known to be ineligible, and submits a ballot. If the prospective voter is not on the voter list, but can provide information that shows he or she is otherwise eligible, the voter should be permitted to vote.

§ 2054.1117 Absentee ballots.

Persons who do not plan to vote in person may request that a ballot be mailed to them. The ballot should be enclosed in an envelope along with voting instructions, a return envelope with the County Office address, and a plain white envelope stamped ballot enclosed. The voter must pay the postage on the return envelope and return the ballot on or before the date set for the election. Upon receipt of the ballot, the name of the voter will be verified against the ASCS producer list, checked off that list, and added to the FmHA voter list. Absentee ballots are subject to the same review process as ballots voted in person. The County Supervisor may challenge any absentee ballot for which there is a reasonable basis to believe that the person voting is not eligible. In these cases, and in cases where the prospective voter is not on the ASCS list, the County Supervisor will hold the ballot in abeyance and write or otherwise contact the individual advising that he or she must provide a verbal explanation or documentation that he or she meets the voter criteria. Individuals must be given 5 working days to respond. If the prospective voter does not respond within the time permitted, or does not provide sufficient information for the County Supervisor to make a determination, the vote will not be counted, and the ballot will be destroyed 30 days after the election. All absentee ballots submitted by eligible voters will be placed unopened in the ballot box by the County Office staff.

§ 2054.1118 Ballot boxes and safekeeping of returned ballots.

Each County Office holding an election will provide a ballot box in the County Office. The boxes must:

(a) Be of sufficient size.

(b) Be constructed so ballots cannot be read or removed.

(c) Be sealed so that tampering with the box would be visible.

(d) Be identified as the ballot box for the county or area in which it is used.

§ 2054.1119 Basic requirements for ballot count.

Ballot count by County Office staff:

(a) Ballots shall be counted with 7 working days after the election.

(b) The counting process should be public. This can be done by counting in the County Office during regular working hours.

§ 2054.1120 Counting ballots and announcing results.

The County Office staff shall:

(a) Announce the beginning of the count, if witnesses are present.

(b) Open the ballot box in the presence of witnesses.

(c) Examine the ballots and determine whether each meets the election requirements.

(d) Separate the valid from the invalid ballots. Invalid ballots will not be counted and will be destroyed as specified in § 2054.1124 of this subpart. Examples of invalid ballots are those that contain write-in candidates, more votes than are specified as being appropriate, or no clear vote.

(e) Call out the votes shown on the ballots.

(f) Review the final vote count and determine the candidates elected.

(g) Settle all two-way ties by coin toss, if necessary. Ties involving more than two will be settled by drawing lots.

(h) Only those candidates who receive one or more votes can be elected. If less than the necessary number of candidates are elected to fill the vacant positions, special elections will be required for those seats left unfilled.

§§ 2054.1121–2054.1122 [Reserved]

§ 2054.1123 Notifying candidates of election results.

The County Supervisor will promptly notify candidates of election results in

writing. See FmHA Guide Letter No. 2054–2, "Letter to Elected County Committee Members" (available in any FmHA office).

§ 2054.1124 Safekeeping and disposition of election records.

(a) Ballots for each County Office should be placed in a sealed container.

(b) Ballots should be retained for 60 days after the elections and then destroyed if no complaint or investigation is initiated.

(c) FmHA voter lists, and other election documents such as the nominating petitions, nominee's certification to hold office, etc., should be retained in the County Office files and disposed of after a period of 3 years.

§ 2054.125 [Reserved]

§ 2054.1126 Appointment.

(a) *Employment conditions.* County committee members both elected and designated are given Federal appointments on an intermittent basis under "Schedule A, Section 213.3113(e)(2)" of Civil Service Rules and Regulations. They are not required to take an Office of Personnel Management (OPM) examination and are not selected from OPM registers. They do not acquire competitive status through their appointment, but such service is creditable toward retention and retirement in connection with other Federal employment. Neither retirement nor social security deductions are made from their pay, nor do they earn annual or sick leave. County committee members are not eligible for life insurance or health benefits coverage.

(b) *Processing accessions.* To document selection of county committee members, specific remark codes have been assigned for use in processing the accession action (SF–52, "Request for Personnel Action," and AD–350A, "Change Action Notice") for members. One of the remark codes listed below must be entered in Blocks 37 and 56 respectively. The National Finance Center (NFC) will supply the descriptive data and complete the remark.

(1) Elected county committee member—remark code 167—remark is—Employee elected as a county committee member.

(2) Designated as a county committee member—remark code 168—remark is—Employee designated as a county committee member.

(3) Designated as an alternate county committee member—remark code 169—remark is—Designated as an alternate county committee member.

(c) *Dual compensation.* A person may be appointed and paid as a county committee member while also holding another Federal appointment in an agency on a part-time or intermittent basis, subject to the exclusions found in § 2054.1104(e) of this subpart. In such cases, the member may not receive pay under both appointments for more than 40 hours in any one calendar week.

(1) A full-time Federal employee may be appointed only on a "Without Compensation" (WOC) basis.

(2) A full-time or part-time State government employee (not disqualified under § 2054.1104 of this subpart) may be appointed. If acceptance of Federal salary would violate a State law, while acceptance of the appointment itself would not be prohibited by the State Constitution or laws, it may be made on a WOC basis.

(3) A retired civilian employee of the Federal Government may be appointed only on a WOC basis.

(4) Dual compensation restrictions do not apply to persons receiving retired pay for enlisted military service, provided they are not receiving other payments from the Federal Government which would constitute a violation of such restrictions.

(5) Dual compensation restrictions apply for persons receiving retired pay for *service as a commissioned officer.* The State Director will make the necessary determinations in such cases in accordance with FPM Chapter 550, Subchapter 6, "Reduction-in-Retired Pay Provision of the Dual Pay Status."

(d) *Appointment procedures.* The following procedures are to be followed:

(1) The County Supervisor will have the prospective county committee members including alternates complete Standard Form 171, "Personal Qualifications Statement," in an original only, which will be forwarded to the State Director by the County Supervisor with Form FmHA 2054–6, "Mileage Certification for County Committee Members," in an original completed by the County Supervisor. Although veteran's preference does not apply to county committee member appointments, copies of the DD–214 should be obtained from veterans in order to accurately establish Service Computation Dates (SCD) for members.

(2) *Care should be taken that all Federal, territorial, State, county, or local offices held by a nominee for county committee appointment are specified on the Standard Form 171,* in the space showing experience, so that the State Director may determine eligibility under the applicable restrictions.

(3) The State Director will review Standard Form 171 for completeness and conformity with requirements and will process Form AD–350A. The State Director will send a copy of Forms AD–350A, AD–349, "Declaration Sheet," SF–61, "Appointment Affidavits," Treasury Form W–4, "Employee's Withholding Exemption Certificate," and State Income Tax withholding form, where applicable, to the County Supervisor. The copy of Form AD–350A will be retained in the County Office committee file. FmHA Instruction 2045–BB and Appendix 1, "Employee Responsibilities & Conduct," will be sent to the County Supervisor with other forms for distribution to the new committee member.

(4) The County Supervisor will instruct the committee member in completing the Form AD–349, SF–61, Treasury Form W–4, and State withholding form, when used, and will return these forms to the State Director for review. The date of Appointment Affidavit must be recorded on Form AD–321–3, "Time and Attendance Report," before Form AD–349 is forwarded to the State Director. Failure to enter the date of the Appointment Affidavit on the Time and Attendance Report will delay the county committee member's pay. Form AD–349 must be executed in its entirety. The State Director will forward the "Employee Copy" of Standard Form 50B printout produced by National Finance Center (NFC) to the County Supervisor for delivery to the county committee member.

(5) The terms of committee members and alternates begin on the effective date of the Schedule A Appointment.

(6) Elected county committee members will be issued a "Certificate of Election." These certificates can be reordered only by State Offices. When ordering from the warehouse, State Offices should ask for item No. 410, Certificate of Election.

(e) County committee members are covered by FmHA Instruction 2045–BB, including Exhibits A and B "Employee Responsibilities and Conduct".

§ 2054.1127 Compensation.

(a) *Computing time.* Service performed by regular and alternate county committee members will be computed in units of whole days. Alternate county committee members who, at the request of County Supervisors, attend county committee meetings for training and/or orientation purposes are entitled to compensation even if all three regular county committee members are present.

(1) *Service time limits.* County committee members are limited to a maximum of 20 days of service in any

one calendar month. Avoid short or unnecessary meetings.

(2) *Compensation restrictions.* Payment of salary for county committee services (as distinguished from the allowance "in lieu of travel and subsistence") may be prohibited in some cases as outlined in § 2054.1126 (c)(3) and (4).

(b) *Rates of pay and allowance.* For county committee services performed in connection with the FmHA program, members will be paid at the basic daily rate of $30.00 plus an allowance in lieu of travel and subsistence on a sliding scale based on the distance from the county committee member's residence to the county office or other place where county committee meetings are normally held, as provided on the following chart:

One-way mileage from residence to meeting place	Salary	Allowance	Total
20 or less	$30.00	$6.00	$36.00
25–50	30.00	9.00	39.00
51 and over	30.00	12.00	42.00

(1) The allowance in lieu of travel and subsistence for each county committee member will be established by the State Director at the time of appointment. The rate will be based upon certification from the County Supervisor as to the mileage between the county committee member's residence and the place where the meetings are normally held, by way of the most commonly traveled route. This rate will remain fixed after initially established, unless there is a change in the residence or place where meetings are normally held, so as to place the member in a lower or higher allowance zone. The change in allowance is effective the first of the month which is not less than 30 calendar days after: (i) the change in residence; or (ii) the first meeting at the new regular location. Changes in allowance in lieu of travel and subsistence will not be made for attendance at training meetings, appeal hearings, or for occasional county committee meetings not held at the regular location.

(2) County Supervisors will certify on Form 2054–6, for each person appointed. The certification will be submitted to the State Director at the time other documents required by 2054.1128 of the subpart are submitted.

(3) A revised certification on Form FmHA 2054–6 will be submitted for a county committee member as required. This certification will be submitted as soon as possible after the county committee member's residence has changed, or after the first county committee meeting at the new location.

(4) If the County Supervisor has positive knowledge of the proper mileage zone, he or she may make the required certification without taking speedometer readings. Otherwise, the certification will be based on actual speedometer readings.

(5) The speedometer readings will be taken to the nearest full mile, with five tenths of a mile counted as the next highest mile. All certification will be prepared in duplicate, with a copy retained in the county office.

§ 2054.1128 Certification of services.

The County Supervisor will certify byweekly on Form AD–321–3, all services for which county committee members are to be paid. These forms should be completed and submitted promptly to NFC according to the Management of Objectives with Dollars through Employees (MODE) Time and Attendance Report Handbook.

§ 2054.1129 Termination of services.

If a county committee member is terminated prior to the expiration of the appointment, the State Director will process Form AD–350A. The Employee's Copy will then be forwarded to the County Supervisor for delivery, using Form FmHA 2054–4, "Separation Notice to County Committee Members," or other suitable letter from the State Director to the committee member. If other than the form letter is used, a copy should be provided for the county committee file. If the form letter is used, no copy is needed.

(a) *Resignation.* The resignation of a county committee member may not be coerced by the County Supervisor or any other person. Members wishing to resign, however, should be urged to do so in writing so that the resignation may be accepted by official action. Resignations will be sent by the County Supervisor to the State Director, accompanied by a recommendation for replacement, if possible (see § 2054.1102(e) of this subpart).

(b) *Other separations.* (1) The County Supervisors will inform members that they no longer meet eligibility requirements when they enter military service. Elected members will lose eligibility if they no longer maintain their principal farming operation in the county or area they represent. Designated and alternate members will lose their eligibility if they move from the area. In all cases the County Supervisor will so notify the State Director. If a resignation is not promptly submitted, termination of the appointment will be processed by the State Director.

(2) When a committee member accepts public office or engages in political activity in violation of the restrictions outlined in § 2054.1104 of this subpart, it is the State Director's responsibility on receipt of such information to make a full report to the Administrator. Upon receipt of a decision or guidance from the Administrator, the State Director will handle the case and direct the processing of any necessary personnel action.

(3) The County Supervisor will notify the State Director if a member dies so that the appropriate action may be processed.

(4) If a County Supervisor or other FmHA officials have information concerning personal conduct of a county committee member which adversely affects FmHA and the USDA, such information should be sent in a confidential letter to the State Director who will forward a report with recommendations to the Administrator. Upon receipt of a decision or guidance from the Administrator, the State Director will handle the case and direct the processing of any necessary personnel action.

(5) Where termination is due to the expiration of the term of appointment, a termination action is not necessary. NFC will automatically drop the county committee member from FmHA rolls. A letter of appreciation will be sent to the county committee member by the State Director.

§ 2054.1130–2054.1149 [Reserved]

§ 2054.1150 OMB control number.

The collection of information requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0117.

Dated: July 17, 1987.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 87–18767 Filed 8–17–87; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

[INS Number: 1012-87]

Petition To Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rulemaking changes the method by which a third preference or sixth preference priority date is established. Under regulations which have been in effect since June 20, 1986, a priority date established by the submission of a request for labor certification is lost if the immigrant visa petition seeking third or sixth preference classification is not filed within 60 days of the date of issuance of the certification, or if the petition is not resubmitted within 60 days of being returned to the petitioner for additional information. The regulations were promulgated in order to prevent certain abuses which existed under the prior regulations. However, the enactment of the Immigration Reform and Control Act of 1986 (IRCA) on November 6, 1986 made the June 20 changes superfluous, since IRCA more effectively prevents the same abuses.

EFFECTIVE DATE: September 17, 1987.

FOR FURTHER INFORMATION CONTACT: Michael L. Shaul, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633-3946.

SUPPLEMENTARY INFORMATION: Under section 212(a)(14) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. 1182(a)(14), certain aliens may not obtain an immigrant visa for entry into the United States to engage in permanent employment unless the Secretary of Labor has issued a labor certification stating that there are not sufficient workers who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform the skilled or unskilled labor, and that the employment of these aliens will not adversely affect the wages and working conditions of similarly employed workers in the United States.

There are three alien immigrant classifications which require a labor certification. These are the third and sixth preference, and under various circumstances, nonpreference classifications (sections 203(a)(3), 203(a)(6) and 203(a)(7) of the Act (8 U.S.C. 1153)). For third and sixth preference applicants, labor certification applications are filed by employers with a state employment service office unless the alien's occupation is a Schedule A occupation (already certified by the Secretary of Labor as in short supply in the United States). If a labor certification is issued or the beneficiary's occupation is on Schedule A, the employer (prospective or current) submits an immigrant visa petition to the Immigration and Naturalization Service ("the Service"). Section 203(c) of the Act (8 U.S.C. 1153(c)) provides that visas will be issued under section 203(a)(1) through (6) to eligible immigrants in the order in which a petition is filed on behalf of each of these immigrants with the Attorney General as provided in section 204 of the Act (8 U.S.C. 1154). If a preference immigrant visa number is immediately available when the petition is approved, the alien beneficiary may be issued an immigrant visa with which to enter the United States for permanent residence or, under certain circumstances, may be permitted to adjust status to that of a permanent resident. If a preference immigrant visa number is not available at the time the petition is approved, the alien's name is instead placed on a waiting list. Petitions are then processed for permanent residence status by date filed. Thus, the filing date has come to be known as the "priority date".

Over the years, the priority date has been computed in different ways at different times. Originally the priority date was based strictly on the date the visa petition was filed with the Service after issuance of the certification by the Department of Labor (DOL). However, because there were varying backlogs and processing times among the offices of the DOL's employment service system, some individuals were able to file the petition earlier than others. Accordingly, in order to eliminate what was seen as an unfair advantage enjoyed by some, the method of computation was changed so that the date that a labor certification request was filed with the local office of the state employment service became the priority date. This method created an opportunity for abuse by those employers and aliens who would obtain a labor certification but not file the I-140 petition until a visa number became available, thereby hiding the illegal alien from the attention of the Service. Accordingly, on June 20, 1986, the regulation was again changed to require that the petitioner file the petition within 60 days of the issuance of the labor certificate, or resubmit the petition within 60 days of the date it was returned for additional information or documentation, in order to retain the priority date. If the petition were not submitted or resubmitted within the allotted period, the date of submission or resubmission would be the new priority date. This provision became known as the "60-day rule".

On November 6, 1986 the Immigration Reform and Control Act (IRCA) became law. By providing for sanctions to be imposed against employers who hire aliens who are not authorized to accept employment in the United States, IRCA removes the incentives for abuse which necessitated the regulatory change of June 20, 1986. With these incentives removed, the 60-day rule became disadvantageous to both the Service and the public.

Accordingly, on May 14, 1987 the Service proposed at 52 FR 18236 to restore the procedure which was in effect prior to June 20, 1986. Additionally, the proposed rulemaking provided that a priority date shall only be established in the case of a third or sixth preference petition for an occupation listed in Schedule A (20 CFR 656.10) if the petition is approved. If the petition is denied, no priority date is established. The proposed rule also invited interested parties to submit comments no later than June 15, 1987.

During the allotted period the Service received eight comments, all but one of which were in favor of abolishing the 60-day rule, with five of them requesting that the rule change be made retroactive to June 20, 1986. The one negative commenter believed that employer sanctions will not be effective in preventing all kinds of illegal employment and feared that the "sunset" provisions of IRCA might take effect and cause the Service to have to reinstitute the 60-day rule.

While neither IRCA nor any other law can be expected to end all illegal employment, it is anticipated that IRCA will be sufficiently effective to obviate the need for the 60-day rule. The Service always recognized that there were both advantages and disadvantages to the rule, with the advantages outweighing the disadvantages only until the enactment of IRCA. Should the sunset provisions of IRCA take effect, the Service will consider reviving the 60-day rule.

In order to facilitate implementation of this rulemaking and to provide for uniformity of procedures, it has been determined that a petitioner who lost a priority date strictly because of the application of the 60-day rule between June 20, 1986 and the effective date of

this rulemaking may have that lost priority date restored by making a written request to the consulate or immigration office where the approved petition is currently located. The written request should include a photocopy of the notice of approval of the petition (Form I-464). Upon receipt of the written request the consular officer or district director will correct the priority date on the petition and, if a visa number is available and the alien is otherwise eligible, allow the alien to apply for an immigrant visa or adjustment of status, as appropriate.

The one person who commented on the clarification of the method of establishing a priority date in a Schedule A case was in favor of the proposal, but asked for clarification as to what was meant by the term "approved" and whether it would also apply to a petition approved on appeal. The term "approved" applies, and the filing date is established as the priority date, regardless of whether the petition is approved by a district director, by the appellate authority, or by a Federal Judge upon judicial review.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule would not, if promulgated, have a significant adverse economic impact on a substantial number of small entities.

This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 204

Administrative practice and procedure, Aliens, Petitions.

Accordingly, Chapter I of Title 8, Code of Federal Regulations, is amended as follows:

PART 204—[AMENDED]

1. The authority citation for Part 204 is revised to read as follows:

Authority: 66 Stat. 166, 173, 175, 178, 179, 182, 217; 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1255.

2. In § 204.1, paragraph (d)(2) is revised to read as follows:

§ 204.1 Petition.

* * * * *

(d) * * *

(2) *Filing date.* In the case of a third or sixth preference petition (except for an occupation listed in Schedule A), the filing date of the petition within the meaning of section 203(c) of the Act will be the date the request for certification was accepted for processing by any office within the employment service system of the Department of Labor. If a third or sixth preference petition for an occupation listed in Schedule A is approved, the filing date of the petition shall be the date it is properly filed with the appropriate Service office. If a third or sixth preference petition for an occupation listed in Schedule A is not approved, no priority date shall be established.

* * * * *

Dated: August 3, 1987.

Richard E. Norton,

Associate Commissioner, Examinctions, Immigration and Naturalization Service.

[FR Doc. 87-18872 Filed 8-17-87, 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 87-079]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the regulations governing the interstate movement of cattle because of brucellosis by classifying the state of Texas as Class B. The state of Texas as a whole meets the standards for Class B status. This action relieves certain restrictions on the interstate movement of cattle from Texas.

EFFECTIVE DATE: September 17, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Jan Huber, Senior Staff Veterinarian, Domestic Programs Support Staff, Veterinary Services, APHIS, USDA, Room 812, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-436-5965.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule published in the Federal Register and effective April 1, 1987 (52 FR 10554-10555, Docket Number 87-042), we amended the regulations governing the interstate movement of cattle because of brucellosis by classifying the state of Texas as Class B. Before publication of the interim rule, Texas had been divided into two areas for brucellosis, Class B and Class C. We did not receive any comments, which were required to be filed on or before June 1, 1987. The facts presented in the interim rule still provide a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; and will not cause a 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.

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

Cattle moved between the Class B and Class C areas of Texas were required under Texas law and regulations to meet standards equivalent to the regulations in Part 78 for movements between Class B and Class C states. However, Texas still requires most cattle to be tested for brucellosis before intercounty movements and sharply restricts the intercounty movements of brucellosis reactor, suspect, and exposed cattle. Consequently, this rule will not have a significant effect on market patterns or a significant economic impact on those persons involved in the movement of cattle within Texas.

Classifying the entire state of Texas as Class B for brucellosis also reduces certain testing and documentation requirements for cattle moved interstate from the area of Texas previously classified as Class C. However, the requirements for moving cattle interstate to recognized slaughtering establishments or quarantined feedlots, for moving cattle from certified brucellosis-free herds, and for moving cattle interstate to and from two premises owned, leased, or rented by the same individual remain unchanged. Consequently, we anticipate that this rule will not have a significant effect on market patterns or a significant economic impact on those persons involved in the interstate movement of cattle.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a

substantial number of small entities. 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 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule without change, the interim rule that amended 9 CFR Part 78 and that was published at 52 FR 10554–10555 on April 1, 1987.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 12th day of August, 1987.

J.K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87–18864 Filed 8–17–87; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 94

[Docket No. 87–089]

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

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of pork and pork products into the United States by removing the Netherlands from the list of countries regulated because of African swine fever (ASF). We are taking this action because we have determined that ASF has been eradicated from the Netherlands. This rule will remove certain restrictions on the importation into the United States of pork and pork products from the Netherlands.

However, the Netherlands is not included in the lists of countries declared to be free of rinderpest and foot-and-mouth disease, hog cholera, and swine vesicular disease. Therefore, even with the adoption of this rule, the restrictions imposed because of these diseases remain in effect for the Netherlands, and pork and pork products must still be heat treated or cured as a condition of importation into the United States.

EFFECTIVE DATE: August 13, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Mark P. Dulin, Senior Staff Veterinarian, Animal Products and Byproducts of the Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 805, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8499.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 94 (referred to below as the regulations), among other things, regulate the importation of pork and pork products to prevent the introduction into the United States of African swine fever (referred to below as ASF). 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 24, 1987, we published in the **Federal Register** (52 FR 13693–13694, Docket 87–038), a document proposing to amend § 94.8 of the regulations governing the importation into the United States of pork and pork products by removing the Netherlands from the list of countries regulated because African swine fever exists or the Administrator of the Animal and Plant Health Inspection Service has reason to believe the disease exists. The effect of this action is to remove certain restrictions on the importation into the United States of pork and pork products from the Netherlands.

Our proposal invited the submission of written comments on or before June 23, 1987. We received one comment, which supports the proposed rule. Therefore, we are adopting the provisions of the proposed rule as a final rule.

Effective Date

This final rule was made effective upon signature. It relieves certain restrictions on the importation into the United States of pork and pork products from the Netherlands. Accordingly, prompt action was taken to remove these restrictions.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will not have an effect on the economy of more than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographical regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

In the year prior to the 1986 outbreak of ASF, less than nine-tenths of one percent of the pork and pork products imported into the United States came from the Netherlands. We therefore anticipate that insignificant quantities of pork and pork products will be imported into the United States from the Netherlands as a result of the adoption of this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

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 disease, 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.

Accordingly, 9 CFR Part 94 is amended as follows:

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

1. The authority citation for Part 94 continues to read as follows:

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 introductory paragraph in § 94.8 is amended by removing "Netherlands."

Done at Washington, DC, this 13th day of August, 1987.

J.K. Atwell,

Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 87-18863 Filed 8-17-87; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 0

Standards and Procedures for Case-by-Case Exemptions for De Minimis Interests From Prohibition Against Employee's Participation in Particular Matter Affecting Employee's Financial Interests

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations governing the granting of statutorily authorized case-by-case exemptions for insubstantial interests from the prohibition against an employee's personal and substantial participation in a particular matter the outcome of which would have a direct and predictable effect on the financial interest of the employee or certain persons or organizations related to the employee. Experience has shown that the agency's procedures and standards for granting such exemptions are in need of clarification and elaboration. The revisions will help assure that the discretion given by statute to agency officers to grant these exemptions will continue to be exercised in an appropriate fashion.

EFFECTIVE DATE: August 18, 1987.

FOR FURTHER INFORMATION CONTACT: Steven Crockett, Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (202) 634-1465.

SUPPLEMENTARY INFORMATION: Section 0.735-21(a) of the Commission's stanadards of conduct regulations implements the prohibition in 18 U.S.C. 208(a) against an employee's participating personally and substantially in a particular matter in which the employee, or certain persons or organizations related to the employee, has a financial interest. Section 0.735-21(b), under the authority of 18 U.S.C. 208(b)(1), sets out procedures for graing case-by-case exemptions from § 0.735-21(a) in instances where the interest involved is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from the employee.

Experience with § 0.735-21(b) has shown that this paragraph's description of the procedures to be followed in entertaining exemption requests, and the standards to be applied in deciding whether to grant the requests, are in need of clarification and elaboration. For example, strictly read, the paragraph does not cover exemption requests from employees in Commission-level offices. Moreover, experience in the NRC and other agencies has identified important factors to be considered in deciding whether to grant case-by-case exemptions, yet the standard set out in the paragraph merely restates the statutory language.

The revised § 0.735-21(b) applies to all employees. It more clearly assigns the responsibility of deciding whether to grant the request and assures that there will be an adequate written record of each decision. It also sets out a number of factors to be considered in such decisions, including the nature and size of the interest and the nature and significance of the employee's services to the Government.[1] These changes will help assure that the discretion given the agency officers by 18 U.S.C. 208(b) will continue to be exercised in an appropriate fashion.

Under 5 U.S.C. 553(b)(A), because these amendments deal solely with agency organization, practice, and procedures, the notice and comment provisions of the Administrative Procedure Act do not apply. The amendments are effective upon publication in the Federal Register. Under 5 U.S.C. 553(d)(3), good cause exists for dispensing with the usual 30-day delay in the effective date, since the amendments are of a minor and administrative nature, simply clarifying and codifying the procedures and standards for the granting of certain statutorily authorized exemptions for agency employees.

[1] In contrast, a number of factors generally would not be relevant to the granting of an ad hoc exemption, including the character of the employee or special government employee making the request for an exemption, and whether, in the case of an employment interest, the outside employer is a nonprofit oeganization.

Environmental Impact: Categorical Exclusion

The action required under the final rule is administrative and would not impact the environment. The NPC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.).

Regulatory Analysis

Under existing Commission regulations, NRC employees are prohibited from participating personally and substantially in any particular matter in which the employee, or persons or organizations closely related to the employee, has a financial interest. However, a statutorily authorized ad hoc exemption from this prohibition may be granted in any case where the financial interest involved is so insubstantial as to be deemed unlikely to affect the integrity of the services the Government can expect from the interested employee. Experience with the regulation has shown that its description of the procedures to be followed in entertaining exemption requests, and the standards to be applied in deciding whether to grant the requests, are in need of clarification and elaboration. The revised § 0.735-21(b) applies to all employees. It more clearly assigns the responsibility of deciding whether to grant the request, sets out a number of factors to be considered in such decisions, and assures that there will be an adequate written record of each decision. Although these changes are not legally required, the Commission believes they will help assure that the discretion given to agency officers by 18 U.S.C. 208(b) will continue to be exercised in a reasonable fashion and certain conflicts of interests thereby avoided. The revised regulation is thus an alternative which is to be preferred to the unrevised regulation, and the administrative cost to be borne by the agency in promulgating and applying the revision is necessary and appropriate.

Backfit Analysis

This final rule does not modify or add to systems, structures, components, or design of a facility; the design approval or manufacturing license for a facility; or

the procedure or organization required to design, construct, or operate a facility. Accordingly, no backfit analysis pursuant to 10 CFR 50.109(c) is required for this final rule.

List of Subjects in 10 CFR Part 0

Conflict of interest, Penalty.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, E.O. 11222 of May 8, 1965, 5 CFR 735.104, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Part 0.

Part 0—Conduct of Employees

1. The authority citation for Part 0 continues to read as follows:

Authority: Secs. 25, 161, 68 p. 925, 948, as amended (42 U.S.C. 2035, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 11222, 30 FR 6469, 3 CFR 1964–1965 COMP., p. 306; 5 CFR 735.104.

Sections 0.735–21 and 0.735–29 also issued under 5 U.S.C. 552, 553. Section 0.735–26 also issued under secs. 501, 502, Pub. L. 95–521, 92 Stat. 1864, 1867, as amended by secs. 1, 2, Pub. L. 96–28, 93 Stat. 76, 77 (18 U.S.C. 207).

2. Section 0.735–21 is amended as follows:

a. Paragraph (a) is revised.
b. Paragraph (b) is revised.
c. Paragraph (e) is revised.

§ 0.735–21 Acts affecting a personal financial interest (based on 18 U.S.C. 208).

(a) *General.* Except as permitted by paragraphs (b), (c), and (d) of this section, no employee, or special Government employee, shall participate personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to the employee's knowledge, the employee, the employee's spouse, minor child, partner, organization in which the employee is serving as officer, director, trustee, partner, or employee, or any person or organization with whom the employee is negotiating or has any arrangement concerning prospective employment, has a financial interest upon which the outcome of the particular matter will have a direct and predictable effect.

(b) *Granting of ad hoc exemptions.* (1) If an employee, or special Government employee, desires to request an exemption from the prohibitions of paragraphs (a) and (e) of this section, the employee shall fully inform the appropriate agency official under paragraph (b)(6) of this section in writing of the nature and circumstances of the particular matter, the financial interests involved, and any other information relevant and material to the decision to be made under paragraph (b)(2) of this section, and shall request a written determination in advance as to the propriety of the employee's participation in such matter.

(2) If, after examining the information submitted and consulting with the Office of the General Counsel, the appropriate agency official under paragraph (b)(6) of this section determines that the employee, or special government employee, does have a conflict of interest, the official may relieve the employee from participation in the particular matter and so advise the employee in writing; or the appropriate agency official under paragraph (b)(6) of this section may approve the employee's participation in such matter upon advising the employee in writing that the appropriate agency official has determined that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee, and that no provision of law and no regulation in this part would appear to be violated by the employee's participation in the particular matter.

(3) In the written decision, the appropriate agency official under paragraph (b)(6) of this section shall discuss the following factors as appropriate, and any other relevant and material information:

(i) The nature of the financial interest, an employment interest generally being deemed more substantial than an interest of another kind;

(ii) The size of the interest, both in absolute terms and in relation to the employee's other salary or liquid assets, and, in the case of any class of shares, bonds, or other security interests, the size of the interest in relation to the dollar value of the outstanding shares, bonds, or other security interests in the said class; and

(iii) The nature and significance of the services the employee would render to the agency in the particular matter; provided, however, that if the request for an exemption is being made by a special Government employee, the provisions of paragraph (d) of this section will apply.

(4) A copy of each request and response made under the provisions of paragraphs (b) (1) and (2) of this section as a matter of record will be forwarded to the Office of the General Counsel and maintained there. Copies of all documents referred to in paragraphs (b) (1) and (2) of this section will be filed by the holders thereof in their confidential files.

(5) Whenever it can be reasonably anticipated that there will be a need to invoke these procedures repeatedly, and where it also appears that a burden would be placed on the NRC thereby, consideration should be given by the appropriate official under paragraph (b)(6) of this section to dismissal or transfer of the employee, or special Government employee, to another position where the problems will not arise, or to the elimination of the outside interest creating the difficulty. It is expected that the employee or special Government employee concerned will take the initiative in resolving any problem in this area.

(6) Requests for exemptions under this paragraph will be submitted to the appropriate agency official, who is to be determined as follows:

(i) For employees in offices reporting to the Executive Director for Operations, the office director;

(ii) For office directors in offices reporting to the Executive Director for Operations and for members of the staff of the Executive Director for Operations, the Executive Director for Operations;

(iii) For employees in offices reporting to the Commission, the office director;

(iv) For employees of the Advisory Committee on Reactor Safeguards (ACRS), the Atomic Safety Licensing Board Panel (ASLBP), or the Atomic Safety and Licensing Appeal Panel (ASLAP), the Chairman of the ACRS, ASLBP, or ASLAP, respectively;

(v) For the Executive Director for Operations, members of the ACRS, ASLBP, or ASLAP, or the directors of offices reporting to the Commission, the Chairman of the Commission, except in cases involving policy formulation, when the Commission shall decide whether to grant the exemption; and

(vi) For employees in an individual Commissioner's office, that Commissioner.

* * * * *

(e) *Vested pension interests.* Except as permitted by paragraph (b) of this section, no employee shall participate personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter affecting the

financial interest of a company in which the employee holds a vested pension interest. The appropriate agency official under paragraph (b)(6) of this section is not to grant an exemption pursuant to paragraph (b) of this section unless the Office of the General Counsel has reviewed the pension plan and made a determination that the pension interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government, in that as an NRC employee the individual cannot in any fashion influence the amount of the pension.

Dated at Washington, DC, this 12th day of August, 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 87-18852 Filed 8-17-87; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL ELECTION COMMISSION

11 CFR Parts 106, 9001, 9002, 9003, 9004, 9005, 9006, 9007, 9012, and 9031, 9032, 9033, 9034, 9035, 9036, 9037, 9038 and 9039

[Notice 1987-10]

Public Financing of Presidential Primary and General Election Candidates

AGENCY: Federal Election Commission.

ACTION: Final rule: Announcement of effective date and correction of explanation and justification.

SUMMARY: On June 3, 1987 (52 FR 20864), the Commission published the text of regulations which implement the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9001 et seq. and 9031 et seq. The Commission announces that these regulations are effective as of August 18, 1987. In addition, the Commission notes two corrections in the Explanation and Justification published in the June 3 notice.

EFFECTIVE DATE: August 18, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 376-5690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: 26 U.S.C. 9009(c) and 9039(c) require that any rule or regulation proposed by the Commission to implement Chapters 95 and 96 of Title 26, United States Code, be transmitted to the Speaker of the House of Representatives and the President of the Senate prior to final promulgation. If neither House of Congress disapproves the regulation within 30 legislative days after its transmittal, the Commission may finally prescribe the regulations in question. The regulations made effective by this notice were transmitted to Congress on May 26, 1987. Thirty legislative days expired in the House and Senate as of August 3, 1987.

Announcement of Effective Date

11 CFR 106.2, Parts 9001 through 9007, 9012, and 9031 through 9039, as published at 52 FR 20864, are effective as of August 18, 1987.

Correction of Explanation and Justification

The Explanation and Justification published on June 3 and transmitted to Congress inadvertently omitted two changes made by the Commission at its meeting of May 21, 1987. At that meeting, the Commission decided to remove the dates limiting the time period within which it would make determinations that a candidate was inactive under 11 CFR 9033.6. Although the final rule reflected this change, the Explanation and Justification did not. See 52 FR 20869. Thus, the Explanation and Justification for § 9033.6 (52 FR 20869) should read as follows:

Section 9033.6 Determination of Inactive Candidacy. Paragraph (a) has been amended to remove the time limitation on when the Commission may determine that a candidate is no longer actively campaigning in more than one state. If it appears at any time that an individual is not an active candidate under this section, the Commission may make an appropriate determination regarding the candidate's entitlement to matching funds.

The time within which a candidate may respond to a Commission notification under this section has been changed to run from the date of service of the Commission's notice.

In addition, the Commission decided at its May 21 meeting to clarify the Explanation of its changes to 11 CFR 9004.6 and 9034.6, regarding reimbursement for transportation and services provided to media personnel. The June 3 notice included the revised language in the Explanation of section 9004.6 but failed to reflect the same revisions in the Explanation of section 9034.6. Compare, 52 FR 20866 and 52 FR 20871. Therefore, (52 FR 20871) the last sentence of the first paragraph and the first sentence of the second paragraph of the Explanation and Justification for section 9034.6 should read as follows:

Section 9034.6 Reimbursements for Transportation and Services Made Available to Media Personnel * * * Conversely, if the campaign receives the full $220 from the reporter, it may only deduct $200 from the limit because the deduction may not exceed the direct cost to the campaign under the rules that were applicable to the 1984 election cycle.

There are two reasons why the 1984 rules allow campaigns to bill 110% of their direct costs to the media even though only 100% may be offset against the limit. * * *

Dated: August 13, 1987.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 87-18818 Filed 8-17-87; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM

12 CFR PART 205

[Reg. E; Docket No. R-0578]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has amended the requirements applicable under Regulation E to electronic fund transfer (EFT) services initiated by non-account-holding financial institutions (at point of sale, for example) and processed through the automated clearing house system for debiting to a consumer's account. The amendments eliminate the periodic statement requirement for persons that provide EFT services to consumers, but do not hold consumer accounts, if they

(1) Issue a debit card to the consumer that includes an address or telephone number to be used by the consumer to contact the service provider;

(2) Send information needed to identify the transaction in accordance with Regulation E (including the terminal location) to the account-holding financial institution; and

(3) Extend the time periods available to the consumer for notice of errors and lost or stolen debit cards, and give certain additional disclosures.

The amendments will also require account-holding financial institutions to include a description of these EFT transactions on periodic statements provided to their customers.

These amendments were made in response to requests from financial institutions and from service providers, current and potential. Changes to the regulation were proposed by the Board

last August (51 FR 28589, August 8, 1986). The amendments should facilitate the development of point-of-sale EFT services that make use of the automated clearing house system for processing, without imposing substantial compliance costs on financial institutions or significantly reducing consumer protections.

DATES: *Effective Date:* November 15, 1987.

However, to facilitate compliance for account-holding institutions, disclosure of the terminal location will not be required until July 1, 1990. In addition, account-holding institutions with assets of $25 million or less will not be required to comply with any aspect of the regulation as to these transactions (except to cooperate with the service provider in the investigation of errors) until July 1, 1990.

FOR FURTHER INFORMATION CONTACT: Regarding the regulatory changes, contact: Gerald P. Hurst or John C. Wood (Senior Attorneys), Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3667. Regarding the regulatory analysis, contact Frederick J. Schroeder (Economist), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–2584. For Telecommunications Device for the Deaf (TDD) users only, contact: Earnestine Hill or Dorothea Thompson, (202) 452–3544.

SUPPLEMENTARY INFORMATION:

(1) Background

The Electronic Fund Transfer Act (EFTA) (15 U.S.C. 1693 *et seq.*), implemented by Regulation E (12 CFR Part 205), establishes the basic rights, liabilities, and responsibilities of consumers who use electronic fund transfer (EFT) services and of financial institutions that offer such services.

The primary objective of the act is to provide individual consumer rights. The act and the Board's Regulation E require financial institutions, for example, to give initial disclosures concerning their EFT services and to provide receipts and periodic account statements. The act and regulation also limit consumer liability for unauthorized EFTs and require institutions promptly to investigate and resolve consumers claims of EFT errors. In part, Congress had in mind that providing these and other safeguards was important to build public confidence in EFT systems (and thus help ensure their development).

At the same time, the statute requires the Board, in prescribing regulations, to take into account and allow for the continuing evolution of electronic banking services and the technology utilized in such services: and to analyze the effects of the Board's regulations on competition in the provision of electronic banking services among large and small financial institutions, and on the availability of such services to different classes of consumers. The Board is also directed, to the extent practicable, to demonstrate that the consumer protections outweigh the compliance costs. (Section 904(a) of the EFTA.)

The EFTA applies to all types of EFT services provided to consumers. These include debits and credits to consumers accounts through the automated clearing house (ACH) system: telephone bill-payment and home banking services; automated teller machine transactions; and debit-card transactions made at point of sale (POS). The EFTA applies principally to account-holding financial institutions (AHFIs), but Section 904(d) of the act also directs the Board to cover in its regulations other providers of EFT services. The regulation carries out this statutory directive by also covering "any person who issues an access device and agrees with a consumer to provide electronic fund transfer services." (Section 205.2(i) of Regulation E.)

Often the person providing the service—the service provider—and the AHFI join together to offer an EFT service. In such cases the parties will usually contract between themselves to ensure that the obligations imposed by the act and regulation are carried out. But if there is no agreement, the regulation allocates the responsibilities between the service provider and the AHFI. Basically, the regulation requires service providers to comply with all the requirements of the act and regulation that relate to the EFT service.

In recent years, there has been growing interest in an alternative to direct debit, on-line systems for processing point-of-sale transactions, one that makes use of the automated clearing house system. Use of the ACH enables a service provider to access consumer accounts at different financial institutions without having to enter into a specific agreement with *each* AHFI on which it may be collecting funds.

Typically, a POS/ACH service will involve a retailer and a traditional financial institution such as a bank. The retailer, or a bank on the retailer's behalf, will issue the consumer a debit card and personal identification number (PIN). The consumer, in turn, furnishes the retailer with the checking-account number and the AHFI's routing number. In the POS/ACH system, when the consumer uses the debit card to make a transaction at point of sale, the transaction is not immediately posted to the consumer's account, as is often the case in direct debit, on-line systems. Instead, the transaction data are initially stored by the retailer (or the retailer's bank) and batched with other transactions; later, the transaction data are sent through the ACH for collection.

In the past several years, the Board has received inquiries about the Regulation E responsibilities of service providers offering POS/ACH services. The inquiries have focused primarily on the requirement governing periodic statements.

The regulation requires service providers to give consumers a periodic statement at least monthly if EFTs have been made by the consumer and quarterly if no EFT has occurred. Typically, the statement given by the service provider will contain the following information regarding transfers made with the debit card issued by the service provider:

- The consumer's account number.
- Information about each transfer made during the cycle—the amount of the transfer, the date the transfer was made by the consumer, the type of transfer, the location of the electronic terminal, and the name of the payee.
- The amount of any fees or charges for transfers.
- The address and telephone number to be used for inquiries or notice of errors.

(2) The Board's August 1986 Proposal

Service providers and financial institutions interested in developing POS/ACH systems asked the Board to eliminate the periodic statement requirement. They believed that, because of the costs involved, the necessity of sending periodic statements impedes the growth of POS/ACH systems. They said that the requirement is particularly onerous for an institution such as a grocery store or other retailer that does not customarily send customers a periodic statement. They also believed such a statement is unnecessary, and claimed that its cost exceeds the consumer benefits. Much of the information, they noted, also appears on the periodic statement received by the consumer from the AHFI.

In August 1986, the Board published for public comment a proposal to amend Regulation E (51 FR 28589, August 8, 1986) to eliminate the periodic statement requirement for service providers if they met certain conditions. The Board also proposed to require AHFIs to include

descriptions of the POS/ACH transactions on their periodic statements to consumers. (Because Regulation E, until now, has imposed no documentation requirements on AHFIs for POS/ACH transactions, AHFIs currently may show only the amount of the debit and the posting date on periodic statements.) The Board proposed to require AHFIs to identify the service provider as the recipient of the funds debited and to give the terminal location—information that would be received through the ACH.

In publishing the proposal for public comment, the Board suggested that the proposed changes would:

- Eliminate a requirement that may pose a barrier to the development and use of POS/ACH systems (thus limiting new EFT services to consumers).
- Provide continued consumer protection by ensuring that consumers receive certain information from service providers on receipts or in periodic notices, and by ensuring that the detailed transaction identification is on the AHFI's periodic statements.
- Result in benefits to consumers, service providers, and financial institutions, without imposing substantial compliance costs on AHFIs.

The Board expressed special interest, however, in hearing from commenters about the effects that the proposed changes might have on AHFIs, particularly small institutions. The Board's notice specifically solicited comment on compliance costs.

The Board received approximately 350 comments on the proposal; about 65 percent of them opposed the changes. But although the majority of financial institutions and almost all of the financial institution trade associations opposed the changes, many banks and other financial institutions supported them. Even among institutions of similar size, there were those that opposed and those that favored the proposal.

The institutions opposing the proposed amendments believed that they would result in increased costs to AHFIs and would reduce consumer protections. They also suggested that the proposal was unfair since it would remove a cost of offering EFT services for service providers, while increasing the cost for some AHFIs. In addition, some institutions were concerned that facilitating POS/ACH development would limit their opportunities to increase usage of the direct debit, on-line systems—in which the institutions have invested large sums of money—for processing POS transfers.

Other commenters were of an opposite view. They believed the proposed changes would benefit development of EFT services, particularly at the point of sale. Some commenters also expressed the opinion that encouraging POS/ACH systems would benefit smaller institutions that can not afford to develop or join a direct debit, on-line program.

Many institutions had difficulty determining the position that would be in their best interest. This was due in part to the fact that the effects of the proposed changes are difficult to predict with any degree of certainty. Some institutions were divided on the proposal since their retail and wholesale divisions took different positions. The retail divisions of financial institutions operate most of the EFT systems that provide consumer services—including the direct debit, on-line systems that support automated teller machine programs. They were generally concerned that the proposed changes would result in their systems not being used for EFTs at the point of sale. The wholesale divisions, on the other hand, offer EFT services to commercial entities, including automated clearing house services. They viewed the proposed changes as making it easier to develop POS/ACH systems that they could offer to corporate customers, some of whom have expressed an interest in this area.

(3) Discussion of Comments and Analysis

After a review of the comments and further analysis of the issues, the Board has amended Regulation E to make the changes that were proposed. Though it is difficult to predict whether elimination of the service-provider periodic statement requirement will in fact lead to widespread adoption of electronic payments by consumer's, the Board believes that keeping the requirement is clearly inconsistent with this goal. The Board continues to believe that the potential costs to service providers of sending periodic statements is a significant impediment to the development and offering of POS/ACH services by some entities (such as grocers and other retailers that do not currently provide periodic statements).

The information given on the service provider's statement is, to a great extent, duplicative of information on the statement the consumer receives from the AHFI. The Board believes that the information that is not duplicative (in particular, the address and telephone number to be used for reporting problems) can be given to the consumer by the service provider effectively, and at a much lower cost, through additional disclosures on debit cards and on transaction receipts. With these increased disclosures, there should be no significant reduction in the protections now afforded consumers under the EFTA and Regulation E.

The compliance costs to AHFIs for capturing and furnishing the required information to consumers can be minimized by providing a long transition period in which institutions can make the operational changes needed to provide the transaction data on periodic statements.

The amendments that the Board has adopted include modifications to the August 1986 proposal. These modifications respond to some of the concerns raised in the comments; they are intended to minimize further the potential costs to AHFIs and the possibility of consumer confusion. The modifications are discussed in the material that follows. However, other concerns raised in the comments—such as the increased costs from returned ACH items and the monitoring of accounts with transaction limitations—do not result from the proposed changes to Regulation E. In the Board's opinion, these concerns are best addressed by the industry and market forces, and not by regulation.

1. Periodic Statement Costs

Under the amendments, all AHFIs will have to identify POS/ACH transactions on their periodic statements in accordance with Regulation E. Currently, they have no such obligation under Regulation E, although some institutions have the capability and do so. As a practical matter, all financial institutions probably post the amount and the date on which they debit the consumer's account, just as they do for checks. Under the amendments, AHFIs will have to identify the transfer by showing (in addition to the amount and date) the name of the payee and the terminal location.

Some commenters suggested that any increased operational costs resulting from the proposed changes would be small. They maintained that most financial institutions currently offer EFT services and, as a result, already have systems in place that are capable of capturing and furnishing transaction data to the consumer in accordance with Regulation E.

Many other commenters, however, claimed that the required changes to periodic statements would result in substantial costs to AHFIs. Frequently mentioned were costs related to operational changes needed for AHFIs to furnish transaction identification information. These commenter's

maintained that financial institutions that handle their data processing in-house will incur expenses in modifying their systems to process the Regulation E transaction information. Operational changes may be necessary, for example, to enable institutions to capture the data, to retain it for the length of the cycle, and to print it on the consumer's periodic statement. Financial institutions that use a service bureau for transaction processing may not incur costs for systems changes, but may be charged higher fees by their service bureau.

A number of commenters addressed the impact that the proposal might have on small institutions. Most of these commenters believed that the proposal would have a disproportionately adverse impact on small institutions due to their limited ability to absorb the added compliance costs. Some commenters singled out certain small institutions, that do not currently have to comply with the regulation, as particularly disadvantaged by the proposal. Regulation E now provides an exemption for preauthorized transfers to or from an account held by a financial institution with assets of $25 million or less. (Preauthorized transfers include, for example, debits such as insurance premiums to an insurance company, and credits such as salary payments deposited by an employer). Thus, if the institution's involvement in EFT is limited to accepting preauthorized ACH items, it is not currently subject to Regulation E.

Based on the comments and the issues raised, the Board notes that the impact on individual institutions probably depends on the extent to which the institution is now participating in EFT programs. Many institutions currently give periodic statements that comply with Regulation E's transaction description requirements.

In addition, because of recent developments, participants in the ACH network are already subject to identification requirements parallel to those that will be imposed by the amendments to Regulation E. The National Automated Clearing House Association (NACHA)[1] last year amended the rules governing POS/ACH transfers, effective April 6, 1987. The revised NACHA rules call for financial institutions that originate POS/ACH transfers to provide to account-holding institutions all of the information that will be required by the Board's changes to Regulation E. (That is, the originating institutions must send detailed information through the ACH so that receiving institutions can describe transactions in accordance with Regulation E.) The rules also call for the receiving institutions to provide consumers with the transaction descriptions required by Regulation E, including the terminal location, on periodic statements.

It is also clear that many financial institutions are not now capturing the terminal location for inclusion on periodic statements. Although these institutions have been receiving ACH transactions for some time (for example, direct deposit of payroll) they have not had to capture any data carried in the ACH "addenda record"— the additional data that accompany the payment record portion of the ACH transaction. (The addenda record contains, among other things, the terminal location for POS/ACH transactions.) Among them, some institutions now have the operational capability to do so, others do not.

Modifications to Proposal. Although many financial institutions already provide other EFT services that require them to comply with Regulation E, listing the terminal location for POS/ACH transfers could be a problem for some of them. The comments and the results of a survey carried out by the Federal Reserve Banks earlier this year support this conclusion. Consequently, the Board has modified the proposal to minimize the impact of the regulatory changes for AHFIs.

The Board believes that any problems and costs associated with compliance will be significantly reduced if AHFIs have a sufficiently long period of time to implement the changes. Therefore, the Board is giving account-holding financial institutions until July 1, 1990, to capture and print the terminal location on periodic statements. Given the speed with which technological developments are occurring, many institutions will be making a significant number of other changes to their computer systems over the next several years. The delayed effective date for disclosure of the terminal location will enable them to implement the operational modifications as they make these other systems changes.

In addition, because the regulatory changes could have a disproportionately greater adverse impact on very small financial institutions, the Board is exempting institutions with assets of $25 million or less from compliance with *all* regulatory requirements for POS/ACH transactions until July 1, 1990. As noted earlier, Regulation E currently exempts from coverage preauthorized credits and debits received by these institutions. Extending this exemption to POS/ACH transfers on a temporary basis will ensure that many small institutions whose EFT involvement is limited to the acceptance of items through the ACH— will continue to have no compliance responsibility under the regulation for the next three years. Again, this action will make it possible for institutions to develop a compliance program and make whatever operational changes need to be made, either in their internal programs or those of an outside processor, over an extended period.

Service providers have not been given a comparable delay for complying with the revised regulation. Service providers will have to transmit the terminal identification for POS transfers in order to take advantage of the exception from the periodic statement requirement. This transmittal will benefit both AHFIs and consumers. It will allow AHFIs that are now capable of capturing the information and printing it on periodic statements to do so, thereby possibly avoiding some questions about transactions. And even if an AHFI chooses not to print the location on the statements during the transition period, it will have the information for reference purposes in case of inquiries.

The Board believes that modifying the periodic statement requirements and providing long lead times for AHFIs to comply fully with the regulation will not significantly reduce consumer protections. The number of POS/ACH programs that are currently in place, and likely to be in place in the next few years, is small.

2. Error Resolution Concerns

A periodic statement given to an EFT customer serves multiple purposes. It summarizes the electronic transfers that have taken place during the statement period, and allows the consumer to verify the accuracy of the entries. The statement also contains the address and telephone number to be used if the consumer has a question, finds an error, or needs to report unauthorized transfers or the loss or theft of a debit card. In many cases, the statement also may contain a brief description of the

[1] NACHA is the national rule-making organization for the automated clearing house network. Through member ACH associations, thousands of financial institutions and corporations have contractually agreed to be bound by the *NACHA Operating Rules and Guidelines*. In addition, the *NACHA Operating Rules* are incorporated into each Federal Reserve Bank's Uniform Operating Circular on Automated Clearing House Items.

error resolution procedures available under the EFTA.

With the adoption of these amendments to Regulation E, consumers will receive periodic statements, identifying the recipient of a POS/ACH transfer, from the AHFI rather than the service provider. They will not, however, be receiving a monthly reminder of the telephone number and address to be used for inquiries, error allegations, or reports of lost or stolen cards.

The Board's August 1986 proposal sought to avoid potential consumer problems by requiring service providers that did not issue periodic statements to make increased disclosures to consumers—both in their initial disclosure statements and on receipts or quarterly notices. In addition, the proposal called for extended time periods for consumers to give service providers notice of errors or lost or stolen debit cards. (Without an extension of the time periods, consumers who mistakenly notified the AHFI of a problem could face increased liability for unauthorized EFTs and the risk of losing certain error resolution rights.)

Nonetheless, some industry commenters expressed concern that the proposed changes might lead to consumer confusion about error resolution responsibility. (No comments were received from any consumer groups or individual consumers.) They suggested that this could result in frustration for consumers when AHFIs are unable to resolve an alleged error that began with the service provider. They thought it would also impose a burden on the AHFI, which could face substantially increased costs for responding to consumer inquiries and error allegations about the service provider's EFT service. Many also suggested that, without a periodic statement from the service provider, consumers might find it more difficult to verify or audit POS/ACH transactions. Other commenters believed that even though the service provider has the sole responsibility to resolve POS/ACH transaction errors, AHFIs would probably also, as a practical matter, become involved in the dispute resolution process. Since the AHFI's telephone number, not the service provider's, would appear on the periodic statement being given, it was considered likely that the consumer would address inquiries to the AHFI. In addition, because AHFIs will want to maintain good customer relations, they will likely attempt to resolve problems for their customers.

In analyzing the potential impact of the proposed changes in Regulation E, it is necessary to separate problems and concerns that might be caused by elimination of the periodic statement from those that will exist in any event. The fact is that any debit transaction, whether by check or POS/ACH, will result in funds being taken from an account held by the AHFI. As a result, consumers are likely to call the financial institution holding their account if an error occurs, whether or not the service provider has given a periodic statement.

Modifications to Proposal

The Board believes that, in the interest of AHFIs and consumers, it is important to minimize the possibility that consumers look to the AHFI as the party responsible for the POS/ACH service. The proposal sought to do so through increased initial disclosures and reminders from the service provider on receipts or quarterly notices. The Board has made two modifications to the proposal to further ensure that the consumer will know whom to notify in case of a problem.

The first modification is to require the service provider to issue its own debit card to consumers, and to include on the card its name and an address or telephone number that may be used to contact the service provider. The fact that the POS/ACH service uses a card issued by the service provider, not the AHFI, will avoid the perception of AHFI responsibility that might result if a service provider could offer a service using a card issued by the AHFI. In addition, the consumer will have readily available an address or telephone number for contacting the service provider.

The second change also relates to the telephone number and address. The proposal would have given service providers the option of putting this information on receipts or in a quarterly notice. The Board has amended the regulation to require that the information be given on each receipt. (The act and regulation already require all financial institutions that offer EFT services to give consumers an annual notice of error resolution rights, unless a summary notice is included on each periodic statement.)

The additional information on the debit card, on receipts, and in initial disclosures should clearly and adequately inform the consumer that the service provider is responsible for the POS/ACH service and is to be notified in the event of a problem. As a result, the possibility that consumers will be confused when an error occurs and will mistakenly look to the AHFI for resolution should not be a significant problem.

3. Other AHFI Costs

A few commenters maintained that significant costs could result in other areas. Several commenters indicated that institutions would incur additional costs to return ACH items that overdraw accounts, and suggested that the number of returns would probably increase. A number of commenters said that it would be expensive to monitor accounts to ensure that transaction limitations under Regulation D are not exceeded.

The Board agrees that if POS/ACH systems become widespread and transaction volume increases, the potential exists for increased problems of the types cited by the commenters. However, since a few retailers are currently offering point-of-sale services using the ACH. AHFIs already face some costs for returning ACH items, monitoring accounts that have transaction limitations, and responding to consumer inquiries and error resolution requests. Also, it is not the issuance or nonissuance of a periodic statement by the service provider that gives rise to these costs; the costs result primarily from the fact that AHFIs hold the consumers accounts being debited for POS/ACH transfers.

Moreover, if the industry acts to ensure that systems are set up properly, while POS/ACH systems are still in their infancy, the difficulties can be minimized. For example, if the originating financial institution (the one setting up a POS/ACH system for a retailer) makes sure that the retailer gives customers access only to a checking or other transaction account, AHFIs will not experience the problem of receiving POS/ACH transfers on non-transaction accounts.

In the end, AHFIs and other participants in the system are free to charge for the services that they provide and to recover the costs they incur. The Board believes that continuing to require that a service provider give a periodic statement is not the answer to these potential problems.

4. Other Concerns

Security. Some of the commenters expressed concern about added risk to the security of EFT systems and individual access devices if Regulation E were amended. They believed the proposal could indirectly result in a lessening of consumer confidence in EFT systems, in general, if problems were to arise. The reason most often given for these concerns was that service providers might permit consumers to use

an access device issued by the AHFI to access accounts through the POS/ACH system. These commenters feared that, in such a case, the service providers might fail to implement adequate safeguards in the system—for example, encryption of personal identification numbers.

The Board's requirement that service providers issue their own debit cards, as a condition to not giving periodic statements, should alleviate some of these concerns. As a practical matter, because the consumer's liability for unauthorized transfers is limited and the AHFI has none in this case, it is the service provider that bears the risk of loss for unauthorized POS/ACH transfers. Thus, there is a substantial basis for believing that service providers will act in their own interest to develop secure systems.

Consumer Liability and Costs. Under the EFTA and Regulation E, the consumer s liability for unauthorized use of an access device is determined by the promptness with which the consumer reports the loss or theft of the device. Liability is limited to $50 if the consumer reports within 2 business days after learning of the loss or theft. It can increase to $500 for unauthorized transfers that take place after 2 business days if the consumer delays reporting (and may be unlimited for unauthorized transfers taking place more than 60 days after unauthorized transfers appear on a statement). Some commenters suggested that the proposed regulatory changes could result in increased losses for consumers. If a consumer is confused about who is responsible for the POS/ACH service, the consumer might initially notify the wrong party about the loss or theft. Substantially higher dollar losses could occur as a result, because the consumer could easily miss the 2-business day deadline.

The Board believes that the actions taken to ensure that the consumer knows whom to notify in case of errors will be equally effective in ensuring that the consumer will notify the service provider when a debit card is lost or stolen. In addition, the amendments provide for longer time periods for notification of a lost or stolen card for these POS/ACH transactions. Consumers should not be exposed to increased liability for unauthorized EFTs under the amendments.

Another concern raised was that the proposal would lead to increased costs for consumers, as AHFIs passed on costs incurred as a result of the regulatory changes. Supporters of the proposal, on the other hand, felt that the proposed changes would benefit consumers, since the cost of payment processing should fall as POS/ACH arrangements become more widespread. These savings would be passed on to consumers in the form of lower priced goods and services, for instance.

AHFIs do of course have the option of passing on costs related to POS/ACH transfers by imposing fees for account services. A consumer would then have various choices: pay the new transaction fees imposed by the AHFI, discontinue use of the POS/ACH service, or, if fees varied among institutions, change AHFIs. There is also evidence to suggest that the availability of the POS/ACH payment alternative may offer consumers the chance to pay a lower price for purchases when using this payment option. For example, at least one gasoline company plans to give customers the cash discount price when they pay with a debit card.

Fair Competition. Many commenters complained that the proposed changes would give service providers an unfair competitive advantage over AHFIs in the offering of EFT services by reducing costs for service providers while increasing costs for AHFIs. A large number of them believed that the proposal would *not* provide any benefits to AHFIs, and only a few suggested that the proposal might result in increased competition.

By facilitating the development and implementation of POS/ACH systems by service providers, the regulatory changes could increase competition in the offering of EFT services. On balance, it is not clear that they will significantly increase existing burdens for AHFIs. Nor is it clear that the changes will create *no* benefits for AHFIs. In the long run, the substitution of EFT transactions for check transactions should result in lower costs to financial institutions.

(4) *Summary.* In conclusion, the Board is adopting in final form the proposed changes to Regulation E that were published in August 1986. To address some of the concerns expressed by the commenters, the Board is modifying certain requirements and imposing additional conditions on service providers. The Board is delaying implementation of certain aspects of the proposal in order to minimize the compliance costs to AHFIs.

The following is a summary of the amendments to Regulation E adopted by the Board:

(1) A service provider—a person that issues an access device and agrees to provide EFT services to a consumer, but has no agreement with the consumer's account-holding financial institution—will not be required to issue a periodic statement summarizing the transactions made if it:

(i) Issues a debit card that bears the name of the service provider and an address or telephone number that can be used by the consumer to contact the service provider, and

(ii) Provides detailed transaction data to the AHFI in the format prescribed by the ACH system, so that the AHFI can comply with the transaction identification requirements of Regulation E.

(2) To take advantage of the exception from the periodic statement requirement, the service provider will also be required to do the following:

(i) Provide the consumer with certain additional information in initial disclosure statements,

(ii) Include the telephone number and address for reporting errors and notice of lost or stolen cards on or with terminal receipts, and

(iii) Extend the time period for reporting a lost or stolen debit card under § 205.6(b)(1) from 2 business days to 4 business days, and extend the time periods under § 205.6(b)(2) and § 205.11(b)(1) from 60 days to 90 days.

(3) AHFIs will be required to describe POS/ACH transactions on consumer periodic statements in accordance with the transaction identification requirements of Regulation E, except that the terminal identification need not be given until July 1, 1990. In addition, financial institutions with assets of $25 million or less will not be required to comply with any requirements as to POS/ACH transactions until July 1, 1990.

5. Regulatory Analysis

The amendments to Regulation E are primarily intended to facilitate the long-term development of electronic fund transfer systems by eliminating duplication of certain documentation currently provided to consumers. By eliminating the periodic statement requirement for service-providing institutions (such as supermarkets, gasoline retailers, and other merchants) that are not the holders of consumer transaction accounts, the amendments will eliminate some duplication of information. Because consumers will continue to receive periodic statements reflecting electronic fund transfers to and from their accounts, they will experience no loss of information or required documentation. Consequently, there will be no elimination of consumer benefits associated with the periodic statement requirements of the act. Potential cost savings to non-account-holding service providers and to the payments system as a whole are likely to be substantial.

1. Effect on Account-Holding Financial Institutions

The cost burden of providing the additional information is not likely to be great for AHFIs as a group. Most POS transactions will involve accounts at financial institutions that already are able to comply with the periodic statement requirements of the act and regulation. Available evidence indicates that 79 percent of all commercial banks already offer at least one EFT service that requires compliance with Regulation E, and larger banks, which hold most consumer asset and transaction accounts, are even more likely to offer EFT services.[2]

The amendments are not expected to lead to a significant increase in the number of periodic statements that AHFIs will have to deliver to consumers. Most depository institutions already provide monthly periodic statements for transaction accounts. The economic burden for each institution will depend, in part, on its ability to disclose the required information on those statements. Some institutions will also have to devote additional resources to data processing, error resolution, and other functions. The aggregate incremental economic burden on AHFIs as a group is expected to be small in comparison to other compliance costs associated with Regulation E.[3] Nonetheless, certain AHFIs may incur substantially increased costs from having to include additional information in periodic statements, and some institutions will have to issue periodic statements more often.

Financial institutions may be able to recover some of the increased compliance costs directly from consumers. Account-holding institutions may choose to assess charges on consumers who use debit cards issued by service providers.[4] Whether such charges will be assessed is not known because pricing actions will ultimately reflect competitive market conditions.

Concerns about the ability of payment system participants to send, receive, and process the required disclosure information are mitigated by recent developments in EFT message interchange standards. Significant progress has been made toward standardization of electronic debit and credit items. In early 1987, the National Automated Clearing House Association (NACHA) introduced new rules that require all financial institutions that participate in the ACH to identify point-of-sale transactions in accordance with the requirements of Regulation E. This development ensures that electronic items originated through the ACH include all information required for account-holding institutions to make periodic statement disclosures in compliance with Regulation E.

2. Effect on Small Financial Institutions

It does not appear that small financial institutions as a group will be unduly disadvantaged by the amendments. Many small institutions, because they already participate in automated teller machine networks, currently are able to comply with the periodic statement requirements of the act and regulation. In any case, small institutions not currently able to disclose the required information with their periodic statements are likely to be able to get assistance at reasonable cost from their correspondent banks or from service bureaus that specialize in data processing applications for small financial institutions.

Furthermore, to mitigate the compliance burden that might arise, the Board is exempting all small institutions (those with assets of $25 million or less) until July 1, 1990, from providing any new documentation required by the changes.[5] Similarly, all institutions, regardless of size, are exempted until July 1, 1990, from the requirement to disclose the physical location of point-of-sale terminals involved in EFT transactions; among the changes, that disclosure requirement appears to present the most burdensome implementation problem to financial institutions in general. The exemptions give institutions approximately three years to come into full compliance with the changes.

3. Effect on Service Providers

For service-providing institutions (such as supermarkets, gasoline retailers, and other merchants) that issue debit cards but do not hold consumer accounts, the cost savings resulting from the amendments are expected to be substantial. Service providers will be able to offer point-of-sale services to consumers without having to enter into agreements with each financial institution holding consumers accounts. In addition, to the extent that payments cleared through the ACH are less costly than other methods of payment, service providers will be better able to convert transactions from cash, check, and credit card payments to electronic point-of-sale payments.[6]

The greatest economic benefit of the amendments is expected to arise in the future as the volume of POS transactions increases. More potential service providers are likely to be able to justify offering consumers POS services as a result of the amendments. It is expected that the amendments will have a salutary effect on the evolution of the payments system by reducing the average system-wide compliance cost per POS transaction.

By eliminating periodic statements for service providers, the amendments are expected to provide a substantial economic benefit through cost savings to service providers and to the payments system as a whole. The amendments will standardize the way in which documentation of EFT point-of-sale transactions is provided to consumers by requiring that AHFIs disclose all the required information. To ensure that their customers are informed about procedures for error resolution, service providers are required to inform consumers, in expanded disclosures, of the telephone number and address consumers should use to report transaction errors or lost or stolen debit cards.

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[2] As of December 31, 1986, banks with assets of $100 million or more held over 84 percent of all U.S. banking assets. More than 96 percent of those banks already offer at least one EFT service that requires compliance with Regulation E.

[3] Board staff conducted a survey of financial institutions in 1981–82 to determine the magnitude of Regulation E compliance costs. The survey revealed that postage and printing or purchase of statements accounted for 27 percent of total ongoing compliance costs, and that development of statement forms and disclosure documents accounted for 11 percent of start-up compliance costs. See Frederick J. Schroeder, *Compliance Costs and Consumer Benefits of the Electronic Fund Transfer Act Recent Survey Evidence*, Staff Study no. 143, Washington, DC: Board of Governors of the Federal Reserve System, April 1985.

[4] Similar charges are already commonly assessed when a consumer uses an ATM not owned or operated by his or her financial institution. The average service charges per transaction for various kinds of ATM transactions performed on other institutions ATMs are detailed in the *1986 Retail Deposit Services Report*, Washington, DC, American Bankers Association, March 1986, table 128.

[5] As of December 31, 1986, 4,697 commercial banks (34 percent), 8 mutual savings banks (2 percent), 572 savings and loan associations (17 percent), and 14,773 credit unions (92 percent) had total assets of $25 million or less. While large in number, those small institutions together controlled only 3 percent of the total assets of U.S. financial institutions and, consequently, a small share of total consumer transaction accounts that might be affected by Regulation E.

[6] For a discussion of the costs of ACH and other means of payment, see David B. Humphrey, *The U.S. Payments System: Costs, Pricing, Competition and Risk*, Monograph Series in Finance and Economics, no. 1984½, New York: Salomon Brothers Center for the Study of Financial Institutions, Graduate School of Business, New York University, 1984.

4. Effect on Competition

Some commenters alleged that the amendments would give service providers an unfair competitive advantage over financial institutions in the provision of point-of-sale EFT services. While statement issuance costs for service providers will be eliminated, and compliance costs for financial institutions as a group are likely to increase, the overall effect on competition is not clear. Financial institutions currently provide to consumers basic documentation of transactions from their accounts that are initiated electronically at point of sale and sent by ACH; the additional documentation required by the amendments may be viewed as a service enhancement, and consumers may be willing to pay for it through fees or other account-pricing mechanisms. To the extent that such ACH items substitute for and are cheaper to clear than paper checks, financial institutions may enjoy a long-term reduction in the cost of clearing consumer payments. Furthermore, many financial institutions may be able to profit from the wholesale provision of ACH clearing to service providers that issue POS debit cards. It is expected that market forces will guide both service providers and financial institutions to the optimal supply and pricing of various consumer payment alternatives. However, an immediate effect of the amendments may be to place some financial institutions at a cost disadvantage in their competition with service providers.

5. Effect on Consumers

Available evidence suggests that consumers are satisfied with their EFT accounts. Board-sponsored consumer surveys conducted in 1981 and 1983 showed that the number of account errors and unauthorized transfers is negligible both in absolute terms and relative to the volume of EFT transactions occurring in the payments system.

Data from the Board's Consumer Complaint Control System offer further evidence that consumers have no serious problems with EFT. Of the 2,400 complaints processed in 1986, 94 involved electronic fund transfers. The Federal Reserve System forwarded 32 of those complaints to other agencies for resolution; of the remaining 62, only 2 involved a possible violation of Regulation E.

Because the amendments ensure that consumers will continue to receive all the disclosures required by Regulation E, consumers will experience no loss of information and, consequently, no reduction in the benefits intended by the act.

6. Conclusion

On balance, the amendments are expected to rationalize the way in which consumers receive the periodic statement disclosures required by Regulation E. With the amendments, the payments system as a whole is likely to realize significant cost savings as electronic point-of-sale transactions increase in volume and relative importance. Consumers are likely to benefit from lower transaction costs and increased efficiency in the payments system as the volume of electronic point-of-sale transactions increases. Moreover, with the amendments, there will likely be no loss of the consumer protections provided by the act.

List of Subjects in 12 CFR Part 205

Banks, Banking, Consumer protection, Electronic fund transfers, Federal Reserve System, Penalties.

Regulatory Text

Pursuant to the authority granted in section 904 of the Electronic Fund Transfer Act, 15 U.S.C. 1693b, the Board amends Regulation E, 12 CFR Part 205, as follows:

PART 205—[AMENDED]

1. The authority citation for Part 205 continues to read as follows:

Authority: Pub. L. 95–630, 92 Stat. 3730 (15 U.S.C. 1693b).

2. Section 205.14 is amended by revising paragraphs (a)(2) and (b) as follows:

§ 205.14 Services Offered by Financial Institutions Not Holding Consumer's Account.

(a) *Compliance by service-providing institution.* * * *

(2) Sections 205.7, 205.8, and 205.9 shall require the service-providing institution to provide those disclosures and documentation that are within its knowledge and the purview of its relationship with the consumer. The service-providing institution need not furnish a periodic statement to the consumer under § 205.9(b), if the service-providing institution:

(i) Issues a debit card, to be used by the consumer to initiate electronic fund transfers, that bears the name of the service-providing institution and an address or telephone number that can be used to contact the service-providing institution;

(ii) Transmits the applicable transaction identification information specified by § 205.9(b)(1) to the consumer's account-holding institution, in the format prescribed by the automated clearing house system used to clear the fund transfers;

(iii) Discloses to the consumer, in addition to the information required by § 205.7, that the service-providing institution (not the account-holding institution) is responsible for all electronic fund transfers made with the debit card, and that all inquiries and error notices related to such transfers should be directed to the service-providing institution; that the service-providing institution will not issue a periodic statement, and that the consumer should retain all terminal receipts to verify transactions; and that the consumer must notify the service-providing institution concerning loss or theft of the debit card;

(iv) Provides on or with the receipts required by § 205.9(a) the address and telephone number to be used for inquiries and error notices and for reporting the loss or theft of the debit card; and

(v) Extends the time period set forth in § 205.6(b)(1) for notice of loss or theft of a debit card, from 2 business days to 4 business days after the consumer learns of the loss or theft; and extends the time periods set forth in §§ 205.6(b)(2) and 205.11(b)(1) for reporting unauthorized transfers or alleged errors, from 60 days to 90 days following the transmittal of a periodic statement.

* * * * *

(b) *Compliance by account-holding institution.* An account-holding institution described in paragraph (a) of this section need not comply with the requirements of the act and this regulation with respect to electronic fund transfers to or from the consumer's account made by the service-providing institution, except that the account-holding institution shall:

(1) Comply with § 205.9 by providing a periodic statement and describing each transaction from the service-providing institution that is debited or credited to the consumer's account in accordance with § 205.9(b);[13] but the account-holding institution has no liability for failure to provide this information if the failure is due to its not having received the necessary information from the service-providing institution in the prescribed format; and

[13] Account-holding institutions shall not be required to furnish the terminal location as part of the transaction description until July 1, 1990. In addition, account-holding institutions with assets of $25 million or less shall not be required to comply with section 205.9(b) until July 1, 1990.

(2) Comply with § 205.11 by promptly providing to the service-providing institution, upon its request, information or copies of documents required for the purpose of investigating alleged errors or for furnishing copies of documents to the consumer; and by honoring debits to the account in accordance with § 205.11(f)(2).

* * * * *

3. Appendix A is amended by revising the introductory language and by adding section A(11) as follows:

APPENDIX A—Model Disclosure Clauses

This appendix contains model disclosure clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of §§ 205.5 (a)(3), (b)(2), and (b)(3), 205.6(a)(3), 205.7, and 205.14(a)(2).

* * * * *

SECTION A(11)—Disclosure From Service-Providing Institution That Does Not Send Periodic Statements (§ 205.14(a)(2))

ALL QUESTIONS ABOUT TRANSACTIONS MADE WITH YOUR (NAME OF CARD) CARD MUST BE DIRECTED TO US (NAME OF SERVICE PROVIDER), AND NOT TO THE BANK OR OTHER FINANCIAL INSTITUTION WHERE YOU HAVE YOUR ACCOUNT. We are responsible for the (name of service) service and for resolving any errors in transactions made with your (name of card) card.

We will not send you a periodic statement listing transactions that you make using your (name of card) card. The transactions will appear only on the statement issued by your bank or other financial institution. SAVE THE RECEIPTS YOU ARE GIVEN WHEN YOU USE YOUR (NAME OF CARD) CARD, AND CHECK THEM AGAINST THE ACCOUNT STATEMENT YOU RECEIVE FROM YOUR BANK OR OTHER FINANCIAL INSTITUTION. If you have any questions about one of these transactions, call or write us at (telephone number and address) (the telephone number and address indicated below).

IF YOUR (NAME OF CARD) CARD IS LOST OR STOLEN, NOTIFY US AT ONCE by calling or writing to us at (telephone number and address).

By order of the Board of Governors of the Federal Reserve System, August 12, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-18788 Filed 8-17-87; 8:45 am]

BILLING CODE 6210-01-M

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12 CFR Part 211

[Docket No. R-0610]

Regulation K; International Banking Operations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule and request for comment.

SUMMARY: The Board has revised its regulation governing permissible foreign investments of U.S. banking organizations to permit investors to acquire from foreign governments ownership of certain foreign companies engaged in nonfinancial activities in the context of exchanging debt obligations of the government for equity ownership interests in the companies. The Board is continuing its examination of regulations governing debt-for-equity investments in heavily indebted countries and requests comments on issues related to such investments.

DATES: The final rule is effective August 18, 1987. Comments are requested on or before September 30, 1987.

ADDRESS: All comments, which should refer to Docket No. R-0610, should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, or should be delivered to the Office of the Secretary, Room 2223, Eccles Building, 20th Street and Constitution Avenue, NW., between the hours of 8:45 a.m. and 5:15 p.m. weekdays. Comments may be inspected in Room 1122, Eccles Building, between 9:00 a.m. and 5:00 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Ricki Rhodarmer Tigert, Assistant General Counsel (202/452-3428); Kathleen O'Day, Senior Counsel (202/452-3786), Legal Division; or James Keller, Manager, International Banking Applications (202/452-2523), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired *only*, Telecommunications Service for the Deaf, Earnestine Hill or Dorothea Thompson, (202/452-3544).

SUPPLEMENTARY INFORMATION: Under the Board's regulations, U.S. banking organizations have substantial authority to make investments in foreign financial companies, including investments resulting from debt-for-equity swaps. Generally under Regulation K, a U.S. banking organization may hold as much as 100 percent of the shares of a financial company and up to 20 percent of the shares of nonfinancial companies.

The Board has had these regulations under review in connection with proposed debt-for-equity swaps in heavily indebted developing countries. The revisions adopted are the first result of this review. The Board is continuing its examination of these regulations and invites comments on issues related to debt-for-equity swaps as part of this review. Such comments are requested by September 30, 1987. The Board will consider the comments as part of its continuing evaluation of Regulation K. In addition, at the request of several members of the Senate Committee on Banking, Housing, and Urban Affairs, the Board will be preparing a report on debt-for-equity issues and will take the comments into account in preparing this report.

Involvement by U.S. banking organizations in debt-for-equity transactions has taken three forms. First, U.S. banks have earned fees by acting as brokers between other banks and multinational companies seeking to make equity investments in developing countries. Second, some U.S. and foreign banking organizations making portfolio adjustments have sold loans to other potential investors, usually multinational corporations that have in turn used them to make debt-for-equity investments in developing countries. Substantial debt-for-equity investments have been made by multinational companies because such investments have been viewed as a natural extension of their business operations. Finally, U.S. banking organizations have themselves made limited debt-for-equity investments under Regulation K.

Some countries with substantial debts to foreign creditors allow or encourage a portion of those debts to be converted into equity investments in those countries. The companies available for investment include nonfinancial companies that are currently state-owned. Private investment in such companies may provide some benefits to the countries by reducing economic inefficiencies and governmental subsidies.

A number of U.S. banking organizations are interested in making controlling investments under these programs in foreign companies that are not engaged in banking or financial activities. The Board has determined that in the following circumstances banking organizations may purchase up to 100 percent of the shares of a nonfinancial company:

—The company must be acquired from a foreign government;

—The country in which the company is located must be a country that has restructured its sovereign debt obligations to foreign creditors since 1980;

—The ownership interest in the companies acquired must be divested as soon as practicable and no later than five years from the date of acquisition, unless the Board extends

the time for good cause for up to a total of five additional years; and

—The investment must be held through a bank holding company.

The above framework provides a basis under which U.S. banking organizations may make investments in foreign companies that are not engaged in permissible activities under Regulation K through foreign government-sponsored debt-for-equity conversion programs. The Board has amended Regulation K to reflect this framework.

The liberalizing amendment would permit investments to be made in companies being privatized by a foreign government using sovereign debt held by the banking organization. If there are instances in which a program of debt-for-equity conversions established by the government of a heavily indebted developing country requires that new money be invested in addition to the proceeds of the debt obligation that is swapped, the Board will consider such investments on a case-by-case basis.

Under the amendment to Regulation K, U.S. banking organizations will be able to make investments in companies being privatized in eligible countries. These would include countries that since 1980 have rescheduled external sovereign debt.[1] The amendment would not allow, for example, a U.S. banking organization to buy a controlling interest in a company in an industrialized country where the company is engaged in activities other than those permissible under Regulation K, even if that company is in the process of being privatized.

Because the amendment is intended to provide flexibility in managing portfolios of loans to heavily indebted countries and is not intended to permit permanent investments in nonbank concerns, the equity interests acquired under this proposal must be divested after a temporary period when it becomes feasible. The debt-for-equity conversion programs usually have restrictions on repatriation of dividends and capital; the repatriation restrictions do not, however, prevent the sale of such companies to other foreign non-residents. In light of the ability to divest the company even within the period of repatriation restrictions, the Board has determined that a reasonable holding period appears to be five years. The Board retains the discretion to grant additional extensions of time totaling five additional years for good cause, normally in one-year increments.

Because this amendment would permit a banking organization to take controlling interests in commercial and industrial companies, even if only for a limited period of time, the Board determined that such investments should be held through the bank holding company and not through the bank itself. This form of ownership attempts to erect an effective barrier between the bank and the commercial and industrial activities of the companies to be acquired. It does this in several ways: the nonbanking activity is further isolated from the bank; ownership through the bank holding company is intended to indicate that the nonbank is not protected by the federal safety net available to banks; and the restrictions of section 23A of the Federal Reserve Act (12 U.S.C. 371c) apply as a matter of law to transactions between banks and affiliated nonbanks. In several previous cases involving non-traditional activities for banking organizations, the Board has required that the investment be held through the bank holding company. *Citibank Overseas Investment Corporation*, 70 Federal Reserve Bulletin 168 (1984); 71 Federal Reserve Bulletin 269 (1985).

Because this new investment authority would permit active involvement of a banking organization in the operations of commercial companies, the Board believes that a number of prudential measures will make an initial contribution toward limiting potential adverse effects, such as conflicts of interest and unsound banking practices.

There are several reasons for these concerns. For example, the affiliation itself could cause the banking organization to extend credit to the nonbank affiliate on other than market terms, even if the affiliate is not creditworthy. Moreover, in instances where the banking organization has joined with one or more other investors to purchase a nonbank affiliate, a bank could feel the same pressure to lend preferentially to the investing partners in order to increase the likelihood of success of the company in which they had invested.

Moreover, experience shows that banking organizations generally stand behind the losses of affiliated institutions in order to protect the international reputation of the organization as a whole. In some instances this has led to losses that have been a multiple of the investments in the affiliated organization. In the case of investments in commercial enterprises, in which banking organizations have little if any expertise, there could be an even greater risk that losses could occur.

As one approach to dealing with these concerns, the Board believes that any loans to the nonbank company acquired pursuant to this amendment should be considered "investments" in that company and subject to the same investment procedures as apply to investments made in the form of equity. Therefore, a bank holding company can make an investment in a foreign nonbank company using existing debt through any combination of loans and equity under the procedures of Regulation K. Under these procedures, any investment of up to the lesser of $15 million or 5 percent of the capital and surplus of the investor may be made under general consent, that is, without any prior notice to the Board. Thereafter, additional investments in the same company generally can be made under general consent in amounts less than or equal to 10 percent of the historical cost of the investment plus any reinvestment of dividends. Any investments that do not qualify for the general consent require 45 days prior notice to the Board. Because they involve interaffiliate transactions and in particular could involve interaffiliate lending, such additional investments would be carefully reviewed from a safety and soundness perspective.

The Board also believes that the banking organization and its nonbank affiliate should not have similar names. Even if there is a legal and functional separation between the bank and its affiliate, there is a danger that the market will perceive the banking organization and the affiliate as one. The restrictions on the sharing of a similar name by the banking organization and its nonbank affiliate would reduce the likelihood that a bank would be identified with the nonbank company and thereby reduce the pressures on a banking organization to support the affiliate in the case of losses.

Acquisition of control of nonbank companies will cause a banking organization to become engaged in the same types of businesses in which some of its customers may be engaged. In order to address this potential conflict, the revised regulation prohibits the banking organization from sharing with the nonbank affiliate any confidential information with respect to customers of the bank holding company or its affiliates that are engaged in the same or related lines of business as the nonbank company.

In addition, care should be exercised to ensure the separateness of the banking organization and the nonbank affiliate. To that end, it is expected that banking organizations will maintain few

[1] *See, e.g.*, Section 1201(e)(2)(H) of The Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2527 (1986).

interlocks of officers and directors between the banking organization and the nonbank affiliate, and then only to the extent that it is administratively necessary.

The Board emphasizes that an investor must, consistent with prudent banking practices, carefully evaluate the soundness of an investment before it is made. In this connection, an investor would be expected to demonstrate that it has conducted a thorough due diligence review of a proposed investment. Such a review could include an examination of the proposed investment by qualified independent experts with knowledge about, and experience in, the commercial activities of the proposed investment. An investor could also demonstrate that the investment may be considered prudent through the participation of unaffiliated investors willing to put their own capital at risk in exchange for equity interests in the company being acquired. In addition, the investing banking organization could show that the operation of the nonfinancial company would be in the hands of experienced management personnel.

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354); 5 U.S.C. 601 *et seq.*), the Board of Governors of the Federal Reserve System certifies that the amendment will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation. The amendment would liberalize existing regulations and would not have any particular effect on small business entities.

The Board has determined that the provisions of section 553(b) of Title 5, United States Code, with respect to notice, public participation and deferred effective date are not necessary with respect to this revision to Regulation K. As noted above, this amendment liberalizes the investment restrictions of the regulation. An immediate effective date will allow banking organizations to begin to make investments under the revised provisions upon publication in the **Federal Register.**

List of Subjects in 12 CFR Part 211

Banks, banking; Federal Reserve System; Foreign banking, Investments, Reporting and recordkeeping requirements, Export trading companies, Allocated transfer risk reserve, Reporting and disclosure of international assets, Accounting for fees on international loans, Investment made through debt-for-equity conversions.

12 CFR Part 211 is amended as follows:

PART 211—[AMENDED]

1. The authority citation for Part 211 is revised to read as follows:

Authority: Federal Reserve Act (12 U.S.C. 221 *et seq.*); Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 *et seq.*); the International Banking Act of 1978 (Pub. L. 95–369; 92 Stat. 607; 12 U.S.C. 3101 *et seq.*); the Bank Export Services Act (Title II, Pub. L. 97–290, 96 Stat. 1235); and the International Lending Supervision Act (Title IX, Pub. L. 98–181, 97 Stat. 1153, 12 U.S.C. 3901 *et seq.*), unless otherwise noted.

2. Section 211.5 is amended by adding a new paragraph (f) to read as follows:

§ 211.5 Investments and activities abroad.

* * * * *

(f) *Investment made through debt-for-equity conversions*—(1) *Permissible Investment.* In addition to an investment that may be made under other provisions of this section, a bank holding company may acquire up to and including 100 percent of the shares of (or other ownership interest in) a foreign company if:

(i) The shares are acquired from the government of an eligible country or from its agencies or instrumentalities;

(ii) The shares are acquired by conversion of sovereign debt obligations of the eligible country either through a direct exchange of debt obligations or a payment for the debt in local currency, the proceeds of which are used to purchase the shares;

(iii) The shares are held by the bank holding company or its subsidiaries, provided however that such shares may not be held by a U.S. insured bank or its subsidiaries;

(iv) The shares are divested within five years of acquisition unless the Board extends such time period for good cause shown but no such extensions may in the aggregate exceed five years; and

(v) An investment shall be made under this paragraph in accordance with the investment procedures of paragraph (c) of this section and shall be subject to paragraphs (b)(3)(i) (A) and (B) of this section.

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

(i) An "eligible country" means a country that, since 1980, has restructured its sovereign debt held by foreign creditors; and

(ii) "Investment" shall have the meaning set forth in § 211.2(i) of this part and, for purposes of this paragraph, shall include loans or other extensions of credit by the bank holding company or its affiliates to a company acquired pursuant to this paragraph.

(3) *Conditions.* (i) Any company acquired pursuant to this paragraph shall not bear a name similar to the name of the acquiring bank holding company or any of its affiliates; and

(ii) Neither the bank holding company nor its affiliates shall provide to any company acquired pursuant to this paragraph any confidential business or other information concerning customers that are engaged in the same or related lines of business as the company.

Board of Governors of the Federal Reserve System, August 12, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–18787 Filed 8–17–87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87–AWA–31; SFAR 51]

Alteration of the Los Angeles Terminal Control Area, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This Special Federal Aviation Regulation (SFAR) alters the Los Angeles, CA, Terminal Control Area (TCA). This action raises the upper limits of the TCA from 7,000 feet above mean sea level (MSL) to 12,500 feet MSL to enable air traffic control (ATC) to provide terminal ATC service to arriving and departing aircraft in a TCA environment throughout transition to and from the enroute structure. The action additionally will eliminate the visual flight rule (VFR) exclusion in Area A of the TCA, by extending Area A continuously from the surface up to and including 12,500 feet MSL, to minimize the mix of controlled and uncontrolled operations in the vicinity of the Los Angeles TCA airspace.

DATE: Effective date of this Amendment is August 19, 1987. Comments must be received on or before December 9, 1987.

ADDRESSES: Send comments on this final rule in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Docket No. 87–AWA–31, 800 Independence Avenue SW., Washington, D.C. 20591; or deliver comments in triplicate to: Federal Aviation Administration Rules Docket,

Room 916, 800 Independence Avenue SW., Washington, D.C. 20591. Comments must be marked Docket No. 87–AWA–31. Comments may be examined in the Rules Docket on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Burns, Manager, Air Traffic Rules Branch, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Because of the emergency need for this regulation, it is being adopted without notice and public comment. However, the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979) provide that, to the maximum extent possible, DOT operating administrations should provide an opportunity for public comment, after issuance, for regulations issued without prior notice. Accordingly, interested persons are invited to comment on this final rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and be submitted in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC–204, Docket No. 87–AWA–31, 800 Independence Ave. SW., Washington, DC 20591. All comments received will be available in the Rules Docket for examination by interested persons. This amendment may be changed in the light of comments received.

Commenters wishing the FAA to acknowledge receipt of their comments on this final rule must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 87–AWA–31." The postcard will be date and time stamped and returned to the commenter.

Availability of SFAR

Any person may obtain a copy of this Special Federal Aviation Regulation (SFAR) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 267–3484. Communications must identify the number of this SFAR. Persons interested in being placed on a mailing list for future SFAR's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

Background

Federal Aviation Regulations (FAR) Part 71, § 71.12, establishes terminal control areas for the positive control of air traffic in the vicinity of major airports having a high proportion of turbojet airline operations. Operations in a terminal control area are subject to the restrictions set forth in FAR § 91.24, ATC Transponder and Altitude Reporting Equipment and Use, and § 91.90, Terminal Control Areas. In brief, pilots must obtain prior clearance from ATC before operating in the TCA, and aircraft must be equipped with a radio capable of 2-way communications, an operable VOR or TACAN receiver (except for helicopters), a radar transponder, and Mode C automatic altitude reporting equipment. The requirement for an air traffic control (ATC) clearance prior to operation in the TCA, and for sophisticated navigation, radar beacon, and automatic altitude reporting equipment, have the effect of providing ATC with continuous location information and positive control of all aircraft in the TCA.

Turbojet aircraft used by commercial airlines operate at low altitude only when approaching and departing airports. Most general aviation aircraft, however, operate below 12,500 feet because of performance and oxygen limitations and because, under FAR § 91.24(b), an altitude-encoding Mode–C transponder is required for operation above 12,500 feet MSL. As a result, the risk of conflict between air carrier jet aircraft and smaller general aviation aircraft is concentrated in the airspace below 12,500 feet MSL in the vicinity of large commercial airports. TCA's provide a high degree of control by ATC in this low-altitude airspace near major airports.

The Los Angeles TCA extends from the surface (or higher) to a uniform ceiling of 7,000 feet MSL, in an area up to 25 miles from the center of Los Angeles International Airport. The floor of the TCA is the surface in the area immediately surrounding the airport and ranges from 2,000 feet MSL to 6,000 feet MSL in the TCA areas extending outward from the airport. Currently, a VFR (Visual Flight Rules) corridor is provided betwen 2,500 feet MSL and 5,000 feet MSL in an area bounded on the north by Ballona Creek, on the east by the San Diego Freeway, on the south by Imperial Boulevard, and on the west by the Pacific Ocean shoreline. The corridor extends directly over the Los Angeles Airport. The corridor is not within TCA airspace, and aircraft operating in the corridor are not required to contact ATC or have the equipment specified in FAR § 91.90(a).

The Los Angeles area contains the largest concentration of based aircraft in the United States, and there is a high volume of both general aviation aircraft and commercial turbojet aircraft in the airspace near Los Angeles International Airport. The adoption of the Los Angeles TCA was an important measure in maintaining safe and efficient operations in this area.

In August 1986, a DC–9 operated by Aeromexico Airlines collided with a single-engine private plane in Area G of the Los Angeles TCA southeast of the airport, resulting in the loss of 84 lives. While the general aviation pilot was operating in the TCA without ATC clearance, the accident raised questions about the need for changes in terminal airspace regulations. Following that accident, the FAA initiated an intensive review of TCA configuration and operation by a special task group. One of the recommendations made by the TCA Review Task Group and subsequently adopted by the agency was to standardize and simplify TCA configuration. One aspect of the proposed configuration was to raise the ceiling of TCA's from 7,000 feet MSL (in most cases) to a higher altitude to preclude uncontrolled operations by aircraft without transponders or automatic altitude reporting equipment above the top of the TCA.

As a result of the recommendations, the FAA on August 5 issued a Notice of Proposed Rulemaking (NPRM) in Docket 87–AWA–31, Proposed Alteration of the Los Angeles Terminal Control Area (52 FR 29612, August 10, 1987). The comment period on the NPRM closes on December 9, 1987. The NPRM proposes a number of revisions to the Los Angeles TCA, including raising the ceiling of the TCA to 12,500 feet MSL. Also in response to the recommendations, the FAA issued Notice 87–7, Terminal Control Area Classification and TCA Pilot and Equipment Requirements, on June 11, 1987 (52 FR 22918, June 16, 1987). Among other changes, Notice 87–7 proposed to require a Mode C transponder for all operations within 30 miles of a TCA primary airport, to provide continuous information to controllers on the location and altitude of aircraft in the TCA area.

As evident from the proposed rulemaking issued by the FAA in recent weeks, the safe and orderly flow of air

traffic in TCA's generally, and in the Los Angeles TCA in particular, have been a subject of scrutiny by the agency for some time. However, incidents continue to occur which lead the FAA to believe that additional restrictions are needed without further delay. On August 11, an American Airlines Boeing 737 pilot reported a near mid-air collision with a single-engine aircraft above the Los Angeles TCA at approximately 7,400 feet MSL. The B–737 pilot executed an immediate steep turn and descent to avoid collision, and reported missing the small aircraft by about 100 feet. The small aircraft did not appear on ATC radar and apparently did not have, and was not required to have, a radar transponder which would have produced a clear target on the controller's radar screen.

On consideration of the factors which supported the issuance of the NPRM in Docket No. 87–AWA–31 and Notice No. 87–7, and of recent reports of near mid-air collisions including the incident on August 11 in Los Angeles, in conjunction with increased aircraft activity in the region and the complexity of air routes and airspace designations in the area, the FAA finds that there is a situation in the vicinity of Los Angeles International Airport which requires immediate remedial action in the interest of air safety. Revised TCA requirements and airspace configurations which either have been proposed by the FAA for Los Angeles will address the current situation, but in the normal course of rulemaking would not take effect for several months or longer. Accordingly, the FAA is adopting changes to the Los Angeles TCA which will provide control of areas in which there exists a high probability of conflict between IFR turbojet traffic and transient VFR traffic which is not in contact with ATC and does not have transponder or automatic altitude reporting equipment.

The high level and complexity of aircraft activity in the Los Angeles area support specific action at the Los Angeles TCA while further improvements are under consideration and public comment for all terminal airspace. For example, when compared to Miami and San Diego, 2 TCA's with similar climates and aviation environments, Los Angeles experienced 11 reported near mid-air collisions (NMAC) between 7,000 feet and 12,500 feet MSL in the past 12 months compared to 1 at Miami and none at San Diego. There are 27 airports and 17,500 based aircraft in the Los Angeles area, compared to 4,800 aircraft and 10 airports in the Miami area and 2,700 aircraft and 10 airports in the San Diego area.

The agency will continue to receive and review comments on the proposals now published for comment, but will not wait to implement necessary changes pending consideration of those comments.

The Amendment

In consideration of the above, the FAA has determined that there is an immediate need for revision of the Los Angeles TCA to extend the TCA from the surface to 12,500 feet MSL and to eliminate the existing VFR corridor through the center of the TCA. Accordingly, the FAA is adopting a Special Federal Aviation Regulation (SFAR), to take effect August 18, 1987, to implement these revisions. Specifically, the amendment will: (1) Raise the ceiling of each area of the TCA from 7,000 feet MSL to 12,500 feet MSL, and (2) eliminate the exception in Area A of the TCA for the airspace between 2,500 feet MSL and 5,000 feet MSL, so that Area A will be continuous from the surface to 12,500 feet MSL.

The amendment will require pilots operating in this airspace to comply with the requirements of FAR § 91.24, ATC Transponder and Altitude Reporting Equipment and Use, and § 91.90, Terminal Control Areas. Pilots must obtain prior clearance from ATC before operating in the TCA. Aircraft must be equipped with a radio capable of 2-way communications; an operable VOR or TACAN receiver (except for helicopters); a radar transponder; and Mode C automatic altitude reporting equipment.

For the reasons set forth in the corresponding NPRM, the FAA has determined that the proposed rule: (1) Is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this action is an emergency regulation that otherwise would be nonsignificant, a Regulatory Evaluation is not required under Department of Transportation Regulatory Policies and Procedures (44g 11034; February 25, 1979). However, the initial regulatory evaluation prepared for the NPRM issued in Docket No. 87–AWA–31 published in the **Federal Register** (52 FR 29612) substantially encompasses the actions adopted in this SFAR. A copy of the initial regulatory evaluation has been placed in the docket.

Reason for No Notice and Immediate Adoption

These amendments are considered necessary for the safe and efficient operation of aircraft in the vicinity of the Los Angeles International Airport. In consideration of evidence that conflicts between turbojet aircraft and VFR general aviation aircraft continue to occur under existing procedures, the agency finds it necessary to implement immediate remedial action while comments on proposed comprehensive changes to current policy are received and reviewed.

For these reasons, the FAA has determined that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this amendment effective in less than 30 days. The comment in Docket No. 87–AWA–31 remains open to December 9, 1987, and comments on this SFAR as well as the NPRM are invited.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.401 of the Federal Aviation Regulations (14 CFR Part 71.401) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.401 [Amended]

2. Paragraph (a) of § 71.401 is amended as follows:

Los Angeles, CA [Amended]

Boundaries. [Revised] That airspace up to and including 12,500 feet MSL.

Area A. [Revised] That airspace extending upward from the surface to 12,500 feet MSL bounded on the north by Ballona Creek, on the east by the San Diego Freeway, on the south by Imperial Highway, and on the west by the Pacific Ocean shoreline.

Areas B–G. [Amended] Areas B–G are amended by changing "7,000 feet MSL" wherever it appears, to read "12,500 feet MSL."

Issued in Washington, DC, on August 12, 1987.

T. Allan McArtor,

Administrator.

[FR Doc. 87-18795 Filed 8-13-87; 11:33 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229 and 249

[Release Nos. 33-6728; 34-24782; FR-30, File No. S7-30-86]

Disclosure of the Effects of Inflation and Other Changes in Prices

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission announces final rules which amend Regulation S-K, Form 20-F and the Codification of Financial Reporting Policies governing the disclosure of the effects of inflation and other changes in prices. These rules delete references to Statement of Financial Accounting Standard ("SFAS") No. 33, "Financial Reporting and Changing Prices," as amended, which was superseded by the Financial Accounting Standards Board ("FASB") in December 1986 with the issuance of SFAS No. 89, "Financial Reporting and Changing Prices." SFAS No. 89 made voluntary the requirements embodied in SFAS No. 33 that certain entities disclose supplemental information of the effects of inflation and other changes in prices. These rule amendments do not affect the current requirements in Item 303 of Regulation S-K for registrants to include, where material, a brief textual presentation of management's views about the impact of inflation and other changes in prices on their financial statements.

EFFECTIVE DATE: September 17, 1987. Registrants, however, are permitted to comply immediately after publication of this Release in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: James R. Bradow, Office of the Chief Accountant (202-272-2130), Securities and Exchange Commission, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is adopting final rules governing the disclosure of the effects of inflation and other changes in prices that amend Items 302 and 303 of Regulation S-K; [1] Item 9 to Part 1 of the text of Form 20-F; [2] and sections 501.05, 504 and 505 of the Codification of Financial Reporting Policies.[3] These rule amendments are being made as a result of the FASB's issuance of SFAS No. 89, "Financial Reporting and Changing Prices," which made voluntary the previous SFAS No. 33 requirement that certain publicly traded companies disclose supplemental information of the effects of inflation and other changes in prices.[4] The Commission's rules had embraced these supplemental disclosures by allowing registrants to combine these disclosures with other disclosures required by the Commission. These rule amendments delete references to the FASB requirements while continuing to encourage registrants to voluntarily present quantified supplemental disclosures on the effects of inflation and other price changes.[5] However, Regulation S-K continues to require registrants to discuss, where material, the impact of inflation on their financial statements in Management's Discussion and Analysis ("MD&A").[6] These existing rules provide for considerable flexibility in the form of a narrative discussion of management's views since no specific numerical financial data need be presented. This release also clarifies that registrants are not required to indicate in their MD&A that inflation has no material impact on their financial statements when such is the case.

Background

On December 18, 1986 the Commission issued Securities Act Release No. 33-6681 [51 FR 47026] inviting public comment on proposed amendments to Regulation S-K, Form 20-F and the Codification of Financial Reporting Policies governing the disclosure of the effects of inflation and other changes in prices. The Commission received letters from fifteen commentators responding to the proposed amendments. Eleven commentators represented commercial enterprises, three were from industry and accounting trade groups and one educator also responded. Commentators generally supported the proposed amendments, including the discussion in that release of the requirement to include a discussion in MD&A of the impact of inflation and changing prices only when it is material. However, several commentators suggested specifying this language in Item 303(a) of Regulation S-K as well. Therefore, appropriate changes have been made to

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[1] 17 CFR 229.302 and 229.303.

[2] 17 CFR 249.220f.

[3] This codification is a composite of the Commission's current published views and interpretations relating to financial reporting. It is not intended to supplant the rules set forth in Regulations S-X and S-K and should be used as only a supplement to those regulations. *See* Financial Reporting Release No. 1 [April 15, 1982] [47 FR 21028, May 17, 1982].

[4] Copies of these documents may be obtained from the Financial Accounting Standards Board, High Ridge Park, P.O. Box 3821, Stamford, CT. 06905-0821.

[5] SFAS No. 89 also encourages companies to continue to present these disclosures on a voluntary basis. That Statement also codifies in an appendix the previously existing guidelines for the presentation of this data that had been included in SFAS No. 33, as amended. This appendix includes disclosures previously required by SFAS No. 39 to be presented by certain publicly traded mining companies. These disclosures (as specified in paragraphs 14 and 15 of SFAS No. 89), that relate to information regarding mineral resource assets, are similar to disclosures required by Item 102 of Regulation S-K (17 CFR 229.102) and have been used to satisfy that disclosure requirement. The Commission encourages the continued use of these disclosures to satisfy the requirements of Item 102.

[6] 17 CFR 229.303.

Item 303(a) as part of this release specifying that registrants are only required to discuss the impact of inflation and other changes in prices when considered material. The Commission emphasizes that the impact of inflation should be considered based on its cumulative impact from the date assets were acquired or obligations incurred. Such determinations should not be based solely on the current year impact of inflation. For example, if a registrant had acquired most of its property, plant and equipment prior to material increases in prices, depreciation expense reflected in the historical financial statements may be significantly less than it would be computed based on current costs.[7]

Registrants are reminded that Accounting Series Release No. 299 (September 28, 1981) [8] indicated the need for all registrants to provide a meaningful discussion of the effects of changing prices on the registrant's business as part of their MD&A. That release contains various illustrations of the types of narrative disclosures made by registrants in their MD&A. Those illustrations should continue to be useful to registrants when responding to the requirements of Item 303(a) of Regulation S–K with regard to disclosure of the impact of inflation.

Costs-Benefits

SFAS No. 89 superseded SFAS No. 33 and its subsequent amendments and made voluntary the previously required supplemental inflation and changing prices disclosures. This release embraces SFAS No. 89 and registrants are no longer required to present these supplemental disclosures. SFAS No. 89 and this release, therefore, should reduce registrant reporting requirements and resultant costs. The FASB performed extensive reasearch [9] relating to the costs and benefits of presenting these supplemental disclosures. The FASB's decision to issue SFAS No. 89 making these disclosures voluntary was based, in part, on their analysis that the benefits of presenting these disclosures did not exceed the costs. Commentators to the Commission's proposing release did not express any views significantly contrary to the FASB's findings in this regard.

Certain Findings

Section 23(a)(2) of the Securities Exchange Act ("the Act") [10] requires the Commission, in adopting rules under the Act, to consider the anti-competitive effect of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The Commission has considered the amendments and additions to Regulation S–K and Form 20–F in light of the standard cited in section 23(a)(2) and believes that adoption of these changes will not impose any burden on competition not necessary or appropriate in furtherance of the Act.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman of the Commission previously certified that the proposed amendments will not have a significant impact on a substantial number of small entities. No comments were received on that certification.

Codification Update:

The "Codification of Financial Reporting Policies" announced in Financial Reporting Release 1 (April 15, 1982) (47 FR 21028) is updated to:

1. Delete the text of old section 501.05.a, entitled as follows:

501.05.a. General

2. Add new section 501.05.a, as follows:

501.05.a. General

The Commission believes that, where material, management for all registered companies should translate inflation into a meaningful discussion of the effects of changing prices on the registrant's business. Consequently, Item 303(a)(3)(iv) requires that registrants include at least a narrative discussion of any material effects of inflation and other changing prices on net sales and revenues and on income from continuing operations. The Commission believes it is important to emphasize that the impact of inflation should be considered significant for discussion based on its materiality using its cumulative impact from the date assets were acquired or obligations incurred. Such determinations should not be based solely on the current year impact of inflation. The Commission's objective is to elicit useful disclosures concerning the impact of inflation without imposing an undue computational burden. Registrants may elect to provide supplemental disclosure on the effects of inflation and other changing prices as provided for in SFAS No. 89, "Financial Reporting and Changing Prices," or otherwise. Registrants that elect to include these supplemental disclosures may provide a cross reference to the location of such information.

3. Delete the text of old section 501.05.e., entitled as follows:

501.05.e. Impact of Inflation on Plant Assets and Depreciation.

4. Add new section 501.05.e., as follows:

501.05.e. Impact of Inflation on Plant Assets and Depreciation.

Under generally accepted accounting principles, entities record plant assets at actual cost and allocate these costs to operations over the assets' useful lives. During inflationary periods, therefore, depreciation charges are understated and net income overstated under the historical cost model to the extent that the current costs of plant assets exceed original costs. The Commission encourages narrative discussion of the extent of the difference between historical cost and current cost. Information on relative asset ages can also assist users in developing their own estimates of price-adjusted amounts.

5. Delete the second paragraph of section 504, entitled as follows:

504 Selected Financial Data

6. Include in section 504 the following as the new second paragraph:

The deletion of summary of operations and the substitution of Selected Financial Data reflected the Commission's concern that operations summaries duplicated information otherwise available in income statements and may have unduly emphasized income over other enterprise performance measures. The Commission recognizes that a detailed specification of the contents or format of a summary might not cure the perceived deficiencies. Accordingly, the revisions strike a reasonable balance between specified content and a flexible approach which permits registrants to select the data which best indicate performance. For example, those registrants who present voluntary disclosures on the impact of inflation and current prices on their business as specified by SFAS No. 89, "Financial Reporting and Changing Prices," are encouraged to combine this information with the information required by Item 301 of Regulation S–K.

7. Delete the text of old section 505, entitled as follows:

505. Information on the Effects of Changing Prices

8. Add new section 505, as follows:

505. Information on the Effects of Changing Prices

The Commission provides a safe harbor rule for information on the effects of changing prices disclosed by registrants pursuant to Item 303 of Regulation S–K relating to the management's discussion and analysis. This safe harbor was provided by amendment of the previously existing safe harbor rule for projections (*see* Rule 175 under the Securities

[7] See item 501.05 of the Codification of Financial Reporting Policies, as amended by this release, for a description of items to consider when discussing the impact of inflation on specific assets and liabilities.

[8] This release is included in the Codification of Financial Reporting Policies as Item 501.

[9] Appendix A of the FASB's Exposure Draft, "Financial Reporting and Changing Prices" (dated September 30, 1986) discusses the Board's research efforts as well as other considerations relative to their project. Copies of this document are available from the Financial Accounting Standards Board, P.O. Box 3821, Stamford, CT, 06905–0821.

[10] 15 U.S.C. 78w(a)(2).

Act of 1933, 17 CFR 230.175, and Rule 3b-6 under the Securities Exchange Act of 1934, 17 CFR 240.3b-6) to extend its coverage to information on the effects of changing prices.

The Codification is a separate publication issued by the SEC. It will not appear in the Federal Register/Code of Federal Regulations system.

List of Subjects in 17 CFR Parts 229 and 249

Reporting and recordkeeping requirements, Securities.

Text of Rules

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

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

1. The authority citation for Part 229 continues to read, in part, as follows:

Authority: Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 12, 13, 14, 15(d) 23 (a), 48 Stat. 892, 894, 901; secs. 205, 209, 48 Stat. 906, 908; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 301, 54 Stat. 857; secs. 8, 202, 68 Stat. 685, 686; secs. 3, 4, 5, 6, 78 Stat. 565–568, 569, 570–574; sec. 1, 79 Stat. 1051; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 28(c) 84 Stat. 1435, 1497; sec. 105(b) 88 Stat. 1503; secs. 8, 9, 10, 11, 89 Stat. 117, 118, 119, 155; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 781, 78m, 78n, 781(d), 78w(a)

* * * * *

§ 229.301 [Amended]

2. By amending the Instructions to § 229.301 to remove paragraph 3 and redesignate paragraphs 4 through 8 as paragraphs 3 through 7.

§ 229.302 [Amended]

3. By amending § 229.302 to remove paragraph (b) and redesignate paragraph (c) as paragraph (b). The instructions heading in newly redesignated paragraph (b) is amended to change the reference reading "Paragraph (c)" to read "Paragraph (b)".

4. By amending § 229.303 by revising paragraphs 8 and 9 to the *Instructions to Paragraph 303(a)* to read as follows:

§ 229.303 (Item 303) Management's discussion and analysis of financial condition and results of operations.

(a) *Full fiscal years.* * * *

Instructions to Paragraph 303(a).

* * * * *

8. Registrants are only required to discuss the effects of inflation and other changes in prices when considered material. This discussion may be made in whatever manner appears appropriate under the circumstances. All that is required is a brief textual presentation of management's views. No specific numerical financial data need be presented except as Rule 3-20(c) of Regulation S-X (§ 210.3-20(c) of this chapter) otherwise requires. However, registrants may elect to voluntarily disclose supplemental information on the effects of changing prices as provided for in Statement of Financial Accounting Standards No. 89, "Financial Reporting and Changing Prices" or through other supplemental disclosures. The Commission encourages experimentation with these disclosures in order to provide the most meaningful presentation of the impact of price changes on the registrant's financial statements.

9. Registrants that elect to disclose supplementary information on the effects of changing prices as specified by SFAS No. 89, "Financial Reporting and Changing Prices," may combine such explanations with the discussion and analysis required pursuant to this Item or may supply such information separately with appropriate cross reference.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 249 continues to read, in part, as follows:

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

§ 249.220f [Amended]

6. By amending Form 20-F, § 249.220f by removing paragraph 8 under Item 9 and redesignating paragraphs 9, 10, 11 and 12 as paragraphs 8, 9, 10 and 11.

(Form 20-F does not appear in The Code of Federal Regulations.)

By the Commission.

Jonathan G. Katz,

Secretary.

August 6, 1987.

[FR Doc. 87-18695 Filed 8-17-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 86F-0209]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of sodium di (*p-tert*-butylphenyl)phosphate as a clarifying agent for propylene homopolymer and high-propylene copolymer articles intended for contact with food. This action responds to a petition filed by Argus Chemical, Division of Witco Chemical Corp.

DATES: Effective August 18, 1987; objections by September 17, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

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

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 30, 1986 (51 FR 19606), FDA announced that a petition (FAP 6B3932) had been filed on behalf of Argus Chemical, Division of Witco Chemical Corp., c/o 1150 17th St. NW., Washington, DC 20036, proposing that § 178.3295 *Clarifying agents for polymers* (21 CFR 178.3295) be amended to provide for the safe use of sodium di (*p-tert*-butylphenyl)phosphate as a clarifying agent for propylene homopolymer and high-propylene copolymer articles intended for contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended as set forth below.

In accordance with § 171(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This

action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before September 17, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the even that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 178.3295 is amended by adding a new item in the list of substances to read as follows:

§ 178.3295 Clarifying agents for polymers.

* * * * *

Substances	Limitations
* *	* * *
Sodium di(*p-tert*-butylphenyl)phosphate (CAS Reg. No. 10491-31-3).	For use only as a clarifying agent at a level not exceeding 0.35 parts per hundred of the resin in olefin polymers complying with § 177.1520(c) of this chapter, items 1.1, 3.1, or 3.2 (where the copolymers complying with items 3.1 and 3.2 contain not less than 85 weight percent of polymer units derived from propylene).

Dated: August 3, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-18785 Filed 8-17-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 22

Care of Indian Children in Contract Schools

July 16, 1987.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule; removal.

SUMMARY: The Bureau of Indian Affairs is removing Part 22 in its entirety from Chapter I, Title 25 of the Code of Federal Regulations. The Bureau of Indian Affairs no longer provides for the support of Indian children who require institutional care through the method described in this rule. Current procedures governing this program appear in 25 CFR Part 23; therefore, there is no further need for or applicability of the rule in this part.

EFFECTIVE DATE: September 17, 1987.

SUPPLEMENTARY INFORMATION: The authority to remove this rule and regulation is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9. This rule is published in exercise of rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The Bureau of Indian Affairs is removing 25 CFR Part 22 in its entirety. The rule provides for contracts to missions and institutions to provide for the care of Indian children who reside within the exterior boundaries of Indian reservations or on trust or restricted lands under the jurisdiction of the Bureau of Indian Affairs. The Bureau no longer provides for the support of Indian children who require institutional care through the method provided under this rule.

Current procedures governing the care of Indian children appear in the implementing regulations for the Indian Child Welfare Act, 25 CFR Part 23, and Chapter 66 of the Bureau of Indian Affairs' Manual. Therefore, there is no further need for or applicability of the rule in Part 22.

Notice of proposed removal was published in 52 FR 17988 on May 13, 1987, and no comments were received.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). This rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969.

This Part contains information collections; however, because this Part is being removed, the information collection requirements will not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 25 CFR Part 22

Government contracts, Indians—education, Indians—social welfare, Schools.

PART 22—[REMOVED AND RESERVED]

Accordingly, Part 22 of Title 25, Chapter I of the Code of the Federal Regulations is removed and reserved.

Ross O. Swimmer,

Assistant Secretary, Indian Affairs.

[FR Doc. 87-18812 Filed 8-17-87; 8:45 am]

BILLING CODE 4310-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-3248-7]

Addenda to Delegation Agreements for National Emission Standards for Hazardous Air Pollutants (NESHAP) Program: the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Addenda to delegation agreements.

SUMMARY: This notice clarifies the authority delegated to the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas under their

current delegation agreements for implementation and enforcement of National Emission Standards for Hazardous Air Pollutants (NESHAP), and announces addition of certain addenda to the delegation agreements of these States. The addenda explain that these States do not have delegated authority to implement and enforce the radionuclide portion of NESHAP, even though they have otherwise received automatic authority (either full or partial) with respect to the NESHAP program. The addenda further explain that the EPA may delegate the radionuclide standards to the States if the States request and demonstrate their capabilities and expertise for implementing and enforcing the radionuclide NESHAP.

EFFECTIVE DATE: August 10, 1987.

ADDRESSES: The related materials in support of this action may be requested by writing to the following address: Chief, SIP New Source Section (6T–AN), Air Programs Branch, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P.E., SIP New Source Section, Air Programs Branch, United States Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone (214) 655–7214.

SUPPLEMENTARY INFORMATION: Under section 112(d)(1) of the Clean Air Act, any State may develop and submit to the Administrator a procedure for implementing and enforcing emission standards for hazardous air pollutants from stationary sources located in such state. If the Administrator determines that the procedures for implementing and enforcing the standards are adequate, the Federal authority may be delegated to the State. To facilitate this process, the EPA Region 6 Office has entered into agreements with certain states for "automatic" delegation of authority for new subparts of the NESHAP. The automatic delegation mechanism allows the States to assume the responsibility for the new NESHAP standards without a written request and further qualification approval from the EPA.

The EPA promulgated the radionuclide standards on February 6, 1985 (50 FR 5190). The preamble of that notice established the EPA's policy on delegating the radionuclide NESHAP to the states and specifically stated that *automatic* delegation shall *not* be applicable to the radionuclide final rules. The Agency's rationale for this action has been that the states' capabilities and expertise in the field of radiation were not considered when the EPA originally delegated the NESHAP program to them. The EPA Region 6 Office had delegated the NESHAP program to the majority of Region 6 States before February 6, 1985. The approval of these delegations was based on general qualifications and capabilities of the states rather than their specific expertise and resources in regard to radiation controls and radionuclides.

On December 2, 1986, the Regional Office notified each State in advance of its intention to exclude the State's automatic (partial or full) authority for the radionuclide NESHAP. Region 6 allowed ample time for the States to consider their options in accepting or rejecting authority for implementation and enforcement of the radionuclide standards. None of the Region 6 States sought authority for the radionuclide NESHAP.

This notice notifies the public that the States located in Region 6 do not have authority (either partial or full) to implement and enforce the radionuclide portion of the NESHAP program. The affected States are Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. The EPA will continue to allow any state to request authority for implementation and enforcement of the radionuclide NESHAP and will approve delegation if the state can satisfactorily demonstrate its capabilities and expertise in the subject area.

Any inquiries or questions concerning implementation and enforcement of the radionuclide NESHAP for the sources located in the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas should be directed to the EPA Region 6 Office, 1445 Ross Avenue, Dallas, Texas 75202. The telephone inquiries should be directed to (214) 655–7208 for technical and enforcement questions, and (214) 655–7214 for delegation of authority issues.

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

This delegation addendum is issued under the authority of section 112(d) of the Clean Air Act, as amended [42 U.S.C. 7412(d)].

List of Subjects in 40 CFR Part 61

Air pollution control, Hazardous materials, Radionuclides.

Dated: August 10, 1987.

Robert E. Layton Jr.,

Regional Administrator.

[FR Doc. 87–18831 Filed 8–17–87; 8:45 am]

BILLING CODE 6560–50–M

Proposed Rules

Federal Register
Vol. 52, No. 159
Tuesday, August 18, 1987

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1079

Proposed Temporary Revision of Shipping Percentage; Milk in the Iowa Marketing Area

AGENCY: Agricultural Marketing Services, USDA.

ACTION: Proposed temporary revision of rule.

SUMMARY: This notice invites written comments on a proposal to relax temporarily certain provisions of the Iowa Federal milk order. The proposed action would relax for September, October and November 1987 the supply plant shipping requirements. This action was requested by the operator of a pool supply plant who ships milk to distributing plants regulated by the order.

DATE: Comments are due not later than August 25, 1987.

ADDRESS: Comments (two copies) should be sent to: Dairy Division, AMS, Room 2968, South Building, U. S. Department of Agriculture, Washington, DC 20250.

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

SUPPLEMENTARY INFORMATION: The Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact on certain milk handlers and would tend to assure that the market would be adequately supplied with milk for fluid use with a small proportion of milk shipments from pool supply plants.

This rule has been reviewed under Executive Order 12291 and Department Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of § 1079.7(b)(1) of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Iowa marketing area, 7 CFR Part 1079, is being considered for the months of September, October and November 1987.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to the Dairy Division, AMS, Room 2968, South Building, U. S. Department of Agriculture, Washington, DC 20250, by the 7th day after publication of this notice in the **Federal Register.** The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include September 1987 in the temporary revision.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The provisions proposed to be revised are the supply plant shipping percentages for the months of September, October and November 1987. The proposed action would reduce the shipping requirement 10 percentage points from the present 35 percent to 25 percent.

Pursuant to the provisions of § 1079.7(b)(1), the supply plant shipping percentages set forth in § 1079.7(b) may be increased or decreased by up to 10 percentage points during any month to encourage additional milk shipments to pool distributing plants or to prevent uneconomic shipments.

Beatrice Companies, Inc. (Beatrice), on behalf of Beatrice Cheese, requested this action in order to prevent uneconomic shipments of milk during September, October and November 1987. Beatrice said that the market's producer milk receipts during the April through June 1987 period showed an increase each month over the same month of 1986. The monthly increases for this period cited by Beatrice were 6.4, 2.0 and 3.9 percent, respectively. Beatrice indicated that receipts at their supply plant, while slightly decreasing in April, had increased by 2.4 percent in June and that they expect their receipts for the balance of 1987 to increase about 3.0 percent. Beatrice also indicated that without a downward revision in the supply plant shipping standards, it would have to uneconomically backhaul approximately 3.4 to 3.7 million pounds of milk per month in order to pool this milk.

The petitioner stated that distributing plants could be adequately served if supply plant shipping requirements were lowered to 25 percent. Beatrice said that thus there will be no need for supply plants to ship as much as 35 percent of their producer receipts and that a temporary lowering of the supply plant shipping requirement to a 25 percent shipping standard, is needed to prevent uneconomic shipments of fluid milk.

List of Subjects in 7 CFR Part 1079

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1079 continues to read as follows:

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

Signed at Washington, DC, on: August 13, 1987.

C. H. Plumb,

Acting Director, Dairy Division.

[FR Doc. 87–18862 Filed 8–17–87; 8:45 am]

BILLING CODE 3410–02–M

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 86–037P]

Ingredients That May Be Identified as Flavors or Natural Flavors When Used in Meat or Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat and poultry products inspection regulations to better define and limit the substances which are permitted to be identified only as "flavors", "natural flavors", or "spices' on packages of meat and poultry products. The proposed rule addresses

the use of substances which are often added to product for the purpose of serving as flavor enhancers, emulsifiers, stabilizers, binders, extenders, and as nutrients, but are currently only identified as flavorings or spices. Most of the substances that would be affected by the proposed rule are proteinaceous materials, having nutritional value, and which may be considered foods in their own right. The proposed rule would require that when used in meat and poultry products these substances be identified on product labels by their common or usual names, thereby informing consumers of the origin of these materials including the species and specific animal tissues from which thye are derived, if animal in origin. The proposed rule would address the personal, cultural, and religious concerns of consumers, as well as the allergies or sensitivities some consumers may have to some of the substances.

DATE: Comments must be received on or before: October 19, 1987.

ADDRESS: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, Room 3168, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments, as provided by the Poultry Products Inspection Act, should be directed to Margaret O'K. Glavin, Director, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; (202) 447–6042.

FOR FURTHER INFORMATION CONTACT: Margaret O'K. Glavin, Director, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; Area Code (202) 447–6042.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that this proposed rule is not a "major rule" within the scope of E.O. 12291. It would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The proposed rule would identify those substances which may be declared as flavors or natural flavors in the ingredients statement on labels of meat or poultry products. While there may be some costs involved in label changes, these costs would be minimized by providing adequate time to use existing label inventories and to include required changes in normal redesigning or repurchasing of labels.

Effect on Small Entities

Under the circumstances mentioned above, the Administrator, Food Safety and Inspection Service, has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601 et seq.). The proposed rule treats all businesses alike. Any economic impact would be minimized as described above in the statement under Executive Order 12291.

Comments

Interested persons are invited to submit comments concerning this proposal. Written comments must be sent in duplicate to the Hearing Clerk and must bear reference to the docket number located in the heading of this document. Any person desiring an opportunity for an oral presentation of views, as provided for in the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), should make such request to Ms. Glavin so that arrangements can be made for such views to be presented. A transcript will be made for such views orally presented. All comments submitted pursuant to this proposal will be made available for public inspection in the Policy Office, Room 3168-S between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

Many meat and poultry products contain proteinaceous (substances containing protein or nitrogen) ingredients obtained from a variety of sources other than meat, meat byproducts, Mechanically Separated (Species), or poultry. These proteinaceous ingredients may be of plant, yeast, dairy, egg, or fish origin as well as derivatives of slaughtered animals such as hydrolyzed collagen, soluble bone protein, dried meat stocks, and blood components. These ingredients serve many functions and are added to perform a multiplicity of physical or other technical effects, the most significant of which are binding, extending, and flavor enhancing. In the last decade, there has been a marked increase in the use of proteinaceous ingredients in meat and poultry products in order to replace meat, meat byproducts, or poultry in these products and for flavor enhancement.

The FSIS labeling regulations require that all ingredients be listed on labels of products fabricated from two or more ingredients by their common or usual names (9 CFR 317.8(b)(7), 317.2 (c)(2) and (f)(1), and 381.118 (a) and (c)), except that flavorings, including natural spices, essential oils, oleoresins, and other natural spice extractives, may be identified together as "flavorings" without listing each separately. FSIS has permitted "flavorings" to include powdered onion, garlic, and celery which are added for flavoring purposes and which do not provide a significant nutritional contribution.

In recent years, FSIS granted an exception to the common or usual name rule to proteinaceous materials, including products of livestock, poultry, egg, milk, plant or yeast origin, permitting them to be identified as flavorings in meat and poultry products under the incorrect assumption that they were being used as such.

More recently, however, the levels at which these ingredients are used in products have increased as manufacturers of these substances have promoted them expressly for their nutritional and other functional values, especially as low cost meat replacements.

Most of the proteinaceous substances addressed in this proposed rule would not be defined as flavorings under Food and Drug Administration (FDA) regulations (21 CFR 101.22) which take a functional approach to these ingredients. FDA ingredient labeling regulations explicitly state that the name of an ingredient shall be a specific name, not a collective or generic name (21 CFR 101.4(b)). Specific exemptions are listed, including exemptions for "spices" and "flavorings" (21 CFR 101.4(b)(1)). The term "spice" is defined as "any aromatic vegetable substance in the whole, broken, or ground form, except for those substances which have been traditionally regarded as foods, such as onions, garlic and celery; whose significant function in food is seasoning rather that nutritional; that is true to name; and from which no portion of any volatile oil or other flavoring principle has been removed. . ." (21 CFR 101.22(a)(2)).

The term "natural flavor" or "natural flavoring" is identified as "the essential oil, oleoresin, essence or extractive, protein hydrolysate, distillate, or any product of roasting, heating or enzymolysis, which contains the flavoring constituents derived from a spice, fruit or fruit juice, vegetable or

vegetable juice, edible yeast, herb, bark, bud, root, leaf or similar plant material, meat, seafood, poultry, eggs, dairy products, or fermentation products thereof, whose significant function in food is flavoring rather than nutritional. . ." (21 CFR 101.22(a)(3)).

FSIS has become concerned that the policy of allowing proteinaceous substances or ingredients to be declared as "flavorings" has resulted in the term "flavoring" being inappropriately used to list ingredients that should be identified by their common or usual name because their functions include more than flavoring.

When these ingredients are labeled as "flavorings," there is not method by which consumers can determine the presence of specific components. Many people would want to avoid certain ingredients for health reasons or because of religious or cultural preferences but cannot do so unless those ingredients are listed on the product label by their common or usual names.

FSIS's paramount concern is public health. Many individuals suffer allergic reactions from eating certain proteinaceous substances. When such ingredients are declared on meat or poultry product labels only as "flavoring", consumers who are sensitive ingest these ingredients without knowledge of their presence, discovering their presence only after the susceptible consumer suffers an allergic response. For example, the Agency has received several letters from persons afflicted with celiac sprue disease which prevents them from digesting gluten-containing products. Some substances now identified on labels of meat and poultry products as "flavorings" may contain gluten. Consumers are unable in these cases to identify and thereby avoid these substances.

FSIS is aware of and concerned about the potential severity of such allergic reactions. Label declaration of these proteinaceous ingredients by their common or usual names is essential to reduce the likelihood of consumers ingesting them unknowingly.

Similarly, protein hydrolysates may contain high levels of salt. Unless hydrolysates are declared by their common or usual names, consumers are not aware of their presence and those on sodium-restricted diets unknowingly may be consuming relatively high levels of salt.

There are also many consumers who have cultural or religious preferences regarding meat and poultry products that are frustrated by the absence of disclosure of these ingredients. For example, when components of slaughtered animal tissues, even though they may be hydrolysates or extracts (e.g., blood components), are not specifically identified, consumers have no way of determining their presence and exercising dietary preferences.

It should be noted that other substances used mainly to flavor foods, such as salt, sugar, and corn syrup (a plant material hydrolysate), are already required by regulation to be identified in the ingredients statement by their common or usual name.

Accordingly, the Administrator is proposing to amend Part 317 of the Federal meat inspection regulations and Part 381 of the Federal poultry products inspection regulations to require that such ingredients be listed, without exception, in the ingredients statements on meat and poultry product labels, and that their common and usual names include the species of origin and the specific tissue from which they are derived.

The proposed regulation would specify that only natural spices, essential oils, oleoresins, and other natural spice extractives, and powdered onion, powdered garlic, and powdered celery may be listed as "flavorings". The term "spices" would be allowed to designate only natural spices. Further, the proposed regulation would specify that any other ingredients, including ingredients that contribute to flavor, must be identified by their common or usual names. When these ingredients are blends or mixture of more than one substance or ingredient, each individual component of that mixture or blend would have to be identified by its common or usual name on the label of the product in which the blend is used as an ingredient unless the component is a spice or flavoring as specified above.

For the reasons set out in the preamble, Parts 317 and 381 would be amended as set forth below:

List of Subjects

9 CFR Part 317

Labeling, Marking devices, containers.

9 CFR Part 381

Poultry products inspection regulations.

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for Part 317 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254, unless otherwise noted.

2. Section 317.2(f)(1)(i) would be revised to read as follows:

§ 317.2 Labels: definition; required features.

* * * * *

(f)(1) * * *

(i) The term "flavorings" may be used only to designate natural spices, essential oils, oleoresins, and other natural spice extractives, powdered onion, powdered garlic, and powdered celery, and the term "spices" may be used only to designate natural spices without naming each.

* * * * *

3. Section 317.8(b)(7) would be revised to read as follows:

§ 317.8 False or misleading labeling or practices generally; specific provisions and requirements for labels and containers.

* * * * *

(b)(7)(i) No ingredient shall be designated on the label as a spice, flavoring, or coloring unless it is a spice, flavoring, or coloring, as the case may be, except that spice may be considered to be a flavoring as provided in § 317.2(f)(1)(i). An ingredient that is both a spice and a coloring, or both a flavoring and a coloring, shall be designated as "spice and coloring," or "flavoring and coloring," as the case may be, unless such ingredient is designated by its specific name.

(ii) All other ingredients whose function is flavoring, either in whole or in part, must be identified by their common or usual names, including species origin and animal tissues. When such ingredients are blends or mixtures of more than one substance or ingredient, each individual component of that mixture or blend must be identified by its common or usual name on the label of the product in which the blend is used as an ingredient unless the component is a spice or flavoring as defined in § 317.2(f)(1)(i).

* * * * *

4. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 et seq., 76 Stat. 663 (7 U.S.C. 450 et seq.).

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

5. Section 381.118(c) would be revised to read as follows:

§ 381.118 Ingredients statement.

* * * * *

(c) Spices, flavorings, and colorings may be listed as spices, flavorings, and colorings without naming each.

However, no ingredient shall be designated on the label as a spice, flavoring, or coloring, unless it is a spice, flavoring, or coloring, as the case may be. However, the term "flavorings" may be used only to designate natural spices, essential oils, oleoresins, and other spice extractives, powdered onion, powdered garlic, and powdered celery, and the term "spices" may be used only to designate natural spices, without naming each. An ingredient that is both a spice and a coloring, or both a flavoring and a coloring, shall be designated as "spice and coloring" or "flavoring and coloring," as the case may be, unless such ingredient is designated by its common or usual name. All other ingredients whose function is flavoring, either in whole or part, must be identified by their common or usual names, including species origin and animal tissue. When such ingredients are blends or mixtures of more than one substance or ingredient, each individual component of that mixture or blend must be identified by its common or usual name on the lable of the product in which the blend is used as an ingredient unless the component is a spice or flavoring as defined above.

* * * * *

Done at Washington, DC, on August 12, 1987.

Lester M. Crawford,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 87-18804 Filed 8-17-87; 8:45 am]

BILLING CODE 3410-DM-M

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9 CFR Part 318

[Docket No. 86-038P]

Determination of "Added Water" in Cooked Sausages

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat inspection regulations to define the method by which the Agency determines the quantity of added water in cooked sausages. "Added water" in cooked sausage means any water not directly attributable to the meat, meat byproducts, Mechanically Separated (Species), or poultry ingredients. The Federal meat inspection regulations limit the amount of added water to a maximum of 10 percent of finished product weight in cooked sausages. The amount of added water is determined by laboratory analysis and appropriate calculations. First, total water and total protein are determined. Then, "meat protein" is determined by subtracting the "nonmeat protein" from total protein. The amount of water indigenous to the various livestock and poultry ingredients is then calculated based on amount of "meat protein" present. The water attributable to these ingredients is then subtracted from the total water to determine "added water". If the amount of protein derived from nonmeat sources is not subtracted from the total protein content, it is possible that added water in excess of the 10 percent permitted by regulations would be present in the product. Such product would be in violation of the regulations.

Each 1 percent of nonmeat protein not subtracted results in the addition of 4 percent added water in a cooked sausage. This situation has resulted in cooked sausages containing upward of 30 percent added water in the finished product. FSIS considers the current substitution of nonmeat protein and water for "meat" ingredients in some cooked sausages not in keeping with both the letter and spirit of the Federal Meat Inspection Act and the Federal meat inspection regulations. Accordingly, FSIS is proposing to amend the regulations to correct this discrepancy by clarifying the method by which the amount of added water in cooked sausages is determined.

DATE: Comments must be received on or before October 19, 1987.

ADDRESS: Written comments may be mailed to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, Room 3168, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Margaret O'K. Glavin, Director, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6042.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that this proposed rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or upon the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The proposed rule would clarify and set forth provisions to determine whether added water in cooked sausage is at a level in compliance with existing regulatory requirements. The regulatory standard for added water is already in effect; the proposed rule only identifies the method by which compliance with the standard would be determined. FSIS can continue to monitor compliance within the framework of its inspection program, initiating no new costs to the Agency.

Effect on Small Entities

A regulatory flexibility analysis is required under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) for every rule proposed unless the head of the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The RFA mandates that agencies consider regulatory alternatives when a proposed rule would have a significant economic impact upon a substantial number of small entities.

The proposed rule would affect a substantial number of small entities. Over 2500 plants have approved labels for the production of cooked sausages subject to an added water limitation. Those meat processors using proteins from nonmeat sources could be required to modify formulations for certain standardized cooked sausages now produced. The majority of these plants or processors would be viewed as small businesses under any reasonable definition.

The Department does not have sufficient information to conclusively determine whether the economic impact on small entities would be significant. A preliminary analysis conducted by FSIS has shown that, on the average, the ingredient costs for the affected products could increase by $.008 per pound. The preliminary analysis has also indicated that the greatest impact would be on those processors that have operated furthest outside the intent of the current regulation, i.e., using substantial quantities of proteinaceous substances indentified on product labels as "flavorings" that have no or minimal flavoring function. The Department does not believe these costs should be viewed as an economic impact of the proposed rule. In addition, the Department has no reason to believe that the small processors are using proportionally more of the nonmeat proteins than larger processors. Furthermore, the proposal would affect

only standardized cooked sausage products and would not have an impact upon other products produced by a plant. (The proposal would not directly limit the use of nonmeat proteins in any products. It would simply not allow them to count as "meat protein".)

In view of the above, the Department does not believe the impact on the small entities would be significant. Because the proposal will allow all processors to compete on an equal basis, the proposal may benefit many small entities. The Department is requesting data on how small entities would be affected by the adoption of the proposed rule.

Comments

Interested persons are invited to submit comments concerning this porposal. Written comments must be sent in duplicate to the Policy Office and must bear reference to the docket number indicated in the heading of this document. All comments submitted pursuant to this proposal will be made available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

Many meat and poultry products contain added water. The amount of added water in a product is controlled by food standard regulations (see 9 CFR Part 319 and Part 381, Subpart P) or by label declarations (see 9 CFR Part 317 and Part 381, Subpart N) to ensure that consumers receive products that are not adulterated with excess water in violation of the Federal Meat Inspection Act and Poultry Products Inspection Act (21 U.S.C. 601(m)(8), 453(g)(8), respectively). Products containing added water include such widely diverse groups as sausages, cured products, and seasoned fresh products. Methods of control currently employed by FSIS to ensure product compliance with regulatory requirements include formulation control, weight measurement, and laboratory analysis. Laboratory analysis of finished product is being used more and more as the preferred method of measurement to ensure product compliance with standards and/or label declarations. Laboratory analysis is the only method for determining compliance with added water limits for cooked sausages, which are the subject of this proposed regulation.

Cooked sausages are meat food products which have existed as recognized items of commerce for generations. They are commonly known by such names as frankfurters, bologna, liverwurst, cotto salami, and many others (see 9 CFR 319.140, 319.180–319.182). These products are mixtures of tissues of slaughtered animal origin, water, salt, seasonings, and other ingredients. Cooked sausages may be cured or smoked and may contain binders which are added for functional purposes. The amount of added water which may be lawfully present in the finished product is limited by regulations (9 CFR 319.140, 319.180–319.182). Added water may be water that is added as such or contained in ingredients which are of nonmeat origin; it does not include water naturally contained in meat, meat byproducts, Mechanically Separated (Species), or poultry ingredients. These ingredients comprise the meat block.

The procedure traditionally employed by FSIS to determine the amount of added water present in a product has been: (1) Calculating the protein attributable to the meat block: (2) multiplying that figure by four to get the amount of water attributable to the meat block; and (3) subtracting the meat block water from the total water present to get "added water". This calculation is based on the fact that the meat block has a consistent moisture-to-protein ratio (MPR) of approximately 4:1 that can be utilized for this compliance determination.

Protein content is determined by measuring the amount of nitrogen present in a sample of product and making appropriate calculations. Therefore, when nonmeat proteins or other nitrogenous substances are added to cooked sausages, they must be deducted from total analytical protein in order to determine the amount of meat block protein present, and to determine what proportion of the water present in the product is attributable to the meat block. This calculation is easily accomplished if the laboratory knows the amount of nitrogenous substances that have been added so that a deduction can be made from the total protein content of the finished product. This information is normally available to, and provided by, the inspector taking the sample at the establishment.

The present policy of USDA laboratories is to deduct all nonmeat proteins except for autolyzed yeast, autolyzed yeast extract, milk protein hydrolysate, milk albuminate, and 0.35 percent of the protein contributed by cereals and spices. Cereal and mustard have always been exempted; each may contribute up to 0.35 percent protein without deduction. All other nitrogen-containing substances such as binders, extenders, and flavor enhancers either are or have been deducted. Recently, however, in the absence of a regulation, autolyzed yeast, autolyzed yeast extract, milk protein hydrolysate and milk albuminate have been permitted to be added to products, and to be labeled as "flavorings". As such, they may be added together with other flavorings and not listed as separate ingredients either on the product label or formulation statement. Therefore, they may not be specifically identified on the sample transmittal form to the laboratory and, thus, the laboratory may not deduct them while performing the analysis for added water. In addition, even if identified, these particular substances have not been deducted during the analysis.

In recent years, proteinaceous materials identified as flavorings have been utilized in increasingly large quantities as ingredients in cooked sausages. They may constitute as much as 20 percent or more of the protein in some cooked sausage formulations without being deducted in the added water calculations. This has permitted products to contain more than 10 percent added water without being considered in violation of the regulations.

The Agency has been petitioned by trade associations and companies to reassess the situation in which nonmeat proteins have been counted in determining added water in cooked sausages. These petitioners have asked the Agency to deduct nonmeat proteins when determining the added water content of cooked sausages and to enforce existing regulatory standards and labeling requirements. The Agency agrees that while these proteinaceous additives might serve as flavorings or flavor enhancers, they should be deducted when determining the added water content of cooked sausages.

The added water limitation is based on the weight of the finished product and is determined by the calculations described earlier. Whatever the function of such nonmeat proteinaceous substances, whether added as spices, flavor enhancers, or meat replacements, their protein content must be deducted in order to perform proper calculations. This deduction is necessary because added water is any water in cooked sausage not attributable to the meat block.

As the use of nonmeat proteins increases, so do the economic implications. One pound of nonmeat protein can replace the protein contributed by more than 5 pounds of the meat block. This use would also add 4 pounds of water. Thus, when nonmeat proteins are not deducted, there is an economic incentive to increase their level of use. This allows substitution of

such ingredients for meat blo ingredients and permits the addition of water in violation of the Federal Meat Inspection Act and regulations issued thereunder which restrict the amount of added water in cooked sausages.

The Agency has, in response to other petitions, considered the option of permitting a limited amount of nonmeat proteins and four times that amount of added water to be considered as "meat" when calculating added water in cooked sausages. FSIS believes that any such crediting of nonmeat proteins, even a limited amount, would be inconsistent with current Agency policy as reflected in the protein fat free (PFF) regulations for cured pork products, which do not allow any nonmeat protein contribution to minimum PFF percentages (9 CFR 319.104, 319.105, 318.19 and 327.23). Choosing and justifying a maximum percentage appeared to be an arbitrary exercise. Furthermore, and attempt by the Agency to review nonmeat proteins on a substance-by-substance basis to determine whether or not its protein should be treated the same as "meat protein" would be unworkable because so many ingredients are utilized to perform various functions, such as binding, emulsifying, and stabilizing.

Therefore, FSIS is proposing that all "nonmeat proteins" be deducted from total protein present during compliance determinations of added water in cooked sausages.

Description of Proposed Rule

The proposed rule would ensure that products to which protein contributing substances have been added are in compliance with prescribed regulatory standards, guaranteering that such products would not be considered adulterated, misbranded, or otherwise not in accordance with the requirements of the Federal Meat Inspection Act. The proposed rule, which is consistent with regulations concerning the addition of proteinaceous substances to cured pork products, would address and resolve concerns expressed by three trade associations, and would implement the principle that nonmeat protein used for functional purposes should not result in any replacement of principal protein and associated nutrients in the food to which they are added.

Under the proposed rule, the determination of added water in cooked sausage products would be based solely on the amount of protein which is of slaughtered animal orign and contributed by meat, meat byproduct, Mechanically Separated (Species), and poultry ingredients. These ingredients, either raw or cooked, comprise the meat block. The total protein contributed by the meat block must be known in order to ensure compliance with regulatory limits for added water. Products such as partially defatted chopped (species), partially defatted (species) fatty tissues, and proteolytic enzyme treated (species) trimmings would be credited as part of the meat block because these are moderately processed ingredients which are used as a significant nutrient source and not for specific functional purposes, such as binding, emulsifying, stabilizing, flavoring, and similar uses (see 9 CFR 301.2(tt) and 301.2(uu); see also 9 CFR 319.5, 319.15(e), 319.180(g), and 381.1(b)(41)).

In determining the amount of creditable protein during added water calculations: (1) All proteinaceous materials which are not of slaughtered animal origin would be identified as to the amount added to the product formulation and these proteinaceous materials would be deducted from total protein when calculating the amount of added water (such substances include, but are not limited to, plant products, yeast products, milk products, egg products, or their derivatives; (2) proteinaceous materials which are of slaughtered animal origin, but which are processed by such means as extracting, concentrating, drying, centrifuging, and hydrolysis, would also not be credited as part of the meat block. The amount added to the product formulation by such ingredients would be required to be identified for deduction from total protein (such proteinaceous materials include, but are not limited to, (species or kind) extract, (species or kind) stock or broth, (species or kind) flavor, (species or kind) concentrate, enzyme modified powdered (species or kind), hydrolyzed (species or kind) collagen, and soluble bone protein). These materials, while of slaughtered animal origin, have been so extensively processed that they have lost their identity as livestock or poultry ingredients, described as comprising the meat block. These materials have also been added as functional ingredients, e.g., flavors, rather than as significant nutrient sources. These new ingredients should not be considered part of the meat block which has a determined moisture-to-protein ratio. The degree of processing used to make these ingredients is such that the natural moisture-to-protein ratio has been altered.

Accordingly, the Administrator is proposing to amend Part 318 of the Federal meat inspection regulations by adding a new section establishing a procedure to be followed when determining the amount of "added water" in cooked sausages subject to added water limitations.

List of Subjects in 9 CFR Part 318

Meat inspection, Preparation of product, Approval of substances.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for Part 318 continues to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*); 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*) 76 Stat. 663 (7 U.S.C. 450 *et seq.*), unless otherwise noted.

2. Part 318 would be amended by adding a new § 318.22 to Subpart A to read as follows:

§ 318.22 Determination of added water in meat products.

(a) The amount of added water in cooked sausage will be determined by calculating the amount of water contributed to the formulation by the meat block and subtracting this amount from the total finished product water content. The meat block water is calculated as being four times the protein contributed by the combined meat, meat byproducts, Mechanically Separated (Species), and poultry ingredients.

(b) The protein contributed by the meat block is calculated as total protein less:

(1) All proteinaceous material contributed by ingredients which are not of slaughtered animal origin. These ingredients include, but are not limited to, plant products, yeast products, milk products, egg products, or their derivatives.

(2) Proteinaceous material contributed by ingredients of slaughtered animal origin which have been processed by such means as hydrolysis, extraction, concentrating, or drying. These ingredients include, but are not limited to, (species or kind) extracts, stocks and broths, hydrolyzed tissues, and tissue extracts.

Done at Washington, DC, on August 12, 1987.

Lester M. Crawford,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 87-18803 Filed 8-17-87; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 338

Fair Housing

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed rule.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") proposes to amend its fair housing regulation, 12 CFR Part 338, which applies to insured state nonmember banks. Part 338 says that such banks must ask applicants for certain data in connection with any application for a "home loan." At present the data-gathering requirement applies not only to loans taken out for the purpose of purchasing or constructing or refinancing the borrower's dwelling, but also to so-called "home-equity loans"—*i.e.*, general purpose, open-end loans secured by the borrower's dwelling—used in some part for the purpose of repairing, maintaining, or improving the borrower's dwelling. The proposed amendment, would eliminate home-equity loans, as well as home improvement, maintenance, and repair loans from the data-gathering requirement. The requirement would then only apply to home purchase, construction and refinancing loans. The FDIC believes that the proposed amendment could reduce the paperwork burden on the banking industry without imparing enforcement of fair housing lending laws.

DATE: Comments must be submitted on or before October 19, 1987.

ADDRESS: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand delivered to, and are available for reviewing in, Room 6108 on weekdays between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Patricia A. McCormick, Fair Lending Analyst, Office of Consumer Affairs (202/898–3538 or toll-free 800/424–5488), Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background

Part 338, 12 CFR Part 338, is the FDIC's fair housing regulation. It applies to all state-chartered banks which are insured by the FDIC, but which do not belong to the Federal Reserve System ("state nonmember banks").

Part 338 implements the Fair Housing Act ("FHA"), 42 U.S.C. 3533(a), 3535(c), & 3601–19. It also carries out the monitoring responsibilities delegated to the FDIC pursuant to the Federal Reserve Board's Regulation B, 12 CFR Part 202, which implements the Equal Credit Opportunity Act of 1974 ("ECOA") (15 U.S.C. 1691–91f).

Part 338 has two main purposes. The FHA forbids banks (and certain other creditors) from engaging in unlawful discrimination in making housing related loans. 42 U.S.C. 3605. Part 338 sets certain data-gathering requirements for state nonmember banks and thereby helps to provide the information needed to enforce that prohibition. In the same vein, the ECOA forbids banks (and all other creditors) from engaging in unlawful discrimination in making loans generally and commands the Federal Reserve Board ("FRB") to prescribe rules carrying out that mandate. 15 U.S.C. 1691 & 1691b. The FRB's Regulation B specifies data-gathering rules for most consumer loans; but in the case of certain loans—those related to the purchase or refinancing of the borrower's dwelling—the FRB has delegated the responsibility to set the data-gathering requirements to its sister federal financial regulatory agencies. *See* 12 CFR 202.13. The FDIC has adopted Part 338 in part to carry out the duty delegated to it by the FRB.

Part 338 requires state nonmember banks to collect certain information from anyone who applies for a "home loan." Part 338 defines a home loan as follows:

> "Home loan" means any extension of credit relating to:
>
> (1) The purchase or construction of or the refinancing for a dwelling which is or will be comprised of one to four residential units, at least one of which the applicant intends to occupy as a principal residence, and which secures or will secure the extension of credit; or
>
> (2) The improvement, repair, or maintenance of a dwelling which is comprised of one to four residential units, at least one of which the applicant intends to occupy as a principal residence, and which secures or will secure the extension of credit. 12 CFR 338.1(f).

Every state nonmember bank that receives a home loan application must request and retain information regarding the applicant's race/national origin, sex, marital status and age. 12 CFR 338.4(a)(1)(i) & (2)(i). Certain state nonmember banks—those with assets exceeding $10 million and having an office in a primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area—must collect additional data. The extra data include, but are not limited to, the applicant's total assets and liabilities, the purchase price or current market value of the property, and the property's census tract. *Id.* 338.4(a)(2)(ii). Certain state nonmember banks that collect the additional information must also keep a log-sheet of home loan applications on a branch-by-branch basis. *Id.* 338.4(a)(2)(iv).

A state nonmember bank must ask for this information during the initial contact with the home loan applicant. *Id.* 338.4(a)(1)(ii) & (2)(iii)(A). The bank must retain the information on file for 25 months after notifying the applicant of the action taken on the application. *Id.* 338.4(c).

FDIC Proposal

The FDIC proposes to amend the definition of "home loan" to read as follows:

> "Home loan" means any extension of credit the primary purpose of which is the purchase or construction of or the refinancing for a dwelling that secures or will secure the extension of credit, which dwelling is or will be comprised of one to four residential units, at least one of which the applicant intends to occupy as a principal residence.

The proposed amendment would also make technical and conforming changes to the rest of Part 338. These changes eliminate language that would become superfluous as a result of the change in the definition of "home loan."

The FDIC has three reasons for changing the definition of "home loan." First, the FDIC would like to remove "home-equity" loans from the data-gathering requirement. Home-equity loans are general-purpose, open-end loans secured by the borrower's dwelling. The FDIC does not believe that the FHA was meant to apply to loans of this kind, or that it is useful to distinguish home-equity loans from other kinds of general purpose, open-end consumer credit.

Second, the FDIC would like to bring its data-gathering requirements into line with those of the Comptroller of the Currency ("OCC") and the FRB. Neither agency applies the data-gathering requirement to loans made for improving, repairing, or maintaining the borrower's dwelling (herein referred to generally as "home improvement loans").

Finally, the FDIC would like to eliminate recordkeeping requirements that have not proven useful. Although the FDIC has monitored home improvement loans for several years, the number of complaints alleging unlawful discrimination in making such loans has been very small.

Reasons for Proposal

A. Home-equity loans

Under current Part 338, a home-equity loan is a "home loan" if the borrower intends to use the proceeds for repairing, improving, or maintaining his or her residence. If the borrower intends to use the proceeds for other purposes—*e.g.*, to buy a car, or to invest in a business enterprise—the loan is not a home loan.[1] State nonmember banks must ask applicants for information on sex and race in the case of "home loans;" state nonmember banks are forbidden to ask for such information in other cases.

The FDIC adopted Part 338's data-gathering requirement in 1978, before home-equity loans became widely available. In 1981 the FDIC affirmed that Part 338 applies to general or multi-purpose loans when the borrower uses part of the proceeds for home loan purposes and further specified that the state nonmember bank is responsible for establishing whether any part of the loan will be used for such purposes. See 1 *FDIC Law, Regulations, Related Acts* 2655 (1981). The FDIC did not have home-equity loans in mind when it took this position, however. The FDIC's only purpose was to assure that Part 338 reached all forms of closed-end home loans.

Home-equity loans present a special problem. Both banks and borrowers regard these lines of credit as a variety of consumer loans—albeit with a higher degree of security for the lender—rather than as residential real estate loans. Moreover, current tax rules provide a tax deduction for interest on residential loans under certain conditions. Home-equity loans are likely to become popular as substitutes for unsecured, open-end credit.

While it is comparatively easy to determine the purpose of a closed-end loan at the time the loan is made, and to segregate home loans from other loans at that time, it is not so easy to do so in the case of open-end, home-equity loans. Banks do not typically place any constraints on the use of the loan proceeds; borrowers want the funds for a variety of purposes, often for purposes yet to be determined. In short, the borrower's primary purpose in taking out a home-equity loan is simply to gain additional liquidity. That remains true even if the borrower happens to draw upon it to reduce or pay-off a mortgage loan.

[1] If the borrower uses a home-equity loan to buy or build a new house, the loan still is not a "home loan," because it is not secured by the dwelling to be acquired. 12 CFR 338.1(f).

Neither the OCC nor the FRB require lenders to obtain monitoring information on home-equity loans for the purpose of home improvement, repair or maintenance. The OCC only imposes the special data-gathering requirement in the case of loans made "for the purchase, permanent financing for construction, or the financing of the borrower's residence 12 CFR 27.2(f). The FRB's parallel data-gathering requirement only applies to loans "primarily for the purchase or refinancing" of the borrower's residence. *Id.* 202.13(a). The FRB has published a staff interpretation explicitly declaring that home-equity loans—at least those that are "made primarily for a purpose other than the purchase or refinancing of the principal residence"—are not subject to the requirement. See *Fed. Reg. Res. Serv.* Paragraph 6–197.5 (1987). Accordingly, the FDIC may be placing state nonmember banks at a competitive disadvantage.

The data-monitoring requirement seems to be only marginally useful in the case of home-equity loans. Banks generally advertise these loans in the media, and offer to mail the customer a loan application on request. This procedure automatically reduces the likelihood of unlawful discrimination—at least discrimination on the basis of race—as the applicant is not visible to the lender. Imposing the requirement could, therefore, be counterproductive in some instances, since the lender would not otherwise be aware of the applicant's race.

The more extensive information required under Part 338 from larger, more urban banks reflects required standardized information on the "Residential Loan Application" and "Second Mortgage or Home Improvement Application" forms authorized by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation. Such standardized information was designed for investment quality mortgages for sale on the secondary markets. Lenders do not have to collect this information in the case of general purpose consumer loans which are not home loans. Lenders do not typically inquire into the purpose of home-equity loans; nor do they concern themselves with how the funds are used. Accordingly, there does not appear to be any sound reason to collect this information in the case of home-equity loans.

Finally, the process of requesting the monitoring information is cumbersome and confusing in the case of home-equity loans and tends to deter consumers from supplying the information voluntarily. The loan application must indicate that the monitoring information is being requested by the federal government for compliance with statutes that prohibit creditors from discriminating against applicants on certain bases. But at the same time, the application must also explain that the monitoring information is only requested when the home-equity loan is a home improvement type loan. In effect, many borrowers are given an incentive to avoid labeling a home-equity loan as a home improvement loan.

B. Home-improvement loans

The FDIC applied the data-gathering requirement to home improvement loans in order to provide more comprehensive enforcement of the FHA. This procedure does not appear to be cost-effective, however. From January of 1985 to May of 1987, neither the FDIC nor the Department of Housing and Urban Development received any complaints alleging unlawful discrimination by state nonmember banks involving secured home improvement loans. The FDIC received only two home improvement loan complaints in 1984, and no unlawful discrimination was found in either case.

Generally, home improvement loans are usually viewed by lenders as preferred loans, because the improvements increase the value of the house. Also, applicants for such loans are generally more financially established and more creditworthy than applicants for other consumer credit.

By continuing to require monitoring information on home improvement loans, the FIC imposes costs on state nonmember banks that national and state member banks do not sustain. Neither the OCC nor the FRB applies the data-gathering requirement to such loans.

The OCC omits home improvement loans from the category "home loan." See 12 CFR 27.2(f); 44 FR 63084. The FRB takes essentially the same view. See *id.* 202.13(a). The FRB has rejected a proposal to apply the monitoring requirement to home improvement loans, on the ground that the data-gathering effort would be costly and of questionable value. See 2 *Fed. Res. Reg. Serv.* Paragraph 6–197.5 (1987); see also 50 FR 10890 & 48018 (1985).

Accordingly, the FDIC considers that it is appropriate to propose to eliminate the monitoring requirement for home improvement loans and home-equity loans.

Suggested Issues for Comment

Issue 1: From all interested parties, general comments regarding the proposal to delete home improvement, repair and maintenance loans from inclusion under the definitions of 338.1(f) and specifically any comments which would support or challenge the "Reasons for the Proposal."

Issue 2: From the standpoint of consumer and civil rights groups and banks, comments would be helpful regarding perceived possible effects on bank compliance with fair housing lending laws of omitting home improvement, repair, and maintenance loans from the scope of Part 338.

Issue 3: From the standpoint of banks, comments on the following would be helpful:

a. What specific problems, if any, have banks had in complying with the information recording requirements of Part 338 regarding home improvement, repair and maintenance loan applicants for both secured closed-end and open-end (*e.i.*, home equity) loans?

b. How many hours or staff time are estimated to be required in a year to comply with the information recording requirements for home improvement, repair and maintenance loan applicants for both secured closed-end and open-end loans? What are the estimated dollar costs? Please explain the way in which these estimates were computed.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board of Directors of the FDIC hereby certifies that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed amendments would ease the existing collection of information requirements. The effect of the amendments is expected to be beneficial, not adverse, and small entities are expected to receive all benefits of the amendments.

Paperwork Reduction Act

The information collection requirements prescribed herein have been submitted to the Office of Management and Budget for review. See 44 U.S.C. 3504(h). Written comments may be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the FDIC, Washington, DC 20503.

List of Subjects in 12 CFR Part 338

Advertising, Banks, banking, Fair Housing, Mortgages, Reporting and recordkeeping requirements, Signs and symbols, State nonmember banks.

The Board of Directors of the Federal Deposit Insurance Corporation proposes to amend Part 338 of title 12 of the Code of Federal Regulations as follows:

PART 338—FAIR HOUSING

1. The authority citation for Part 338 continues to read as follows:

Authority: Sec. 2, Pub. L. 86–671, 74 Stat. 547 (12 U.S.C. 1817); sec. 8, Pub. L. 797, 64 Stat. 879, as amended by secs. 202, 204, Pub. L. 89–695, 80 Stat. 1046, 1054, and sec. 110, Pub. L. 93–495, 88 Stat. 1506 (12 U.S.C. 1818); sec. 9, Pub. L. 797, 64 Stat. 881, as amended by sec. 205, Pub. L. 89–695, 80 Stat. 1055 (12 U.S.C. 1819); sec. 203, Pub. L. 89–695, 80 Stat. 1053 (12 U.S.C. 1820(b)); sec. 805, Pub. L. 90–284, 82 Stat. 83, 84, as amended by sec. 808, Pub. L. 93–383, 88 Stat. 729 (42 U.S.C. 3605, 3608); sec. 501, Pub. L. 93–495, 88 Stat. 1521, as amended by sec. 2, Pub. L. 94–239, 90 Stat. 251 (15 U.S.C. 1691, et seq.); 40 FR 49306, 12 CFR Part 202; 37 FR 3429, 24 CFR Part 110.

2. Section 338.1 is amended by revising paragraph (f) to read as follows:

§ 338.1 Definitions.

* * * * *

(f) "Home loan" means any extension of credit the primary purpose of which is the purchase or construction of or the refinancing for a dwelling that secures or will secure the extension of credit, which dwelling is or will be comprised of one to four residential units, at least one of which the applicant intends to occupy as a principal residence.

3. Section 338.4 is amended by revising paragraphs (a)(2)(i)(G) and (a)(2)(ii)(C)(*1*)(*v*) to read as follows:

§ 338.4 Recordkeeping requirements.

(a) *Records to be retained.* * * *

* * * * *

(2) * * *

* * * * *

(i) * * *

* * * * *

(G) Loan type, using the following categories: purchase of existing dwelling; refinancing of existing home loan; construction loan only; construction-permanent; other (specify).

* * * * *

(ii) * * *

* * * * *

(C) * * *

(*1*) * * *

* * * * *

(*v*) Other (specify).

* * * * *

By Order of the Board of Directors.

Dated at Washington, DC, this 12th day of August, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–18874 Filed 8–17–87; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

Extension of Deadline for the Permanent State Regulatory Program of Texas

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing procedures for a public comment period on a request submitted by the State of Texas to further extend the deadline for Texas to resubmit rules governing a blaster training, examination and certification program as required by the Federal regulations at 30 CFR Part 850.

All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) were required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSMRE's regulations provides that the Director, OSMRE, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

Texas has previously requested and received four such extensions (March 21, 1985, 49 FR 37062; June 3, 1985, 50 FR 23299; January 17, 1986, 51 FR 2489; and August 8, 1986, 51 FR 28554). In a letter dated June 4, 1987, Texas requested a further extension of its blaster certification program submission deadline to December 31, 1987. OSMRE is proposing to again modify the deadline for Texas to develop and adopt its blaster program. This notice sets forth the dates and locations for submission of written comments.

DATE: Comments not received by 4:00 p.m. c.d.t. September 17, 1987, will not necessarily be considered.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa

Field Office, Office of Surface Mining Reclamation and Enforcement, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103; Telephone: (918) 581–7927.

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

On March 1, 1984, Texas submitted an amendment to its approved program that was intended to implement the Federal requirements for a blaster training, examination and certification program. OSMRE published a notice of public comment period and opportunity for public hearing in the **Federal Register** on March 23, 1984 (49) FR 10943). In its subsequent review of the proposed amendment, OSMRE identified several deficiencies and pointed these out to the State.

On June 25, 1984, Texas advised OSME that it would require a 6-month extension of the deadline for resubmission of a blaster program in order that Texas might adequately address and respond to the issues raised of OSMRE. Texas also requested suspension of the current rulemaking on this subject. In the September 21. 1984 **Federal Register**, OSMRE announced its decision to suspend current rulemaking and extend Texas' deadline to March 21, 1985 (49 FR 37062).

On March 7, 1985, Texas requested an additional 4-month extension through July 15, 1985, to submit the state's blaster certification rules, training and certification program. In the June 3, 1985, **Federal Register**, OSMRE announced its decision to extend the deadline to May 15, 1986. In the August 8, 1986, **Federal Register**, OSMRE further extended the deadline to May 15, 1987.

In a letter dated June 4, 1987, Texas requested additional time to submit its blaster certification program, citing "unexpected delays in the final adoption of amendments concerning notices of violation, prime farmland, lands unsuitable for mining and effluent limitation." In addition, Texas stated that, as a result of discussions with OSME, priority has been given to amendments concerning self-bonding.

OSMRE is seeking comment on the State's request for additional time to develop and adopt a blaster certification program. Section 850.12(b) of OSMRE's regulations provides that the Director, OSMRE, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

List of Subjects in 30 CFR Part 943

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

Date: August 7, 1987.

Raymond L. Lowrie

Assistant Director, Western Field Operation.

[FR Doc. 87–18793 Filed 8–17–87; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 123

[FRL-3213-9]

NPDES Permit Regulations; Application Requirements; Duration of Certain NPDES Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this notice, the EPA proposes to withdraw provisions in the Agency's NPDES regulations which authorize the Director of a NPDES program to grant case-by-case extensions for the submission of certain types of effluent data by permit renewal applicants (40 CFR 122.21(d)(2)(ii) and 123.62(e)). Repeal of these provisions would obligate applicants to submit effluent data by the deadlines established for the submission of a permit application established in 40 CFR 122.21(d).

DATE: Comments must be submitted on or before September 17, 1987.

ADDRESSES: Send written comments to Stephen Bugbee, Permits Division (EN–336), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Stephen Bugbee, Permits Division (EN–336), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460; (202) 475–9539.

SUPPLEMENTARY INFORMATION:

I. Background

On August 9, 1984, EPA promulgated regulations authorizing NPDES program directors to grant extensions for permit renewal applicants to submit certain effluent data beyond the expiration date of the discharger's NPDES permit (49 FR 31840). In *National Wildlife Federation* v. *EPA*, 84–1547 (D.C. Cir. 1984), the petitioners challenged the data submission rule, arguing that the regulation was not adopted in accordance with the Administrative Procedure Act, and that the rule was inconsistent with provisions of the Clean Water Act. In light of issues raised by the petition for review, EPA sought a voluntary remand of the regulation in order to address NWF's procedural concerns in a new rulemaking. On July 1, 1985, the court granted the Agency's motion of a voluntary remand, and denied NWF's motion for a stay of the rule. Therefore, the data submission rule has remained in effect during the remand of this regulation.

The Agency believes that withdrawing the 1984 regulation is appropriate because the circumstances which the rule was designed to address have been largely alleviated during the last three years. At the time the rule was promulgated, there was a relatively large backlog of major permits. Due to lack of resources, the Agency had to administratively extend some permits beyond their expiration date. Under these circumstances, effluent data that was submitted 180 days before the permit expiration date might have been outdated by the time the Agency was able to reissue the permit. The Agency believed that granting extensions on a case-by-case basis would insure that the permit writer had current effluent data with which to establish permit limitations and conditions.

At present, however, the large backlog of major permits has been essentially eliminated. When the rule was originally proposed, approximately 67% of the Agency's NPDES permits had been continued beyond their expiration date. Currently, that figure is below 15%. Since the permitting backlog has been drastically reduced, the Agency believes that effluent data submitted with the rest of the NPDES permit application will not be outdated when Directors reissue NPDES permits.

In addition, at the time the data submission rule was adopted, shortages in priority pollutant laboratory testing capacity made it difficult for some permit applicants to submit effluent data by certain deadlines. The Agency

believed that the regulations would enable Directors to respond to local laboratory shortages by adjusting the timing of effluent data submission. However, there is now adequate laboratory capacity to accommodate the testing needs of NPDES permit applicants.

Finally, EPA stated in the preamble to the data submission rule that extensions were appropriate in light of uncertainty regarding testing regulations which had not yet been finalized by the Agency (49 FR 31840). At that time EPA was involved in negotiations for settlement of litigation of the Agency's Consolidated Permit Regulations. Since the Agency's testing requirements could change as a result of that proceeding, commenters on the proposed data submission rule had suggested that the Agency postpone the deadline for submission of effluent data until some time after final testing requirements were promulgated. EPA has promulgated regulations pursuant to settlement of the Consolidated Permit Regulations litigation. [49 FR 37998, (Sept. 26, 1984)]. Therefore, there is no longer uncertainty justifying retention of the 1984 data submission rule.

Furthermore, the Agency believes that there may be some advantages to having all applicants submit effluent data along with the rest of their permit application. Timely submission of effluent data promotes the efficient use of permitting resources by State and federal agencies which may utilize that data in establishing permitting priorities. Also, uniform submission requirements may tend to promote public participation in the permitting activities of agencies administering the NPDES program.

The Agency has conducted an informal survey of EPA's regional offices to determine how frequently permit applicants have requested extensions for the submission of effluent data. The ten regional offices indicated that they were not aware that any requests for extensions had been made to EPA. Thus, it appears that the data submission rule has not been utilized by EPA since it was adopted almost three years ago.

Since the data submission rule was remanded to the Agency, EPA has considered other options for revising the regulation. These alternatives have been rejected on the grounds that they would place too heavy an administrative burden on permit-issuing agencies. The data submission rule could be modified to provide that requests must be made in writing to a specified official in EPA or the State agency administering the NPDES program. Copies of all requests and extensions could also be made available for public inspection. The Agency believes that imposing these administrative requirements on permittees and the relevant agencies is not justified, especially since the circumstances underlying adoption of the rule are no longer of concern to the NPDES program, and since the rule has rarely been utilized since it was adopted.

As noted above, since effluent data may be used by the Director in setting permitting priorities, the data submission rule could be modified to provide that extensions would be granted if the Director had other data, such as ambient monitoring data or guidelines development documents, with which to allocate the agency's permitting resources. However, EPA believes that implementing such a requirement would be unduly burdensome for the federal and State agencies administering the NPDES program.

The proposed rule, by deleting 40 CFR 122.21(d)(2)(ii) and the last sentence in 40 CFR 123.62(e), would result in requiring all permit renewal applicants, without exception, to submit effluent data required in § 122.21 (f), (g) and (h) by the deadline established for the submission of a permit reapplication. *See* § 122.21(d). Thus, dischargers would have to submit their effluent data at least 180 days before their permit expiration date. However, the Director would retain the authority under § 122.21(d)(1) and (2)(i) to grant extensions for submission up to the expiration date of the existing permit.

II. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory analyses of major regulations. Major rules are those that impose a cost on the economy of $100 million or more annually or have certain other economic impacts. This regulation is not a major rule because it merely deletes a time extension for submission of Form 2c effluent data. Thus it meets none of the criteria of a major rule as set forth in section 1(b) of the Executive Order. This rule has been submitted to the Office of Management and Budget for review. Any comments from OMB and any EPA response to those comments will be available for public inspection at EPA, Room 3220, 401 M Street, SW., Washington, DC 20460.

III. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., EPA must submit a copy of any proposed rule that contains a collection of information requirements to the Director of the Office of Management and Budget for review and approval. This proposed regulation contains no additional information collection requirements and therefore the Paperwork Reduction Act is not applicable.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act, 2 U.S.C. 601 *et seq.*, requires EPA and other agencies to prepare an initial regulatory flexibility analysis for all proposed regulations that have a significant impact on a substantial number of small entities. No regulatory flexibility analysis is required, however, where the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Since the proposed regulatory change does not impose any new requirements on permit applicants, but merely adjusts the timing for submission of effluent data, the Administrator certifies, pursuant to 5 U.S.C. 605(b), that this proposed regulation will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Parts 122 and 123

Administrative practice and procedure, Reporting and recordkeeping requirements, Water pollution control.

Date: August 12, 1987.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, 40 CFR Parts 122 and 123 are proposed to be amended as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for Part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 et seq.

§ 122.21 [Amended]

2. Section 122.21 is amended by removing paragraph (d)(2)(ii).

PART 123—STATE PROGRAM REQUIREMENTS

3. The authority citation for Part 123 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 et seq.

§ 123.62 [Amended]

4. The last sentence in § 123.62(e) is removed.

[FR Doc. 87-18833 Filed 8-17-87; 8:45 am]

BILLING CODE 6560-50-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1165

[Ex Parte No. MC-142 (Sub-No. 2)]

Freight Forwarder Restrictions

AGENCY: Interstate Commerce Commission.

ACTION: Discontinuance of proceeding.

SUMMARY: By a decision served June 19, 1986 (51 FR 22537, June 20, 1986) the Commission requested comments on proposed amendments to the rules at 49 CFR Part 1165 to provide for the removal of restrictions from freight forwarder permits. The Commission is discontinuing the proceeding in response to changed circumstances, specifically: (1) The intervening Freight Forwarder Deregulation Act of 1986, Pub. L. No. 99-521, 100 Stat. 2993, enacted October 22, 1986; and (2) the proposed elimination of the Part 1165 rules and relocation of modified restriction removal provisions to Part 1160, in Ex Parte No. MC-142 (Sub-No. 4), *Revision of Licensing Procedures to Include Applications for Removal of Restrictions from Authorities of Motor Carriers of Property and Passengers—Elimination of 49 CFR Part 1165*, 52 FR 17420 (May 8, 1987).

EFFECTIVE DATE: This decision will be effective on September 17, 1987.

FOR FURTHER INFORMATION CONTACT:
Suzanne Higgins (202) 275-7203
or
Andrew Lyon (202) 275-7691

SUPPLEMENTARY INFORMATION: The Commission's decision contains additional information. To purchase a copy of the decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357, or TDD for hearing impaired (202) 275-1721.

This action will not affect significantly the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1165

Freight forwarders, Motor carriers.

Authority: 49 U.S.C. 10101, 10321, and 10923(d)(1); and 5 U.S.C. 553.

Decided: August 6, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-18800 Filed 8-17-87; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 52, No. 159
Tuesday, August 18, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

State of Ohio Abandoned Mined Lands Reclamation Program; Determination

AGENCY: Office of the Secretary, USDA.
ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that all state cost-share payments made under the Ohio Abandoned Mined Lands Program pursuant to § 1513.28 of the Ohio Revised Code have been made primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife. The determination is in accordance with section 126(b) of the Internal Revenue Code of 1954 as amended by section 543 of the Revenue Act of 1978 and the Technical Corrections Act of 1979. The determination permits recipients of these payments to exclude them from gross income to the extent allowed by the Internal Revenue Service (IRS).

FOR FURTHER INFORMATION CONTACT: Robert S. Baker, Manager, Division of Reclamation, Abandoned Mined Lands Section, Ohio Department of Natural Resources, Fountain Square, Building H–2, Columbus, Ohio 43224, (616) 265–1092; or Director, Land Treatment Program Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, DC 20013, (202) 382–1870.

SUPPLEMENTARY INFORMATION: .

Section 126 of the Internal Revenue Code of 1954, 26 U.S.C. 126, as amended by the Revenue Act of 1978 and the Technical Corrections Act of 1979, provides that certain payments made to persons under state conservation programs may be excluded from the recipient's gross income for federal income tax purposes if the Secretary of Agriculture determines that payments are made "primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife . . ." The Secretary of Agriculture evaluates these conservation programs on the basis of criteria set forth in 7 CFR Part 14 and makes a "primary purpose" determination for the payments made under each program. Before there may be an exclusion, the Secretary of the Treasury must determine that the payments made to a person under these conservation programs do not substantially increase the annual income derived from the property benefited by the payments.

The Ohio Abandoned Mined Lands Reclamation cost-share program operates pursuant to § 1513.28 of the Ohio Revised Code. It is funded by grants of money from the Unreclaimed Lands Special Account created by § 1513.30 of the Ohio Revised Code. The Unreclaimed Lands Special Account is funded by an excise tax created under § 5749.02 of the Ohio Revised Code, which is assessed for the severance of coal and industrial minerals. Under § 1513.28, the Chief of reclamation may make grants up to 75 percent of the reasonable and necessary expenses incurred by the owner of any unreclaimed land affected by mining before April 10, 1972, or pursuant to a license issued before April 10, 1972, that causes of may cause pollution of the waters of the state or damage to the adjacent property, that is not likely to be mined in the foreseeable future, and that lies within the boundaries of a project area approved by the Board on Unreclaimed Strip Mined Lands, in accordance with a plan of reclamation approved by the Chief. Cost-share payments accomplish one or more of the following purposes:

1. To establish vegetative cover;
2. To substantially reduce or eliminate erosion, sedimentation, or discharge of acid water, flooding, and damage to adjacent property; or
3. To properly conserve and utilize the water and related land resources.

Procedural Matters

The Department of Agriculture has classified this determination as "not major" in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1. The Secretary has determined that these program provisions will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in cost to consumers, individuals, industries, government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

An Ohio Abandoned Mined Reclamation Program, "Primary Purpose Determination for Federal Tax Purposes," Record of Decision, has been prepared and is available upon request from the Director, Land Treatment Program Division, Soil Conservation Service, P.O. Box 2890, Washington, DC 20013; or Robert S. Baker, Manager, Division of Reclamation, Abandoned Mined Lands Section, Ohio Department of Natural Resources, Fountain Square, Building H–2, Columbus, Ohio 43224, (614) 265–1092.

Determination

As required by section 126(b) of the Internal Revenue Code of 1954, as amended, I have examined the authorizing legislation, regulations, and operating procedures of the Ohio Abandoned Mined Lands Reclamation Program. In accordance with the criteria set out in 7 CFR Part 14, I have determined that all cost-share payments made under this program are for soil and water conservation, protecting or restoring the environment, or providing wildlife habitat. Subject to further determination by the Secretary of the Treasury, this determination permits payment recipients to exclude from gross income, for federal income tax purposes, all or part of such payments made under § 1513.28 of the Ohio Revised Code after January 15, 1986.

Signed at Washington, DC, on August 12, 1987.

Peter C. Myers,

Acting Secretary.

[FR Doc. 87–18860 Filed 8–17–87; 8:45 am]
BILLING CODE 3410-01-M

Forest Service

Oil and gas leasing; Escalante Known Geological Structure (KGS); Utah

AGENCY: Forest Service, USDA.

ACTION: Notice of availability of draft environmental impact statement and public meeting schedule.

SUMMARY: The Draft Environmental Impact Statement (DEIS) for Oil and Gas Leasing in the Escalante Known Geological Structure (KGS), Garfield County, Utah, is now available for public review. In addition, the Forest Service gives notice of two public meetings to be held to receive public comments on the DEIS.

DATES: Written comments on the analysis and recommendations contained in the DEIS will be accepted until October 20, 1987. Public meetings will be held to receive public comments on the DEIS on Wednesday, September 9, 1987, at 7 p.m., at the Hilton Hotel (Downtown) 150 West 500 South, Salt Lake City, Utah; and on Monday, September 14, 1987, at 7 p.m., at the Escalante Community Center, Escalante, Utah.

ADDRESSES: Requests for copies as well as written comments on the DEIS should be addressed to: Forest Supervisor, Dixie National Forest, P.O. Box 580, Cedar City, Utah 84720.

FOR FURTHER INFORMATION CONTACT: Clavin Bird, Planner, Dixie National Forest, P.O. Box 580, Cedar City, Utah, 84720; telephone 801/586–2421.

SUPPLEMENTARY INFORMATION: The Escalante Known Geological Structure (KGS) encompasses approximately 80,000 acres of land within the Escalante and Teasdale Ranger Districts of the Dixie National Forest and the Cedar City District managed by the Bureau of Land Management, U.S. Department of the Interior. In addition to nonwilderness lands, the KGS includes lands within the Box-Death Hollow Wilderness and the Phipps-Death Hollow Instant Study Area.

The DEIS assesses potential impacts associated with oil and gas and carbon dioxide leasing in the KGS. No site-specific proposals have been submitted by industry; therefore, the levels of leasing and subsequent development considered in the DEIS are based on assumptions utilizing available information.

The preparation of the DEIS was a cooperative effort between the Forest Service, as Lead Agency, and the Bureau of Land Management, as Cooperating Agency

In accordance with established guidelines, the Forest Service is giving supplementary notice to the notice of availability published by the Environmental Protection Agency in the **Federal Register**. This will insure that interested parties are aware that the DEIS is available for review and give notice of public meetings scheduled to receive public comments.

Date: August 12, 1987.

T.A. Roederer,

Deputy Regional Forester, Resources.

[FR Doc. 87–18782 Filed 8–17–87; 8:45 am]

BILLING CODE 3410–11–M

National Environmental Policy Act; Revised Implementing Procedures

AGENCY: Forest Service, USDA.

ACTION: Notice of interim policy.

SUMMARY: The Forest Service is issuing an interim directive to clarify its National Environmental Policy Act implementation policy on categorical exclusions from documentation. The new direction emphasizes the importance of recordkeeping in conjunction with categorical exclusion determinations, and it limits the types of low-impact silvicultural activities that normally qualify for categorical exclusion. This directive is being issued to Agency personnel in the Forest Service Manual and replaces existing policy, which was published in the **Federal Register** on June 24, 1985 (50 FR 26081–26082).

EFFECTIVE DATE: In order to allow sufficient time for distribution of the interim directive to affected Forest Service personnel, the policy will become effective on August 25, 1987. The limitation on low-impact silvicultural activities applies only to the salvage, thinning, and small harvest cuts that are proposed, analyzed, and decided after issuance of the interim directive. In other words, proposed actions which have been analyzed and categorically excluded under previous policy do not have to be re-analyzed as a result of the interim directive.

FOR FURTHER INFORMATION CONTACT: Questions and comments about this policy should be addressed to David E. Ketcham, Director of Environmental Coordination, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 447–4708.

SUPPLEMENTARY INFORMATION: The Forest Service is in the process of revising Forest Service Manual Chapter 1950 and Forest Service Handbook 1909.15, which contain the Forest Service policy and procedures for implementing the National Environmental Policy Act (NEPA) and Council on Environmental Quality (CEQ) implementing regulations at 40 CFR Part 1500 et seq. A draft of the proposed changes will be published in the **Federal Register** this fall for public comment; the final policy and procedures should be adopted by January 1988.

In the interim, to respond to questions raised about the use of categorical exclusions, the Forest Service is issuing an interim directive to clarify its policy. The interim directive will be in effect until the final policy and procedures become effective. The interim directive:

—Deletes a paraphrase of the Council on Environmental Quality's definition of categorical exclusion and requires employees to refer directly to the CEQ regulations, thus eliminating a potential for inconsistent interpretation between the Manual paraphrase and the actual CEQ regulations.

—Emphasizes that, as for all proposed actions, units must establish and maintain a project file for any records created during environmental analyses of proposed actions found to be categorically excluded from documentation in an environmental assessment or an environmental impact statement.

—Provides examples of the types of records that might be included in the project file.

—Limits the use of categorical exclusions for low-limit silvicultural activities to "salvage, thinning, and small harvest cuts of less than 100 thousand board feet or less than 10 acres."

—Adds "miscellaneous forest product sales" as a representative example of the type of activity that may be categorically excluded from documentation.

The full text of the interim directive appears at the conclusion of this notice.

Allan J. West,

Acting Chief, FS.

Date: August 13, 1987.

Forest Service Manual

Washington, DC

Interim Directive No. 14.
Duration: One year.
Chapter: 1950—Environmental Policy and Procedures.
Posting Notice: Last ID was No. 13 to FSM 1920, dated 1/20/87.

This interim directive clarifies direction in section 1952.2—Categorical Exclusion From Documentation. It

removes a paraphrase of the Council on Environmental Quality's definition of categorical exclusion. It emphasizes that a project file should be maintained for any records created during analyses of actions that are categorically excluded from documentation in an environmental assessment or an environmental impact statement. It provides examples of the types of records that might be included in the project file. It also limits the use of categorical exclusions for low-impact silvicultural activities to "salvage, thinning, and small harvest cuts of less than 100 thousand board feet or less than 10 acres" and adds "miscellaneous forest product sales."

This policy change applies only to the salvage, thinning, and small harvest cuts that are proposed, analyzed, and decided after the effective date of this interim directive. In other words, proposed actions which have been analyzed and categorically excluded under previous policy do not have to be re-analyzed and documented in an environmental assessment or an environmental impact statement as a result of this interim directive.

1952.2—Categorical Exclusion From Documentation In An Environmental Assessment Or An Environmental Impact Statement. (40 CFR 1508.4). In addition to the seven categories of actions excluded from documentation in 7 CFR 1b.3, certain other actions may be categorically excluded from documentation in an environmental assessment or environmental impact statement. To determine if an action may be categorically excluded, an environmental analysis, including scoping, must be conducted. (FSH 1909.15, ch. 10 and 20).

The guide for determining whether an action may be excluded is the significance of the effects (40 CFR 1508.27). In unusual circumstances an action that normally might be categorically excluded may have a significant environmental effect on the quality of the human environment and require an environmental impact statement. Unusual circumstances might include areas involving threatened and endangered species; critical habitat; flood plains; wetlands; and specially designated areas, such as wilderness, wilderness study areas, or roadless areas designated for further planning.

Interested and affected persons must be informed in an appropriate manner (40 CFR 1506.6 and FSM 1950.3) of a decision to proceed with an action that has been categorically excluded from documentation in an environmental assessment or environmental impact statement.

During the analysis, maintain a project file for any records prepared, such as (1) a list of interested and affected people contacted during scoping, (2) the results of the analysis, (3) documentation of the determination of consistency with the Forest Plan (FSM 1920, ID No. 13, 1/20/87), (4) documentation of the notification given of the decision to proceed with an action that has been categorically excluded from documentation in an environmental assessment or environmental impact statement (for example, telephone message, news release, and so forth), and (5) a list of the people notified of the decision to proceed.

Typical classes and representative examples of actions that might be categorically excluded are listed below. Experience and environmental analysis indicate that these actions and classes usually do not significantly affect the quality of the human environment, individually or cumulatively. These typical classes include most forest management activities that normally could be categorically excluded. Proposed actions considered for categorical exclusion which are not clearly within a typical class must have no more environmental impact than those which are.

1. Administrative actions, such as road and area closures; restrictions on travel or use, such as camping, boating, or hunting; and posting signs and markers.

2. Construction of low-impact facilities or improvements, such as auxiliary support buildings or other structures; picnic areas and campgrounds; temporary and other low-standard roads, such as traffic service level "D" roads (FSH 7709.56); and trails.

3. Repair and maintenance activities, such as on buildings, grounds, trails, rights-of-way, and range improvements.

4. Low-impact silvicultural activities that are limited in size and duration and that primarily use existing roads and facilities, such as firewood and miscellaneous forest product sales; salvage, thinning, and small harvest cuts of less than 100 thousand board feet or less than 10 acres; site preparation; and planting and seeding.

5. Low-impact range management activities, such as fencing, seeding, and installing water facilities.

6. Issuance or modification of authorizations or agreements for such uses of lands or facilities as road maintenance and additional use of existing roads, rights-of-way, and easements.

7. Low-impact pest management activities, such as suppressing nuisance insects and poisonous plants in campgrounds and picnic areas; controlling cone and seed insects in seed orchards; and fumigating to control weeds in nurseries.

8. Mineral and energy activities of limited size, duration, and degree of disturbance, such as preliminary exploration and removal of small mineral samples.

9. Fish and wildlife management activities, such as improving habitat, installing fish ladders, and stocking native or established species.

10. Transfer of interests in land, such as sales, exchanges, or interchanges pursuant to the Small Tracts Act; purchases and gifts; and small transfers and trades with other Federal agencies.

[FR Doc. 87-18839 Filed 8-17-87; 8:45 am]
BILLING CODE 3410-11-M

Soil Conservation Service

Availability of Record of Decision; Howard Creek Watershed, WV

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of a record of decision.

SUMMARY: Paul S. Dunn, responsible Federal official for projects administered under the provisions of Pub. L. 83-566, 16 U.S.C. 1001-1008, in the State of West Virginia, is hereby providing notification that a record of decision to proceed with the installation of the Howard Creek Watershed project is available. Single copies of this record of decision may be obtained from Paul S. Dunn at the address shown below.

FOR FURTHER INFORMATION CONTACT: Paul S. Dunn, Assistant State Conservationist, Soil Conservation Service, 75 High Street, Room 301, Morgantown, West Virginia, 26505, telephone (304) 291-4151.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. State and local review procedures for Federal and Federally assisted programs and projects are applicable.)

Paul S. Dunn,

Assistant State Conservationist.

August 10, 1987.

Record of Decision, Howard Creek Watershed, Greenbrier County, West Virginia

1 *Purpose:* As State Conservationist for the Soil Conservation Service, I am the Responsible Federal Official (RFO) for all Soil Conservation Service projects in West Virginia.

The recommended plan for the Howard Creek Watershed involves works of improvement to be installed under authorities administered by the Soil Conservation Service. This project includes the installation of 2,910 feet of channel work along Howard Creek, accelerated land treatment on 1,615 acres, and construction of floodwater retarding dam 12 on Dry Creek.

The Howard Creek Watershed plan was prepared under the authority of the Watershed Protection and Flood Prevention Act (Pub. L. 566, 83rd Congress, 68 Stat. 666, as amended) by the Greenbrier Valley Soil Conservation District, city of White Sulfur springs, and Greenbrier County Commission. The Soil Conservation Service (SCS), U.S. Department of Agriculture, is the lead agency, and the Forest Service (FS)–USDA, U.S. Environmental Protection Agency (EPA), West Virginia Department of Natural Resources (DNR), West Virginia Department of Highways (DOH), and U.S. Army Corps of Engineers (COE) are cooperating agencies.

2. *Measures Taken to Comply with National Environmental Policies:* The Howard Creek watershed project has been planned in accordance with existing Federal legislation concerned with preservation of environmental values. The following actions were taken to insure that the Howard Creek Watershed plan is consistent with National goals and policies.

The environmental evaluation was accomplished by an interdisciplinary team under the direction of SCS in 1985, prior to the scoping meeting, and it concluded that significant impacts on the human environment may occur because of the complexity and public interest of the proposed action. As RFO, I directed that a draft Environmental Impact Statement (EIS) be prepared.

The interdisciplinary environmental evaluation of the Howard Creek Watershed project was conducted by the cooperating agencies, U.S. Fish and Wildlife Service, and the Soil Conservation Service. Information was obtained from many groups and agencies. Reviews were held with the Environmental Protection Agency, Fish and Wildlife Service, and West Virginia Department of Natural Resources. The State Historic Preservation officer and the West Virginia Geologic Survey, Archaeology Section, were consulted. Inputs from these reviews and consultations were included in the EIS.

A draft Enviromental Impact Statement was prepared in January 1987, and made available for public review. The recommendations and comments obtained from public meetings held during project planning and assessment were considered in the preparation of the statement. Projects of other agencies were included only when they related to the Public Law 566 project, and they were not evaluated with regard to their individual merit.

About 100 copies of the draft Environmental Impact Statement were distributed to agencies, conservation groups, organizations, and individuals for comment. A public meeting was held on March 5, 1987, to review the planned project and draft Environmental Impact Statement with the general public. The draft Environmental Impact Statement was filed with the Environmental Protection Agency on January 30, 1987.

Numerous public meetings were held to solicit public participation in the environmental evaluation, to assure that all interested parties had sufficient information to understand how their concerns are affected by water resource problems to affaord local interests the opportunity to express their views regarding the plans which can best solve these problems, and to provide all interests an opportunity to participate in the plan selection. The March 5, 1987, meeting was attended by about 80 persons. A transcript of the minutes of this meeting was developed and is on file.

Testimony and recommendations were received relative to the following subjects:

a. Location of structural measures.

b. Land rights acquisition procedures, structures to be relocated, and property values.

c. Time required for project installation.

d. Protection afforded by each alternative.

e. Maintenance responsibilities.

f. Project cost and funding sources.

g. Potential road relocations and bridge replacements.

h. Bank erosion and stablization concerns.

i. Employment opportunities.

All existing data and information pertaining to the project's probable environmental consequences were obtained by SCS with assistance from other scientists and engineers. Documentary information as well as the views of interested Federal, State, and local agencies and concerned individuals and organizations having special knowledge of, competence over, or interest in the project's environmental impact were sought. This process continued until it was felt that all information necessary for a comprehensive, reliable assessment had been gathered.

A complete picture of the project's current and probable future environmental setting was assembled to determine the proposed project's impact and identify unavoidable adverse environmental impacts that might be produced. During these phases of evaluation, it became apparent that there are legitimate conflicts of scientific theory and conclusions leading to differing views of the project's environmental impact. In such cases, after consulting with persons qualified in the appropriate disciplines, those theories and conclusions appearing to be the most reasonable and having scientific acceptance, were adopted.

The consequences of a full range of reasonable and viable alternatives to specific project features were considered, studied, and analyzed. In reviewing these alternatives, all courses of action that could reasonably accomplish the project purposes were considered. Attempts were made to identify the economic, social, and environmental values affected by each alternative. In accordance with existing policy and procedures, the possibilities of structural and nonstructural alternatives for the project were considered.

Four alternatives considered reasonable to accomplish the project's objectives were: (1) dam and clearing and snagging; (2) land treatment, dam, and channel work (Recommended Plan); (3) land treatment and dam; and (4) land treatment, dam, channel work, and nonstructural measures. Other alternatives were suggested and evaluated that would accomplish part of the objectives of the planned project. The full range of effects as set forth in the alternatives section of the EIS. Individual flood plain management strategies, actions, and programs that would meet some of the project's goals were considered.

3. *Conclusions:* the following conclusions were reached after carefully reviewing the proposed Howard Creek Watershed project in light of all National goals and policies, particularly those expressed in the National Environmental Policy Act, and after evaluating the overall merit of possible alternatives to the project:

a. The Howard Creek Watershed project will employ a reasonable and practicable means that is consistent with the National Environmental Policy Act while permitting the application of other National policies and interests. These means include, but are not limited to, a project planned and designed to minimize adverse effects on the natural environment, while accomplishing an

authorized project purpose. Project features designed to preserve environmental values, for future generations, include: (1) installation of a subchannel throughout the length of the channel work; (2) maintaining existing channel alignment; (3) construction of a fish pool; (4) one sided construction on 455 feet of stream; (5) application of erosion and sediment control measures during construction; (6) acceleration in the application of land treatment practices to reduce erosion and sediment damage to streams and ecosystems; (7) establishment of vegetation on the sediment pool shoreline, channel berms, spoil disposal areas, and disturbed areas to protect them from erosion and provide food for wildlife; (8) placement of trees and shrubs for landscape purposes; (9) maintenance easements along 2,910 feet of Howard Creek to assure "greenbelt" establishment and preservation; (10) acquisition of a 100-year easement on the 81-acre flood pool area to protect the area's wildlife habitat from future alteration or disturbance; (11) placement of boulders in the channelized reach for fish habitat; (12) provisions for public access at the dam and constructed fish pool on Howard Creek; (13) retention of standing timber in the sediment pool; (14) construction of two waterfowl nesting islands; (15) deepening of the sediment pool where practical; (16) boulder placement (if available) in the sediment pool; and (17) placement of rock riprap on the bases of the islands

b. The Howard Creek Watershed project was planned using a systematic interdisciplinary approach involving integrated uses of the natural and social sciences and environmental design arts. The results of this review constitute the basis for the conclusions and recommendations. All conclusions concerning the environmental impact of the project and overall merit of existing plans were based on a review of data and information that would be reasonably expected to reveal significant environmental consequences of the proposed project. This data included additional studies prepared specifically for the project and comments and views of all interested Federal, State, and local agencies and individuals. The project will not affect any cultural resources eligible for inclusion in the National Register of Historic Places; nor will the project affect any species of fish, wildlife, or plant, or their habitats that have been designated as endangered or threatened.

c. In studying and evaluating the environmental impact of the Howard Creek Watershed project, ever effort was made to express all environmental values quantitatively. Failure to quantify particular environmental amenities and values is the result of the absence of a methodology having general scientific acceptance. Nevertheless, every effort was made to identify and give appropriate weight and consideration of nonquantifiable environmental values.

d. Wherever legitimate conflicts of scientific theory and conclusions existed and conclusions led to different views, persons qualified in the appropriate environmental disciplines were consulted. Theories and conclusions appearing to be the most reasonable, scientifically acceptable, or both, were adopted.

e. Every possible effort has been made to idenfity those adverse environmental effects which cannot be avoided if the project is constructed.

f. The long-term and short-term resource uses, long-term productivity, and the irreversible and irretrievable commitment of resources are accurately described in the final environmental impact statement.

g. All reasonable and viable alternatives to project features and to the project itself were studied and analyzed with reference to National policies and goals, especially those expressed in the National Environmental Policy Act and the Federal waters resource development legislation under which the project was planned. Each possible course of action was evaluated as to its possible economic, technical, social, and overall environmental consequences to determine the trade-offs necessary to accommodate all National policies and interests. Some alternatives may tend to protect more of the present and tangible environmental amenities than the proposed project will preserve. However, no alternative or combination of alternatives will afford greater protection of the environmental values while accomplishing the other project goals and objectives.

h. I conclude, therefore, that the proposed project will be the most effective means of meeting National goals and serving the public interest.

4. *Recommendations:* Having concluded that the proposed Howard Creek Watershed project uses all practicable means, consistent with other essential considerations of the National Policy, to meet the goals established in the National Environmental Policy Act, that the project will thus serve the overall public interest, that the final environmental impact statement has been prepared, reviewed, and accepted in accordance with the provisions of the National Environmental Policy Act as implemented by Department regulations for the preparation of environmental impact statements, and that the project meets the needs of the project sponsors, I propose to implement the Howard Creek Watershed project.

Paul S. Dunn,

Assistant State Conservationist, Soil Conservation Service, U.S. Department of Agriculture.

Date: August 10, 1987.

[FR Doc. 87-18811 Filed 8-17-87; 8:45 am]

BILLING CODE 3410-16-M

Environmental Statement; Monroe County Airport CAT & LD RC&D Measure, Monroe, IN

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Robert L. Eddleman, State Conservationist, Indianapolis, Indiana, 46224, telephone 317-248-4350.

Notice

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Monroe County Airport CAT & LD RC&D Measure, Monroe, Indiana.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Robert L. Eddleman, State Conservationist, has determined that the preparation of and review of an environmental impact statement are not needed for this project.

The project concerns a plan for Critical Area Treatment and Land Treatment. The planned works of improvement include the reconstruction of a grassed waterway, the installation of a concrete block chute structure and a diversion, the stabilization of three 1300 square yards of steep gullied slopes, and the installation of subsurface drains and approximately 40 surface water inlets. Three hundred feet of outlet channel will be reshaped and seeded.

The Notice of Finding of No Significant Impact (FNSI) has been forwarded to the Environmental

Protection Agency. The basic data developed during the environmental evaluation is on file and may be reviewed by contacting Robert L. Eddleman, State Conservationist. The FNSI has been sent to various Federal, State and local agencies and interested parties. A limited number of copies of the FNSI are available to fill single requests at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: August 11, 1987.

Robert L. Eddleman,

State Conservationist

[FR Doc. 87-18777 Filed 8-17-87; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments; National Museum of Natural History et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 87-226. Applicant: National Museum of Natural History, Smithsonian Institution, 10th & Constitution Avenue, Washington, DC 20560. Instrument: Electron Microscope, Model JEM 1200EX-SEG. Manufacturer: JEOL Ltd., Japan. Intended Use: Studies of routinely prepared, ultrathin sections of normal plant and animal tissue and abnormal growths (tumors) in lower vertebrate animals. The broad range of projects will include research of pollen, marine nematodes, tumors and riftia. Application Received by Commissioner of Customs: June 11, 1987.

Docket No.: 87-227. Applicant: American Red Cross, SE Michigan Blood Services, 100 Mack Avenue, Box 351, Detroit, MI 48232. Instrument: Rapid Kinetic Accessory, SFA-11. Manufacturer: Hi-Tech, United Kingdom. Intended Use: Quantitatively determine the effects of proteinase inhibitors on the blood clotting factors. Application Received by Commissioner of Customs: June 11, 1987.

Docket No.: 87-228. Applicant: Miami University, 213 Roudebush Hall, Oxford, OH 45056. Instrument: Electron Microscope, EM 10CA. Manufacturer: Carl Zeiss, West Germany. Intended Use: Ultrastructural studies of algae, fungi, higher plants and animals. Attention will be focused on the structure of the flagellar apparatus and nuclear division process as aids to understanding how organisms are related to each other. In addition, the pattern of partitioning the transfer of toxic metals in plants which have vesicular arbuscular mycorrhizae associated with their roots will be investigated. Application Received by Commissioner of Customs: June 18, 1987.

Docket No.: 87-229. Applicant: Fidia-Georgetown Institute for the Neurosciences, 3900 Reservoir Road NW., Washington, DC 20007. Instrument: Electron Microscope, Model EM 902. Manufacturer: Carl Zeiss, West Germany. Intended Use: Study of brain and peripheral neuronal function. Application Received by Commissioner of Customs: June 18, 1987.

Docket No.: 87-230. Applicant: U.S. Department of Energy, Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439-4812. Instrument: Streak Camera, Model C1587. Manufacturer: Hamamatsu Photonic Systems Corp., Japan. Intended Use: Study the wake field phenomena in metallic structures and in plasmas. These studies are part of the broader search for new methods of particle acceleration. Application Received by Commissioner of Customs: June 18, 1987.

Docket No.: 87-231. Applicant: National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892. Instrument: Electron Microscope, Model JEM 1200EX/SEG/DP/DP. Manufacturer: JEOL Ltd., Japan. Intended Use: Study of the ultrastructure of heart and lung tissues, including the following:

1. Evaluation of heart and lung biopsy and necropsy specimens from patients with different diseases.

2. Evaluation of artificial heart valves recovered after implantation in patients and experimental animals.

3. Evaluation of cardiac effects of drugs given to experimental animals. The instrument will also be used on a one-to-one basis in the training of medical and graduate students and postdoctoral fellows: Application Received by Commissioner of Customs: June 18, 1987.

Docket No.: 87-232. Applicant: University of California, College of Chemistry, 2405 Bowditch Street, Berkeley, CA 94720. Instrument: Mass Spectrometer, Model VG ZABEQ with VG 11-250J Data System. Manufacturer: VG Analytical Ltd., United Kingdom. Intended Use: The instrument is intended to be used for varied research projects which include the following:

1. Synthesis, characterization and separation of complicated organotransition metal complexes and studies of the course and mechanism of their reactions.

2. Determination of the structure of the phycobilisome—a light-harvesting complex in cyanobacteria.

3. Investigations into the structure of phycobiliproteins.

4. Oligonucleotide analysis.

5. Study of the relationship between primary structure and biological function in proteins.

6. Total synthesis of potentially physiologically active compounds and construction of novel polycyclic benzenoid hydrocarbons and their potential mutagenic activity.

7. Design and synthesis of metal-ion specific sequestering agents.

8. Studies of synthesis and characterization of molecular compounds that can serve as models for zeolite and polyphosphate materials.

Application Received by Commissioner of Customs: June 18, 1987.

Docket No.: 87-233. Applicant: University of California, Department of Chemistry & Biochemistry, 405 Hilgard Avenue, Los Angeles, CA 90024-1569. Instrument: Surface Analysis System, Model XSAM 800. Manufacturer: Kratos Analytical, United Kingdom. Intended Use: The instrument will be used to examine the atomic composition and structure and electronic properties of solid surfaces. The materials studied will be inorganic solids that may be insulating, semiconducting, or metallic. Application Received by Commissioner of Customs: June 23, 1987.

Docket No.: 87-234. Applicant: Rutgers University, Procurement & Contracting, P.O. Box 1089, Piscataway, NJ 08854. Instrument: Fluorescence Lifetime Instrument. Manufacturer: Photochemical Research Associates, Canada. Intended Use: Studies of Solutions of polysaccharides and

proteins using fluorescence probes. Fluorescence lifetime and fluorescence depolarization will be measured and analyzed for heterogeneity by deconvolution methods in the absence and presence of quencher molecules. The objectives pursued are to improve the understanding of the interactions of polysaccharides with proteins and with water. Application Received by Commissioner of Customs: June 24, 1987.

Docket No.: 87–235. Applicant: McLean Hospital, 115 Middle Street, Belmont, CA 02178. Instrument: Electron Microscope, Model JEM 1200EX/SEG/DP/DP. Manufacturer: JOEL Ltd., Japan. Intended Use: Study of the ultrastructure of neurons and their connections in the central nervous system. Specimens will be of biological origin, primarily experimental animals, although there will be some tissue culture and human pathology samples. Experiments will be conducted for advancement of neuroscience research and advancements in the understanding and treatment of neuropsychiatric disorders. Application Received by Commissioner of Customs: June 24, 1987.

Docket No.: 87–236. Applicant: University of South Carolina, Department of Chemistry, Columbia, SC 29208. Instrument: Gas Chromatograph Mass Spectrometer, Model VG–70–SQ with Model VG 11–250J Data System. Manufacturer: VG Instruments, United Kingdom. Intended Use: The instrument will be used for studies of organic natural products, organometallic and biological compounds ranging in molecular weight from about 100 to 8000 daltons and in polarity from volatile liquids to non-volatile liquids to non-volatile salts. The instrument will produce molecular ions and fragmentation ions for each natural product or biomolecule under study and display the various ions in a spectrum. Application Received by Commissioner of Customs: June 25, 1987.

Docket No.: 87–237. Hospital of the University of Pennsylvania, 3400 Spruce Street, Philadelphia, PA 19104. Instrument: Cerebrograph for Measuring Blood Flow. Manufacturer: Scan-Delectronics, Denmark.

Intended Use: Research to determine changes in behavioral measures of cognitive and emotional functioning associated with normal aging and senile dementia of the Alzheimer type and relate them to changes in whole-brain and regional brain anatomy and physiologic function. The instrument will also be used to train medical students, neurophysiology and neuropsychology graduate students and postdoctoral fellows and faculty in the use of the device. Application Received by Commissioner of Customs: June 25, 1987.

Docket No.: 87–238. Applicant: University of Denver, Chemistry Department, 2101 East Westley, Denver, CO 80218. Instrument: Luminox NO_2 In Air Monitor, Model LMA–3. Manufacturer: Scintrex/Unisearch, Canada. Intended Use: Studies of oxides of nitrogen, peroxycetyl nitrate, ozone and free radicals in air pollution and acid rain. Field experiments will be conducted to determine better the cause and effects of acid rain. Application Received by Commissioner of Customs: June 26, 1987.

Docket No.: 87–239. Applicant: University of Arizona, Optical Sciences Center, 3rd & Cherry, Tucson, AZ 85721. Instrument: Electron Microscope, Model JEM–2000FX. Manufacturer: JEOL Ltd., Japan. Intended Use: Studies of thin film inorganic materials including dielectrics such as Al_2O_3, SiO_2, TiO_2, MgF_2; semiconductors such as ZnS and GaAs; and metals such as Zn, Au, Ag, Sm. The structure of these materials, including the existence of microcrystalline regions, defects and columnar morphology will be probed. Experiments will be conducted to elucidate the relationship between the fabrication conditions and the resulting structure of these thin film materials. Application Received by Commissioner of Customs: June 29, 1987.

Docket No.: 87–240. Applicant: Connecticut College, Mohegan Avenue, New London, CT 06320. Instrument: Electron Microscope, Model EM 109T. Manufacturer: Carl Zeiss, West Germany. Intended Use: The instrument will be used to teach Biology 213, Theory and Practice of Electron Microscopy. Application Received by Commissioner of Customs: July 2, 1987.

Docket No.: 87–241. Applicant: University of California, Los Angeles, 405 Hilgard Avenue, Los Angeles, CA 90024. Instrument: X–Ray Diffractometer. Manufacturer: Stoe & Cie, West Germany. Intended Use: Studies of metallic and inorganic glasses, prepared by rapid solidification or by irradiation (metamic materials). Metallic glasses will also be produced by mechanical alloying and inorganic glasses by the sol-gel process. In order to understand their mechanical and electrical properties, it will be necessary to determine the topological and chemical short range order. Other materials to be studied are solid electrolytes and coatings. Application Received by Commissioner of Customs: July 6, 1987.

Docket No.: 87–242. Applicant: Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439. Instrument: Daly Scintillation Detector. Manufacturer: VG Isotopes, Ltd., United Kingdom. Intended Use: The instrument will be used to upgrade an existing mass spectrometer which is being used for studies of elemental samples derived from materials submitted for high-recision assay and isotopic analysis. The experiments conducted involve the precise measurement of isotope ratios for an element of interest, from which the isotopic composition of element may be directly calculated. Samples containing such elements as uranium, plutonium, lithium, strontium, boron rare earths, and others are analyzed in support of nuclear safeguards, fusion research, geochemical research and materials science research. Application Received by Commissioner of Customs: July 7, 1987.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87–18847 Filed 8–17–87; 8:45 am]

BILLING CODE 3510–DS–M

Applications for Duty-Free Entry of Scientific Instruments; University of Montana

Pursuant to section 6(c) of the Eduational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 87–243. Applicant: University of Montana, Purchasing Department, Lodge Room 113, Missoula, MT 59812. Instrument: Magnetic Susceptibility & Anisotropy Instrument, Model SI–2. Manufacturer: Sapphire Instruments, Canada. Intended Use: The instrument will be used to measure the variation of magnetic susceptibility with direction in rock samples. The data acquired will allow determination of whether the remanence direction of a sample or suite of samples is correlated with, or biased by, a fabric in the rock. The data also allow determination of finite strain (deformation) in rocks that do not have obvious macroscopic strain

indicators. Application Received by Commissioner of Customs: July 8, 1987.

Docket No.: 87–244. Applicant: The Penn State University, Center for Advanced Materials, 226 Steidle Building, University Park, PA 16802. Instrument: Optical Extensometer, Model 200X. Manufacturer: Zimmer, OHB, West Germany. Intended Use: The instrument is intended to be used to determine the creep and time-to-failure behavior of various silicon carbide materials. These materials include siliconized, hot pressed and sintered silicon carbides. Application Received by Commissioner of Customs: July 8, 1987.

Docket No.: 87–245. Applicant: University of Nevada Reno, Department of Mining Engineering, Reno, NV 89557–0047. Instrument: Friction Hoist Test Rig. Manufacturer: Hattam Engineering, Ltd., United Kingdom. Intended Use: Studies of elmwood, brake lining material, aluminum and plastics with the objective of improvement of safety features of friction hoists. The instrument will also be used for training of professional mining engineers. Application Received by Commissioner of Customs: July 8, 1987.

Docket No.: 87–246. Applicant: University of Nevada Reno, Department of Mining Engineering, Reno, NV 89557–0047. Instrument: Air Compressor & Air Motor Test Unit. Manufacturer: G. Cusson, Ltd., United Kingdom. Intended Use: Trining professional mining engineers in the course Mine Plant Design. Application Received by Commissioner of Customs: July 8, 1987.

Docket No.: 87–247. Applicant: Rutgers University, Procurement and Contracting, P.O. Box 1089, Piscataway, NJ 08854. Instrument: Electron Microscope, Model JEM 100CX. Manufacturer: JEOL Ltd., Japan. Intended Use: Ultrastructural studies of protistan cells from the division Euglenophyta. Research will be conducted to examine selected ultrastructural features in a variety of euglenoid general. The data obtained will be used to make comparisons of the flagellar ultrastructure. Such information will then be applied to the construction of a more natural taxonomic scheme for the Euglenophyta. Application Received by Commissioner of Customs: July 8, 1987.

Docket No.: 87–249 Applicant: University of California, Santa Cruz, Institute of Marine Sciences, Room 272, Applied Science Building, Santa Cruz, CA 95064. Instrument: Gas Chromatograph Mass Spectrometer/Data System, Model MAT 90. Manufacturer: Finnigan MAT GmbH, West Germany. Intended use: Research activities which will require the detection and identification of trace organic compounds extracted from water, sediment and biological tissues. Compounds of interest will include those of biogenic origin (natural products), petroleum derived and synthetic organics (pesticides, polychlorinated biphenyls, industrial contaminants, etc.). Considerable effort will be given to the identification of unknown components which are now routinely detected by electron capture gas chromatography and low resolution mass spectrometry. Application Received by Commissioner of Customs: July 14, 1987.

Docket No.: 87–250 Applicant: New York University, 100 Washington Square, New York, NY 10003. Instrument: Electron Microscope, Model CM–10/PC. Manufacturer: Philips, The Netherlands. Intended use: The instrument is intended to be used for the following research purposes:

1. The effect of polypeptide toxins on specific cellular membrane channels—designed to examine the nature of the secretory tissue of a flat fish, *pardachirus marmoratus*, found in the Red Sea and the nature of the toxin it produces.

2. Immunocytochemical study at the ultrastructural level to compare the myelination of cholinergic fibers in the cortex of aged animals with normal adult monkeys.

3. Investigation of the growth cone of neurites growing in tissue culture.

4. Studies of the development of the neuromuscular junction and the apparent plasticity of this junction during its development.

Application Received by Commissioner of Customs: July 15, 1987.

Docket No.: 87–252 Applicant: University of Alabama in Huntsville, Sparkman Drive, Huntsville, AL 35899. Manufacturer: Spectrometer, Model XSAM 800. Manufacturer: Kratos Analytical, United Kingdom. Intended use: Corrosion research or the research of the microfouling of copper alloys used in shipping industries to provide a better understanding of the chemical processes associated with corrosion of surface carbonaceous films or organic matters formed due to microorganisms in seawater. Application Received by Commissioner of Customs: July 16, 1987.

Docket No.: 87–253. Applicant: Boston University, Department of Chemistry, 590 Commonwealth Avenue, Boston, MA 02215. Instrument: Rapid Kinetics Accessory, Model SFA–11. Manufacturer: Hi-Tech Scientific, United Kingdom. Intended use: The instrument is an accessory which will be used for the study of the ways in which various metal complexes can influence the rates of reactions for phosphate species of biological interest. The systems to be studied will be useful in elucidating the various roles of metal ions in enzyme promoted reactions. Application Received by Commissioner of Customs: July 16, 1987.

Docket No.: 87–254. Applicant: N. C. Agricultural and Technical State University, 1601 East Market Street, Greensboro, NC 27411. Instrument: Electron Microscope, Model JEM 1200EX-SEG, JEOL Ltd., Japan. Manufacturer: JEOL Ltd., Japan. Intended use: The ultracytochemical study of (1) the localization of Ca^{++} binding sites in Limus sperm acrosomes, (2) the development of mesomes during the cell cycle of Caulobacter, (3) the effect of chloroquine on the interaction of human chronionic gonadotropin with corpus luteum membranes, and (4) the association of infectious pancreatic necrosis virus with fish eggs. Application Received by Commissioner of Customs: July 17, 1987.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87–18848 Filed 8–17–87; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments; University of Nevada-Reno et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 86–186R. Applicant: University of Nevada-Reno, Reno, NV 98557. Instrument: Circular Dichroism Spectropolarimeter, Model J–500A with Accessories. Manufacturer: JASCO, Japan. Original of this resubmitted application was published in the **Federal Register** Tuesday, May 6, 1986.

Docket No.: 87–209. Applicant: University of California at Berkeley,

School of Optometry, c/o Purchasing Department, 2405 Bowditch Street, Berkeley, CA 94720. Instrument: Two (2) Display Oscilloscopes, Model DM–2. Manufacturer: Joyce Electronics, United Kingdom. Intended Use: Studies of spatial vision with the intent of relating normal vision, peripheral vision, amblyopic vision, and computer vision. Application Received by Commissioner of Customs: May 22, 1987.

Docket No.: 87–212. Applicant: NASA, NASA Resident Office, Jet Propulsion Laboratory, 4800 Oak Grove Drive, Pasadena, CA 91109. Instrument: Xenon Chloride Excimer Laser System. Manufacturer: Lambda Physik, West Germany. Intended Use: Measurement of ozone and temperature profiles, specifically detection of changes in the stratosphere. Application Received by Commissioner of Customs: May 29, 1987.

Docket No.: 87–213. Applicant: Loma Linda University Medical Center, 11234 Anderson Street, Loma Linda, CA 92354. Instrument: Kidney Lithotripter. Manufacturer: Dornier Medizintechnik, GmbH, West Germany. Intended Use: The instrument will be used to allow medical students to observe and participate in the treatment of urology patients and to help these students decide their field of medical practice and to provide training for residents who have selected urology as their field. Application Received by Commissioner of Customs: May 28, 1987.

Docket No.: 87–214. Applicant: University of Colorado, Campus Box 380, Boulder, CO 80309. Instrument: Rapid Kinetics Stopped Flow Instrument. Manufacturer: Hi-Tech, United Kingdom. Intended Use: Study of the fast reactions of metal complexes with substrates to aid in the study of asymmetric hydrogenation reactions and to examine the energetics of metal-small ligand interations. These studies will aid in the design of new metal catalysts for chemical reactions. The kinetics of metal-substrate interaction will be examined using the instrument. Application Received by Commissioner of Customs: June 1, 1987.

Docket No.: 87–215. Applicant: University of Washington, Department of Chemistry, BG–10, Seattle, WA 98195. Instrument: Molecular Beam Equipment. Manufacturer: Australian National University, Australia. Intended Use: Investigations of cluster formation, infrared spectra, photodissociation and scattering cross-sections of small molecules, particularly hydrocarbons and gases which are found in the atmosphere. Experiments will consist of sub-doppler spectroscopy, time-of-flight analyses, and angular distribution of scattering events. In addition, the instrument will be used in the course Chemistry 600, Independent Research to provide thorough training in modern methods of chemical research including advanced instrumentation. Application Received by Commissioner of Customs: June 3, 1987.

Docket No.: 87–216. Applicant: Boston Biomedical Research Institute, 20 Staniford Street, Boston, MA 02114. Instrument: Stopped Flow Module 3 Syringe, Model SFM–3. Manufacturer: BioLogic, France. Intended Use: The instrument will be used for investigations of calcium transport and relese in muscle membrane. Application Received by Commissioner of Customs: June 3, 1987.

Docket No.: 87–217. Applicant: Rutgers University, 195 University Avenue, Newark, NJ 07102. Instrument: Electron Microscope, Model CM–10. Manufacturer: Philips, The Netherlands. Intended Use: Examination of a variety of biological samples, including cell cultures, cells and tissues isolated from vertebrate and invertebrate sources and samples of isolated proteins and nucleic acids. Primary interests are in understanding structure-function relationships at the cellular level and how such relationships change relative to cell/tissue differentiation, age or disease. The instrument will also be used for teaching cell ultrastructure and electron microscopy to undergraduate students. Application Received by Commissioner of Customs: June 3, 1987.

Docket No.: 87–218. Applicant: U.S. Department of Energy, New Brunswick Laboratory, Building 350, 9800 South Cass Avenue, Argonne, IL 60439. Instrument: Mass Spectrometer System, Model 261. Manufacturer: Finnigan Mat GmbH, West Germany. Intended Use: Studies of uranium for routing isotopic analysis as well as for the characterization of isotopic standards and reference materials. In addition, isotope dilution techniques will be used to determine the elemental concentration for these materials. The state-of-the-practice nuclear materials measurement technology will be evaluated. Application Received by Commissioner of Customs: June 3, 1987.

Docket No.: 87–219. Applicant: National Institutes of Health, Room 3W13, Bethesda, Md 20892. Instrument: Scanning Transmission Electron Microscope, Model HB 501. Manufacturer: VG Instruments, United Kingdom. Intended Use: Ultrahigh resolution study of various biological cellular components including chemical determination at the near atomic level of spatial resolution. The material studied will include neurofibrillary tangles from Alzheimer disease victims, synaptic cells from human brain and spinal cord and chromaffin granules. Application Received by Commissioner of Customs: June 3, 1987.

Docket No.: 87–221. Applicant: NASA Ames Research Center, Acquisition Division, M/S241–1, Moffett Field CA 94035. Instrument: Electron Microscope, Model EM 902. Manufacturer: Carl Zeiss, West Germany. Intended Use: As a research instrument to determine ion distributions (particularly calcium and sodium) in inner ear tissue, to achieve 3-dimensional reconstructions of complex neural connectivity in macular end organs (balance organs), to develop methodology for recording images directly from the microscope to the laser disk. Application Received by Commissioner of Customs: July 5, 1987.

Docket No.: 87–222. Applicant: University of Michigan, Department of Geological Science, 1006 C. C. Little Building, 425 East University, Ann Arbor, MI 48109–1063. Instrument: Mass Spectrometer, Model VG Sector. Manufacturer: VG Isotopes Ltd., United Kingdom. Intended Use: Measurement of the isotopic compositions of the elements rubidium, strontium, samarium, neodymium, lead and uranium in terrestrial rocks, minerals and other natural materials (e.g., water). In addition, the instrument will be used for training graduate students for the Ph.D. degree in which major parts of the research involve radiogenic isotope geochemistry and for graduate and undergraduate students in the principles of isotope geochemistry. Application Received by Commissioner of Customs: June 8, 1987.

Docket No.: 87–223. Applicant: Research Triangle Institute, Office of Research Contracts, P.O. Box 12194, Research Triangle Park, NC 27709. Instrument: UltraVacuum Surface Analysis System, Model LHS–12. Manufacturer: Leybold-Heraeus Vacuum Products Inc., West Germany. Intended Use: The instrument is intended to be used for investigating semiconducting properties of synthetic diamond films. Application Received by Commissioner of Customs: June 8, 1987.

Docket No.: 87–224. Applicant: Boston University, Center of Remote Sensing, 725 Commonwealth Avenue, Boston, MA 02215. Instrument: Electromagnetic Meter, EM31–D. Manufacturer: Geonics Ltd., Canada. Intended Use: Studies of archaeological and geologic subsurface structures. Educational purposes will include instruction in the principles and techniques of remote sensing and archaeological reconnaissance. Students will use the instrument for understanding the principles of

electromagnetic conductivity and subsurface surveying. Application Received by Commissioner of Customs: June 10, 1987.

Docket No.: 87–225. Applicant: Children's Medical Center of Dallas, 1935 Motor Street, Dallas, TX 75235. Instrument: Electron Microscope, Model JEM 100SX. Manufacturer: JEOL Ltd., Japan. Intended Use: Assisting in such research areas as morphologic identification and subsequent classification of leukemias and viruses. The material examined and the information derived through use of the instrument will be used in teaching conferences for medical students in the fields of pathology and cell biology and pediatric and pathology house staff by enabling visualization and photographic recording of both normal and altered cell ultrastructure. Application Received by Commissioner of Customs: June 10, 1987.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87–18849 Filed 8–17–87; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Applications; Minority Business Development Center Program, Commerce

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a three (3) year period, subject to available funds. The cost of performance for the first *twelve* months is estimated at *$347,000* for the project performance of *January 1, 1988* to *December 31, 1988.* The New England MBDC will operate in the Massachusetts, New Hampshire, Rhode Island, Maine and Vermont Standard Metropolitan Statistical Areas (SMSA) but excluding the State of Connecticut. The first year cost for the MBDC will consist of *$347,000* in Federal funds and a minimum of *$61,235* in Non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

CLOSING DATE: The closing date for applications is September 21, 1987.

Applications must be postmarked on or before September 21, 1987.

ADDRESS: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, Room 3720, New York, New York 10278 (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: Gina A. Sanchez, Regional Director, New York Regional Office at (212) 264–3262.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Dated: August 10, 1987.

William R. Fuller,

Deputy Regional Director, New York Regional Office.

[FR Doc. 87–18780 Filed 8–17–87; 8:45 am]

BILLING CODE 3510-21-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Negotiated Settlement and Adjustment of the 1987 Import Restraint Limit for Certain Cotton Textile Products in Category 335 Produced or Manufactured in the People's Republic of China

August 13, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 19, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566–6828. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letters published below, the Chairman of the Commttee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the 1987 limit for Category 335 and to deduct certain 1986 overshipment charges made to the 1987 limit. As a result, the 1987 limit for Category 335, which is currently filled, will re-open.

Background

A CITA directive dated December 23, 1986 (51 FR 47041) established import restraint limits for certain cotton, wool and man-made fiber textile products, including Category 335, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

During recent consultations between the Governments of the United States and the People's Republic of China, agreement was reached, effected by exchange of notes dated August 10 and 11, 1987, to establish restraint limits concerning cotton textile products in Category 335, produced or manufactured in the People's Republic of China and exported to the United States during the period which begins on January 1, 1988 and extends through December 31, 1991. The levels will be published in the Federal Register at a later date.

Also during these consultations, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreements of August 19, 1983, as amended, the two governments further agreed to increase the 1987 level for Category 335, for special carryforward of 75,000 dozen, to 405,474 dozen.

To the extent used, carryforward will be deducted from the level established for the 1988 agreement year.

In reviewing the import charges, the U.S. Customs Service determined that 7,969 dozen were incorrectly charged to the 1986 limit for Category 335 and has reduced the charges accordingly. As a result, overshipment charges of 7,969 dozen are being deducted from the 1987 limit and charged back to the 1986 limit.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

August 13, 1987

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 23, 1986, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on August 19, 1987, the directive of December 23, 1986 is further amended to include an adjusted limit of 405,474 dozen [1] to the previously established restraint limit for cotton textile products in Category 335, as provided under the terms of the bilateral agreement of August 19, 1983, as amended.[2]

Also effective on August 19, 1987, you are directed to deduct 1986 overshipment charges, amounting to 7,969 dozen, from the charges made to the import restraint limit established in the directive of December 23, 1986 for Category 335 for the twelve-month period which began on January 1, 1987 and extends through December 31, 1987. This same amount is to be charged to the 1986 limit.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-18869 Filed 8-17-87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Armor Anti-Armor Competition; Cancellation

ACTION: Cancellation of Meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Armor Anti-Armor Competition for August 12 and 17, 1987 as published in the **Federal Register** (Vol. 52, No. 133, Page 26171, Monday, July 13, 1987, FR Doc 87-15844.) has been cancelled. In all other respects the original notice remains unchanged.

Linda Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 12, 1987.

[FR Doc. 87-18819 Filed 8-17-87; 8:45 am]

BILLING CODE 3810-01-M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1986.

[2] The agreement provides, in part, that (1) with the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yard equivalent total, provided that the amount of the increase is compensated by an equivalent square decrease in one or more other specific limits in that agreement year; (2) the specific limits for categories may be increased for carryover or carryforward; (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Engineers Corps, Department of the Army

[Regulatory Permit Application No. 16611S91]

Intent To Prepare a Draft Environmental Impact Statement (DEIS); Proposed Expansion of Ox Mountain Sanitary Landfill Into Apanolio Canyon; San Mateo County, CA

AGENCY: San Francisco District, U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of Intent to Prepare a DEIS.

SUMMARY:

1. Proposed Action

Browning-Ferris Industries (BFI), San Carlos, California, has applied for a Department of the Army permit under section 404 of the Clean Water Act (33 U.S.C. 1344) to expand the existing Ox Mountain Ranch solid waste disposal site into the adjacent Apanolio Canyon. The site is along Apanolio Creek, approximately three miles northeast of Half Moon Bay, San Mateo County, California. The expansion site is 285 acres in the upper portion of Apanolio Canyon. The Canyon would be filled from a 500-foot elevation to a 1200-foot elevation, with an average depth of 185 feet. Refuse would be dumped at the working face and compacted by heavy equipment. The San Francisco District, Corps of Engineers, will prepare an environmental impact statement (EIS) for the proposed project pursuant to the National Environmental Policy Act.

2. Alternatives

The EIS will address all the practicable alternatives that will go before the ultimate decision maker for the permit application. The EIS will consider those reasonable alternatives which are both practical and within the capability of the applicant and within the jurisdiction of the Corps; those alternatives which are within the capability of the applicant but outside the jurisdiction of the Corps; those which are reasonably foreseeable, beyond the capability of the applicant but within the jurisdiction of the Corps; and those reasonably foreseeable, although beyond both the capability of the applicant and outside jurisdiction of the Corps. Based on the above, the alternatives being considered by the Corps of Engineers at this time are:

a. *Proposed project:* The 285 acre expansion into Apanolio Canyon

b. *Reduced project at proposed location:* Filling of less acreage
c. *No action:* Permit denial, no expansion into Apanolio Canyon

(1) Offsite landfill disposal alternatives—new and existing landfill sites.

(2) Alternative technologies including waste recycling and refuse to energy.

Additional alternatives identified during the scoping process will also be considered in the EIS.

3. Scoping Process

a. A scoping meeting will be held on Thursday, September 3, 1987, at the offices of the San Francisco District, Corps of Engineers, 211 Main Street, San Francisco, California, Room 917A, from 9 AM to 11 AM. Government agencies, public and private interest groups, and the public are invited to participate in the scoping process by attending the meeting. The purpose of the scoping meeting is to identify significant issues and alternatives to be considered in depth in the EIS.

b. Any person may also participate in the scoping process by submitting written comments to the Corps of Engineers. Comments should be addressed to Colonel Galen H. Yanagihara, District Engineer, San Francisco District, Corps of Engineers, 211 Main Street, San Francisco, California, 94105 and received within 21 calendar days of the date of this notice.

c. The issues which have been identified to date and which will be analyzed in the EIS include impacts on:

(1) Aquatic ecosystem
(2) Wetlands
(3) Hydrology and water quality
(4) Riffle and pool areas/fish habitat
(5) Terrestrial ecosystem
(6) Endangered species
(7) Cultural resources
(8) Business and industrial activity
(9) Economics
(10) Public facilities and services
(11) Public health and safety

Additional significant issues identified during the scoping process will also be analyzed in the EIS.

D. Environmental review and consultation as required by sections 401 and 404 of the Clean Water Act, as amended (33 U.S.C. 1341 and 1344); section 307 of the Coastal Zone Management Act of 1972, as amended (16 U.S.C.1456(c)); the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*); the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*); Executive Order 11990, "Protection of Wetlands", 24 May 1977; and other applicable statutes or regulations will be conducted concurrently with the EIS process.

It is estimated that the draft EIS will be made available to the public on or about 20 November 1987.

5. Questions regarding the scoping process or preparation of the EIS may be directed to Barney Opton, Environmental Branch, San Francisco District, Corps of Engineers (Telephone No.: (415) 974–0441. General questions concerning the processing of the permit application may be directed to Dave Hodges, Regulatory Branch (Telephone: (415) 974–0426).

Dated: August 11, 1987.

Galen H. Yanagihara,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 87–18778 Filed 8–17–87; 8:45 am]

BILLING CODE 3710-FS-M

Defense Communications Agency

Membership of the Defense Communications Agency SES Performance Review Board

AGENCY: Defense Communications Agency, DOD.

ACTION: Notice of membership of the Defense Communications Agency SES Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the SES Performance Review Board (PRB) of the Defense Communications Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Director, Defense Communications Agency.

EFFECTIVE DATE: August 1, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Painter, Personnel Management Services Branch, Civilian Personnel Division, Personnel and Administration Directorate, Defense Communications Agency (202) 692–2794.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names and titles of the executives who have been appointed to serve as members of the SES Performance Review Board. They will serve a one-year renewable term, effective August 1, 1987.

Gordon K. Soper, Associate Director for Engineering and Technology (Code H110)
John W. Beach, Deputy Director, Resource Management (Code H600)
Benham E. Morriss, Deputy Manager, National Communications System (Code Q100)
E. William Harding, Acting Director, Defense Communications System Organization (Code B100)
David T. Signori, Jr., Director, Center for Command and Control, and Communications Systems (Code A100)
Glenwood M. Stevener, Director, Joint Data Systems Support Center (Code C100)
George A. Bombel, Brigadier General, USA Director, Joint Tactical Command, Control and Communications Agency (Code JTC$_3$A)

T. R. M. Emery

Rear Admiral, USN, Vice Director.

[FR Doc. 87–18791 Filed 8–17–87; 8:45 am]

BILLING CODE 3610-05-M

DEPARTMENT OF EDUCATION

Compromise Claim; Deganawidah-Quetzalcoatl University

AGENCY: Office of Postsecondary Education, ED.

ACTION: Notice of intent of compromise claim.

SUMMARY: Notice is given that the Department intends to compromise a claim of $33,820.05 against Deganawidah-Quetzalcoatl University (D-Q University) pursuant to 20 U.S.C. 1234a(f). That claim is the subject of an appeal now pending before the United States Court of Appeals for the Ninth Circuit, *D-Q University v. Bennett*, CA No. 86–7097.

DATE: Interested persons may comment on the proposed action by submitting written data, views, or arguments on or before October 2, 1987.

ADDRESSES: Comments should be addressed to Richard A. Hastings, Director, Debt Collection and Management Assistance Service, U.S. Department of Education, Room 5102, R.O.B. 3, 7th and D Streets SW., Washington, DC 20202.

SUPPLEMENTARY INFORMATION: The claim in question was based on a March 8, 1978 Final Letter of Determination (FLD) which was issued by the Department of Health, Education and Welfare (DHEW), Office of Education. The audit report which supported the FLD was issued on November 14, 1975 by an independent certified public accounting firm. The audit covered the University's general funds and certain grants it administered for the one-year periods ending June 30, 1974, August 31, 1974, and June 30, 1975. The grant programs involved included, among

others, the College Library Resources Program, Title II of the Higher Education Act of 1965, 20 U.S.C. 1029, and four programs under Title IV of the Indian Education Act, 20 U.S.C. 3385: the Native American Language Education Program, Special Services Program, Training Teachers of Indian and Chicano Studies, and the Civil Rights Training Program.

The March 8, 1978 FLD issued by DHEW disallowed $49,609 of claimed costs based on inadequate documentation, misallocation of funds, and violation of grant terms under 20 U.S.C. 1231(c); 31 U.S.C. 1301, and 45 CFR Part 100, Appendix C. In accordance with the Agency review procedure applicable at the time (45 CFR Part 16), D-Q timely appealed the disallowances to the DHEW Grants Appeal Board. By letter dated October 6, 1980, both parties were notified that the case was transferred to the Education Appeal Board (EAB). During the EAB proceedings, conducted in accordance with the procedures in 34 CFR Part 78, D-Q submitted documentation substantiating approximately $15,000 of the disallowed costs. The Department, therefore, reduced the outstanding claim amount from $49,609 to $33,820.05.

The EAB issued an Initial Decision on October 11, 1985, and required D-Q to repay $33,820.05 pursuant to 20 U.S.C. 1234a(d).

On December 24, 1985, the EAB's Initial Decision became the Department's Final Decision. D-Q has since appealed this decision to the United States Court of Appeals for the Ninth Circuit. The Department proposes to compromise the full amount of the claim of $33,820.05 for $14,800. Under the proposal the Department would require D-Q to pay the Department $14,800 in quarterly payments over a 24-month period plus interest of 8 percent. D-Q University would agree to dismiss with prejudice the Ninth Circuit appeal upon the execution of a compromise agreement by both parties.

In making this proposal, the Department has taken into consideration its review of the record in this matter, evidence from an independent certified public accountant that D-Q's accounting system is now in conformity with generally accepted accounting principles, the demonstrated financial weakness of the University, and the likely difficulty of rapid collection. Additionally, the Department has taken into account that if this case is not settled, the Department could incur substantial litigation costs and risks associated with litigating the pending appeal in the United States Court of Appeals for the Ninth Circuit. For these reasons, the Department has determined it would not be practical or in the public interest to require full payment.

Because of the specific facts of this case, the proposed compromise will not adversely affect any other audit proceeding currently pending before the EAB or any Federal courts of appeals.

FOR FURTHER INFORMATION: The public is invited to comment on the Secretary's intent to compromise this claim. Additional information may be obtained by writing to Richard A. Hastings, Director, Office of Debt Collections and Management Assistance Service, at the address given at the beginning of this Notice. Mr. Hastings has been delegated authority to compromise this claim.

(20 U.S.C. 1234a(f))

Dated: August 12, 1987.

Mary Rose,

Deputy Under Secretary for Management.

[FR Doc. 87-18844 Filed 8-17-87; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.003L]

Notice Inviting Applications for New Awards Under the Bilingual Education; Special Populations Program for Fiscal Year 1988

Purpose: Provides awards to eligible applicants to establish, operate, or improve preparatory or supplemental preschool, special education, and gifted and talented programs for limited English proficient children.

Deadline for Transmittal of Applications: November 16, 1987.

Deadline for Intergovernmental Review Comments: January 18, 1988.

Priorities: The Secretary will give a competitive preference, in accordance with 34 CFR 75.105(c)(2)(ii), to projects for preschool children or for LEP children who by reason of outstanding abilities are capable of high performance as stated in 34 CFR 526.10 and 526.30.

Applications Available: September 4, 1987.

Available Funds: The President's budget request for fiscal year 1988 includes approximately $1,300,000 for new awards in this program. The Congress has not yet completed action on the 1988 appropriation. The estimates below assume passage of the President's Budget.

Estimated Range of Awards: $25,000–$200,000.

Estimated Number of Awards: 12.

Project Period: 12 to 36 months.

Applicable Regulations: (a) The Bilingual Education: Special Populations Program Regulations, 34 CFR Part 526, (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

Additional Factors: In accordance with 34 CFR 526.31(b), the Secretary—in evaluating applications under the published criteria—distributes an additional 15 points among the factors listed in § 525.32 as follows: (1) Historically underserved (4 points); (2) Geographic distribution (4 points); (3) Need (4 points); (4) Relative number and proportion of children from low-income families (3 points).

For Applications or Information Contact: Barbara Wells, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, DC 20202. Telephone (202) 732–1840.

Program Authority: 20 U.S.C. 3231(a)(6).

Dated: August 13, 1987.

Anna Maria Farias,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 87-18845 Filed 8-17-87; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.003S]

Notice Inviting Applications for New Awards Under the Bilingual Education; Training Development and Improvement Program for Fiscal Year 1988

Purpose: Provides awards to institutions of higher education to encourage reform, innovation, and improvement in higher education programs related to programs for limited English proficient persons.

Deadline for Transmittal of Applications: October 14, 1987.

Deadline for Intergovernmental Review Comments: December 14, 1987.

Applications Available: September 4, 1987.

Available Funds: The President's budget request for fiscal year 1988 includes approximately $200,000 for new awards under this program. The Congress has not yet completed action on the 1988 appropriation. The estimates below assume passage of the President's Budget.

Estimated Average Size of Awards: $100,000 per year.

Estimated Number of Awards: 2.

Project Period: 12 to 36 months.

Applicable Regulations: (a) The Bilingual Education: Training Development and Improvement Program Regulations, 34 CFR Part 573, (b) the Education Department General

Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

For Applications or Information Contact: Cynthia Ryan, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, DC. 20202. Telephone: (202) 245-2595.

Program Authority: 20 U.S.C. 3251(a)(3).

Dated: August 13, 1987.

Anna Maria Farias,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 87-18842 Filed 8-17-87; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No. 84.003A]

Notice Inviting Applications for New Awards Under the Program of Transitional Bilingual Education for Fiscal Year 1988

Purpose: Provides grants to local educational agencies (LEAs) and institutions of higher education applying jointly with one or more LEAs to establish, operate, and improve programs of transitional bilingual education.

Deadline for Transmittal of Application: December 1, 1987.

Deadline for Intergovernmental Review Comments: February 2, 1988.

Applications Available: September 4, 1987.

Available Funds: The President's Budget for fiscal year 1988 includes approximately $22,000,000 for new awards under this program. The Congress has not yet completed action on the 1988 appropriation. The estimates below assume passage of the President's Budget.

Estimated Range of Awards: $40,000-$500,000.

Estimated Number of Awards: 160.

Project Period: 36 months.

Applicable Regulations: (a) The Programs of Transitional Bilingual Education Regulations, 34 CFR Part 501, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

Additional Factors: In accordance with 34 CFR 501.32(b), the Secretary—in evaluating applications under the published criteria—distributes an additional 15 points among the factors listed in § 501.32(a) as follows: (1) Historically underserved (4 points); (2) Relative need (4 points); (3) Geographic distribution (3 points); (4) Relative number and proportion of children from low-income families (4 points).

For Applications or Information Contact: Rudy Munis, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, DC 20202. Telephone: (202) 245-2609.

Program Authority: 20 U.S.C. 3231(a)(1).

Dated: August 13, 1987.

Anna Maria Farias,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 87-18843 Filed 8-17-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; Australia

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Australia concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale:

Contract Number S-AU-130, for the sale of 150 milligrams of uranium-236 and 5 milligrams of uranium-234 to the Australian National University, Canberra, Australia for use in isotope dilution measurements in geological samples.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: August 11, 1987.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87-18826 Filed 8-17-87; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 87-24-NG]

Order Granting Blanket Authorization To Import Natural Gas From Canada; Cherhill Resources Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Order Granting Blanket Authorization to Import Natural Gas From Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Cherhill Resources Inc. (Cherhill) blanket authorization to import natural gas from Canada. The order issued in ERA Docket No. 87-24-NG authorizes Cherhill to import up to 100 Bcf over a two-year period for sale in the domestic spot market.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 11, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-18827 Filed 8-17-87; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 87-41-NG]

Application To Import Natural Gas From Canada; Goetz Oil Corp.

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of Application For Blanket Authorization to Import Natural Gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on July 28, 1987, of an application from Goetz Oil Corporation (Goetz) for blanket authorization to import Canadian natural gas for short-term and spot market sales in the United States. Authorization is requested to import up to 140 Bcf of natural gas for a two-year term beginning on the date of the first delivery. Goetz is a New York corporation with its principal place of business in Tonawanda, New York. Goetz states that it intends to use

existing pipeline facilities and facilities specifically at Emerson, Manitoba and Niagara Falls, Ontario.

The firm proposes to submit quarterly reports giving details of individual transactions within 30 days following each calendar quarter.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than September 17, 1987.

FOR FURTHER INFORMATION CONTACT:

Allyson Reilly, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9394

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if the ERA approves this requested blanket import, it may designate a total amount of authorized volumes for the term rather than a daily or annual limit, in order to provide the applicant with maximum flexibility of operation. ERA will also condition the authorization on the filing of quarterly reports to facilitate ERA monitoring of the operation and effectiveness of the blanket program.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decisions on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m., e.d.t., September 17, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comment, an oral presentation, a conference, or trial-type hearing. A request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts. If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Goetz's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 7, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–18828 Filed 8–17–87; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 87–38–NG]

Application for Blanket Authorization to Export Natural Gas; Vector Energy (U.S.A.) Inc.

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of Application for Blanket Authorization to Export Natural Gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on July 15, 1987, of an application from Vector Energy (U.S.A.) Inc. (Vector) for blanket authorization to export, for its own account or the account of others, up to 60 Bcf of U.S. natural gas to Canada over a two-year period, beginning on the date of first delivery, for short-term or spot market sales. Vector, a Deleware corporation, is a wholly owned subsidiary of Vector Energy Inc., an Alberta corporation. Vector intends to use existing pipeline facilities for the transportation of the requested exports, and proposes to submit quarterly reports giving details of individual transactions.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motion to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than September 17, 1987.

FOR FURTHER INFORMATION CONTACT:

Lot Cooke, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8116

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independece Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the Secretary of Energy's Delegation Order to the Administrator of the ERA (49 FR6690, February 22, 1984), under which the domestic need for the gas to be exported is the primary consideration in

determining whether it is in the public interest. Parties that may oppose this application should comment in their response on the issue of the domestic need for the gas as set forth in the Delegation Order.

Public Comment Procedues.

In response to this notice, and person may file a protest, motion intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropirate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.s.t., September 17, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necesssary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that addional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevent and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide, notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Vector's application is available for inspection and copying in the Natural Gas Division Docket Room GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC August 11, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Program Economic Regulatory Administration.

[FR Doc. 18829 Filed 8–17–87; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP).

Date and Time: Wednesday, September 9, 1987, 9:00 am—6:00 pm; Thursday, September 10, 1987, 9:00 am—4:00 pm.

Place: U.S. Department of Energy, Room A–410, 19901 Germantown Rd., Germantown, MD 20874.

Contact: Dr. P.K. Williams, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER–221:GTN, Washington, DC 20545, Telephone: 301/353–4829.

Purpose of Panel: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda:

Wednesday, September 9, 1987

—Discussion of the National Science Foundation Elementary Particle Physics Program FY 1988 Budget Plan
—Discussion of the Department of Energy High Energy Physics Program FY 1988 Initial Financial Plan (IFP) Budget
—Discussion of the FY 1988 Budget Plans for the Laboratories and Universities
—Status Reports on the Superconducting Super Collider (SSC)
—Status Report on SLC (Stanford Linear Collider) Construction at SLAC (Stanford Linear Accelerator Center)
—Status Report on the BESAC (Basic Energy Sciences Advisory Committee) Subpanel on High Temperature Superconductors
—Discussion of the October meeting of the International Committee on Future Accelerators
—Public Comment (10 minute rule)

Thursday, September 10, 1987

—Status Report on Tevatron Operations at Fermilab
—Discussion of a proposed experiment to measure the antiproton gravitational force
—Discussion of the Subpanel on Future Modes of Experimental Research in High Energy Physics
—Further Discussion of Foregoing Items
—Public Comment (10 minute rule)

Public Participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on August 12, 1987.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 87–18830 Filed 8–17–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 3043–009]

Proposed Transmission Line Corridor Revision; Arkansas Electric Cooperative Corp.

August 12, 1987.

Take notice that Arkansas Electric Cooperative Corporation filed on June 30, 1987, a revised Exhibit G drawing showing the final proposed lengths and directions of the 161–kV transmission

line segments for Arkansas River Lock and Dam No. 13, Project No. 3043.

The license for Project No. 3043 was issued on October 18, 1983, and would expire on September 30, 2033. The project is located on the Arkansas River in Crawford County, Arkansas.

Correspondence with the applicant should be directed to: Mr. W. B. Smith, Benham—Holway Power Group, 5314 South Yale Avenue, Tulsa, Oklahoma 74135–7457. Phone Number (918) 492–1600.

Comments, Protests, or Motions to Intervene

Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 F.R. 19025–19026 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests or motions to intervene must be filed on or before September 25, 1987.

Filing and Service of Responsive Documents

Any filings must bear in all capital letters the title *"Comments", "Protest", or "Motion To Intervene"*, as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. William C. Wakefield II, Acting Director, Division of Project Management, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any motion to intervene must also be served upon each representative of the applicant specified in the third paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18754 Filed 8–17–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85–13–015]

Change in FERC Gas Tariff; Northwest Pipeline Corp.

August 12, 1987.

Take notice that on August 5, 1987, Northwest Pipeline Corporation (Northwest) submitted for filing, to be a part of its FERC Gas Tariff, Original Volume No. 1–A and Original Volume No. 2, the following tariff sheets.

Orginal Volume No. 1–A

Tenth Revised Sheet No. 201

Original Volume No. 2

Fifth Revised Sheet No. 2.2

Northwest states that the purpose of the filing is to reflect the new statutory corporation federal income tax rate of 34 percent, with respect to the credit for gathering payments in its T–5 transportation schedule, pursuant to the settlement terms in Docket No. RP85–13–000.

Northwest requests that the Commission grant such waivers of its regulations as it deems necessary to enable this filing to become effective July 1, 1987.

A copy of this filing has been served on Northwest's jurisdictional customers and affected state regulatory Commissions.

Any persons desiring to be heard or protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18822 Filed 8–17–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87–15–017]

Proposed Changes in FERC Gas Tariff; Panhandle Eastern Pipe Line

August 12, 1987.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on August 6, 1987 tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 2:

First Revised Sheet Nos. 1621, 1931 and 2432
Second Revised Sheet No. 2707
Fourth Revised Sheet Nos. 1557, 1558, 1610, 1920, 1995, 2489, 2524 and 2672
Fifth Revised Sheet No. 2731
Sixth Revised Sheet No. 2242
Twelfth Revised Sheet Nos. 694 and 695

Panhandle states that such changes are made to amend certain Rate Schedules for the transportation of natural gas on behalf of various Panhandle transport customers to reflect Trunkline Gas Company's current transportation rates as approved in Docket No. RP87–67–000 by Commission Order issued May 29, 1987 and ERRATUM Notice dated June 9, 1987 to be effective May 1, 1987. Panhandle proposes that these tariff sheets be given an effective date of May 1, 1987.

A copy of this filing has been served on the various transport customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before August 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18823 Filed 8–17–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EC87–20–000, et al.]

Electric Rate and Corporate Regulation Filings; Southern California Edison Co. et al.

August 11, 1987.

Take notice that the following filings have been made with the Commission:

1. Southern California Edison Company

[Docket No. EC87–20–000]

Take notice that on August 6, 1987, Southern California Edison Company (Edison), pursuant to section 203 of the Federal Power Act, tendered for filing an application for an order authorizing its proposed corporate reorganization.

Edison is a public utility primarily engaged in the business of supplying electric energy to a 50,000 square mile area in central and southern California. In addition to its regulated utility operations, Edison owns all of The Mission Group, an unregulated, non-utility company, which in turn owns all of several unregulated, non-utility

subsidiaries. Edison proposes to carry out a plan of reorganization whereby an as yet unnamed parent corporation would own all of the common equity shares of Edison, as well as all of the shares of The Mission Group.

Edison's position is that the corporate reorganization is consistent with the public interest.

Comment date: August 24, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Connecticut Yankee Atomic Power Company

[Docket No. ER87-390-002]

Take notice that on July 15, 1987, Connecticut Yankee Atomic Power Company tendered for filing pursuant to the Commission's Order issued June 12, 1987, a supplement to its proposed rate schedule to reflect the annual charge for decommissioning.

Comment date: August 24, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Appalachian Power Company, Indiana & Michigan Electric Company, Kentucky Power Company, Ohio Power Company, Wheeling Electric Company

[Docket No. ER87-280-001]

Take notice that on July 14, 1987, in accordance with ordering Paragraph (C), of the Commission's Order Accepting Proposed Rates for Filing, Noting Interventions, Granting Waiver of Notice Requirements in Part, and Terminating Dockets issued June 16, 1987 in Dockets Nos. ER87-280-000, ER87-281-000 and ER87-355-000, American Electric Power Service Corporation on behalf of its affiliates, Appalachian Power Company, Indiana & Michigan Electric Company, Kentucky Power Company, Ohio Power Company, and Wheeling Electric Company (sometimes collectively referred to as the AEP Parties), tendered for filing a Compliance Filing to the above referenced dockets.

The purpose of the Compliance Filing is to incorporate changes ordered by the Commission by adding a statement that modifies the AEP Parties' hourly Non-Displacement rates and hourly transmission rates so that no hourly customer will pay more than the equivalent daily rate.

Copies of the filing were served upon the public service commissions in the states of Ohio, Kentucky, Indiana, Michigan, Virginia, and West Virginia, and all parties.

Comment date: August 24, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Sierra Pacific Power Company

[Docket No. ER87-506-000]

Take notice that on July 22, 1987, Sierra Pacific Power Company (Sierra) tendered for filing the second part of a two part filing regarding the following contracts Sierra filed in this docket:

A. Agreements For Service Under Sierra's Tariff RT between Sierra and the following companies:

1. Idaho Power Company,
2. Montana Power Company,
3. Pacific Power & Light,
4. Portland General & Electric Company,
5. Washington Water Power Company,
6. Intermountain Consumer Power Association, and
7. Northern California Power Agency.

B. Amendment No. 1 to the May 19, 1981 Agreement between Sierra and Idaho Power Company.

C. First and Second Addenda to the February 24, 1971 Agreement between Sierra and Mr. Wheeler Power, Inc.

D. July 1, 1986 North Valmy Plant Operation Agreement between Sierra and Idaho Power Company.

E. August 6, 1986 Silver Peake 55kv Interconnection Agreement between Sierra and Southern California Edison Company.

F. August 16, 1985 Special Facilities Agreement between Sierra and Beowawe Geothermal Power Company.

G. August 6, 1986 Operation and Maintenance Services Agreement between Sierra and Beowawe Geothermal Power Company.

Comment date: August 24, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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 Commisison and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18820 Filed 8-17-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF87-564-000 et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; E.F. Chollas, Inc., et al.

Comment date: September 17, 1987 in accordance with Standard Paragraph E at the end of this notice.

August 11, 1987.

Take notice that the following filings have been made with the Commission.

1. E.F. Chollas, Inc.

[Docket No. QF87-564-000]

On July 31, 1987, E.F. Chollas, Inc. (Applicant) of 401 B Street, Suite 1000, San Diego, California 92101, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Harbor Drive and 28th Street, San Diego, California. The facility will consist of a combustion turbine generator, a waste generator. The thermal output of the facility, in the form of steam, will be sold to a local water distribution company for use in a flash desalinization process. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 45.7 MW. Construction of the facility is expected to begin in January 1990.

2. E.F. Torrey Pines, Inc.

[Docket No. QF87-565-000]

On July 31, 1987, E.F. Torrey Pines, Inc. (Applicant) of 401 B Street, Suite 1000, San Diego, California, 92101, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located on the campus of the University of California San Diego in La Jolla, Califorina. The facility will consist of a combustion turbine generator and a supplementary-fired waste heat recovery steam generator (HRSG). Steam from the HRSG will be

utilized by Applicant for purposes of campus heating and cooling. The primary energy source of the facility will be natural gas. The maximum net electric power production capacity of the facility will be 11.35 MW. Construction of the facility is expected to begin in November 1988.

Standard Paragraph

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 inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18821 Filed 8-17-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER87-570-000, et al.]

Electric Rate and Corporate Regulation Filings: Idaho Power Co. et al.

August 13, 1987.

Take notice that the following filings have been made with the Commission:

1. Idaho Power Company

[Docket No. ER87-570-000]

Take notice that on August 7, 1987, the Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during June 1987, along with cost justification for the rate charged. This filing includes the following supplements:

Pacific Power & Light Co., Supplement No. 20
Utah Power & Light Co., Supplement No. 67
Montana Power Co., Supplement No. 52
Washington Water Power Co., Supplement No. 50
Sierra Pacific Power Co., Supplement No. 65
Puget Sound Power & Light Co., Supplement No. 29
City of Pasadena, Supplement No. 30
City of Burbank, Supplement No. 32
Pacific Gas & Electric Co., Supplement No. 25
Sacramento Municipal Utility District, Supplement No. 3
City of Glendale, Supplement No. 32
Los Angeles Dept. of Water and Power, Supplement No. 37

Comment Date: August 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Public Service Corporation

[Docket No. ER87-571-000]

Take notice that on August 10, 1987, Wisconsin Public Service Corporation (Company) of Green Bay, Wisconsin, filed a supplement to its service agreement with Wisconsin Public Power Incorporated System (WPPI). The service agreement supplement relates to the company's FERC Electric Tariff, Original Volume No. 2 for all requirements service and contains provisions relative to the point of delivery and location of electric metering at the City of Algoma. The filing does not change the level of the Company's rates or affect terms and conditions other than those related to the said metering location.

The company asks that the supplemental agreement become effective upon the operational date of the new facilities which is estimated to occur about September 27, 1982. The company represents that WPPI joins in the request for this effective date and also supports the filing which the company has made. The company states that it has furnished copies of the filing to WPPI and the Wisconsin Public Service Commission.

Comment Date: August 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Boston Edison Company

[Docket No. ER84-705-000]

Take notice that on August 10, 1987 Boston Edison Company (Boston Edison) tendered for filing revised Exhibit Bs to its Rate Schedules FPC Nos. 47 and 51 for service to the Towns of Concord and Wellesley, Massachusetts, to reflect the direct cost of service effects on the S-8/PR Rate charged the two Towns of the reduction in the federal income rate from 46% to 34%, pursuant to the Tax Reform of 1986. Boston Edison asks that the rate schedule changes be made effective as of July 1, 1987.

Boston Edison states that this filing has been posted and that copies of the filing have been served upon the two Towns and the Massachusetts Department of Public Utilities.

Comment Date: August 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Consolidated Edison Company of New York, Inc.

[Docket No. ER87-572-000]

Take notice that on August 10, 1987, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing Supplements to thirteen of its Rate Schedules:

Rate schedule No.	Supplement No.	Person receiving service
55	6	Philadelphia Electric Company (PE).
56	6	Public Service Electric and Gas Company (Public Service).
57	6	Northeast Utilities (NU).
62	6	Orange and Rockland Utilities, Inc (O&R).
69	3	NU.
70	1	Niagara Mohawk Power Corporation (Mohawk) and Pennsylvania Power & Light Company (PP&L).
71	1	New England Power Co. (NEP).
74	4	PP&L.
75	5	GPU Service Corporation (GPU).
78	4	Power Authority of the State of New York (Power Authority).
82	2	Baltimore Gas & Electric Company (BG&E).
83	2	Atlantic City Electric Company (Atlantic).
84	2	Connecticut Municipal Electric Energy Cooperative (CMEEC).

The Supplements provide for a decrease in rate from 2.6 mills to 2.3 mills per Kwh of interruptible transmission of power and energy over Con Edison's transmission facilities, thus decreasing annual revenues under the Rate Schedules by a total of $169,318.80. The Supplement to No. 57 also provides for an additional source for the power to be transmitted. Con Edison has requested waiver of notice requirements so that the Supplements can be made effective as of September 1, 1987.

Con Edison states that copies of this filing have been served by mail upon PE, Public Service, NU, O&R, Mohawk, PP&L, NEP, GPU, the Power Authority, BG&E, Atlantic and CMEEC.

Comment date: August 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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 in intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18854 Filed 8-17-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-472-000, et al.]

Natural Gas Certificate Filings; United Gas Pipe Line Co., et al.

August 13, 1987.

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Company

[Docket No. CP87-472-000]

Take notice that on July 31, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-472-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a direct industrial sale service to New Orleans Public Service Inc. (NOPSI), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that continuation of the present service is not in the public interest and requests that the Commission permit the termination of direct sale service to the extent required.

United asserts it is not requesting abandonment authority of any facilities. United states that the subject delivery facilities would be left in place to accommodate either future transportation service or new sales service if appropriate contractual arrangements can be made. United states that if such new arrangements are not made, it would file to abandon such facilities.

Comment date: September 3, 1987, in accordance with Standard Paragraph F at the end of this notice.

2. United Gas Pipe Line Company

[Docket NO. CP87-481-000]

Take notice that on August 5, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-481-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a direct industrial sale service to Louisiana Power & Light Company, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that continuation of the present service is not in the public interest and it requests that the Commission permit the termination of direct sale service to the extent required.

United contends that it is not requesting abandonment authority of any facilities. United states that the subject delivery facilities would be left in place to accommodate either future transportation service or new sales service if appropriate contractual arrangements can be made. United states that if such new arrangements are not made, it will file to abandon such facilities.

Comment date: September 3, 1987, in accordance with Standard Paragraph F at the end of this notice.

3. Natural Gas Pipeline Company of America

[Docket No. CP87-485-000]

Take notice that on August 7, 1987, Natural Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP87-485-000 an application pursuant to section 7 of the National Gas Act for a certificate of public convenience and necessity authorizing: (1) The continuation of the existing grandfathered transportation service provided in Docket No. ST86-73 on behalf of Tennessee Gas Pipeline Company (Tennessee) for a limited term extending through September 9, 1988, and (2) the increase in the maximum daily volume of synthetic natural gas delivered from 41,250 MMBtu to up to 48,000 MMBtu, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural entered into a limited term gas transportation agreement with Tennessee dated August 2, 1985 (Agreement) to provide on an interruptible basis transportation of up to 41,250 MMBtu per day of gas from a receipt point in Mills County, Iowa to delivery points in Wharton County, Texas and Cameron Parish, Louisiana, pursuant to the transitional provisions of Order No. 436, *et al.* and Subpart G of Part 284 of the Commission's Regulations. Natural receives the gas for Tennessee's account from Northern Natural Gas Company, a Division of Enron Corp. (Northern). The gas transported is synthetic natural gas produced at the Great Plains coal gasification plant located in Beulah, North Dakota. Northern Border Pipeline Company receives the gas from the plant and delivers it to Northern near Ventura, Hancock County, Iowa. Natural's grandfathered transportation service for Tennessee expires September 9, 1987.

Natural proposes to extend the transportation service for Tennessee for one year expiring on September 9, 1988 (pursuant to the agreement, as amended by Amendment No. 1 dated July 23, 1987) pursuant to the same terms and conditions set forth in Docket No. ST86-73. Natural proposes to charge Tennessee a transportation rate of 11.46 cents per MMBtu. Natural also proposes to reduce the volumes of gas redelivered for the account of Tennessee by five-tenths percent (0.5%) per MMBtu for gas lost and unaccounted for and gas used as fuel. Natural states that no additional facilities would be required to continue such service.

Comment date. September 1, 1987, in accordance with Standard paragraph F at the end of this notice.

4. United Gas Pipe Line Company

[Docket No. CP87-476-000]

Take notice that on August 3, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-476-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a direct industrial sale service to American Cyanamid Company (American), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that it has notified American by letters dated August 4, 1986 and August 11, 1986, that its present firm service contract would terminate on September 4, 1986. It is further stated that continuation of this service is not in the public interest and it requests that the Commission permit the termination of direct sale service to the extent required.

United States it is not requesting abandonment authority of any facilities. United further states that the subject delivery facilities would be left in place to accommodate either future transportation service or new sales service if appropriate contractual arrangements can be made. It is stated that if such new arrangements are not made, United would file to abandon such facilities.

Comment date: September 3, 1987, in accordance with Standard Paragraph F at the end of this notice.

5. Natural Gas Pipeline Company of America

[Docket No. CP86-437-006]

Take notice that on August 6, 1987, Natural Gas Pipeline Company of America (NGPL), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP86-437-006 a petition to further amend the order issued September 3, 1986, in Docket No. CP86-437-000, as amended, on September 29, 1986, and January 27, 1987, pursuant to section 7(c) of the Natural Gas Act NGPL requests authorization so as to extend the term of transportation service for Olin Corporation (Olin), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

NGPL states that in the order issued September 3, 1986, in Docket No. CP86-437-000, as amended, NGPL is authorized to transport up to 4,000 MMBtu of natural gas per day on an interruptible basis for Olin for a term ending September 4, 1987.

NGPL states that in the amendment to the transportation agreement dated March 27, 1986, as amended, NGPL and Olin seek to continue transportation service beyond the currently authorized termination date. NGPL requests that the certificate, in Docket No. CP86-437-000, as amended, be extended for a limited term ending September 4, 1989.

NGPL does not propose any other changes in the authorized service, and further states that no new facilities are proposed herein.

Comment date: September 3, 1987, in accordance with the first subparagaph of Standards Paragraph F at the end of this notice.

Standard Paragraph

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, and hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed with 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-18855 Filed 8-17-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF87-560-000 et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; Applied Energy, Inc., et al.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

August 13, 1987.

Take notice that the following filings have been made with the Commission.

1. Applied Energy, Inc.

[Docket No. QF87-560-000]

On July 31, 1987, Applied Energy, Inc. (Applicant), of 401 B Street, Suite 1000, San Diego, California 92101, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in San Diego, California. The facility will consist of a combustion turbine generating unit, a heat recovery steam generator, and an extraction/condensing steam turbine generating unit. Steam produced from the facility will be sold to the United States Navy for space and water heating, and for steam blanketing. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 45.5 MW. Installation of the facility is expected to begin in October 1988.

2. E. F. Kenilworth, Inc.

[Docket No. QF87-559-000]

On July 31, 1987, E. F. Kenilworth, Inc. (Applicant), of 401 B Street, Suite 1000, San Diego, California 92101, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Kenilworth, New Jersey. The facility will consist of one combustion turbine generating unit, one heat recovery steam generator, and an extraction/condensing steam turbine generating unit. Steam produced from the facility will be sold to Schering Plough for sterilization, pharmaceutical processing and space heating. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 25 MW. Installation of the facility is expected to begin in September, 1987.

3. E. F. Union, Inc.

[Docket No. QF87-558-000]

On July 31, 1987, E. F. Union, Inc. (Applicant), of 401 B Street, Suite 1000, San Diego, California 92101, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Union, New Jersey. The facility will consist of two combustion turbine generating units and two heat recovery steam generators. Steam produced from the facility will be sold to Schering Plough for sterilization, pharmaceutical processing and space heating. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 7.1 MW. Installation of the facility is expected to begin in September, 1987.

4. Solar Turbines Incorporated

[Docket No. QF87-567-000]

On July 31, 1987, Solar Turbines Incorporated (Applicant), of 2200 Pacific Highway, San Diego, California 92138-5376 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Chicago, Illinois. The facility will consist of two combustion turbine generators and two heat recovery steam generators. Thermal energy recovered from the facility will be used by the Chicago Union Station Company for building space heating and cooling, and domestic hot water production. The primary energy source for the facility will be natural gas. The net electric power production capacity of the facility will be 3.89 MW. Installation will begin in January 1988.

Standard Paragraph

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 inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18856 Filed 8–17–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86–98–003]

Compliance Filing; Michigan Gas Storage Co.

August 13, 1987.

Take notice that on August 7, 1987, Michigan Gas Storage Company (Storage Company) tendered for filing the following revised tariff sheets pursuant to the letter order of the Commission dated July 23, 1987, in the subject proceeding:

First Substitute First Revised Sheet No. 8
First Substitute First Revised Sheet No. 20

The proposed effective date of these revised tariff sheets is July 1, 1986.

Storage Company respectfully requests waiver of such provisions of the Commission's Regulations, as may be necessay so that this compliance filing and the accompanying tariff sheets may be accepted to be effective July 1, 1986.

Copies of the filing were served on all intervenors, jurisdictional customers and 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 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 August 21, 1987. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18857 Filed 8–17–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87–83–000]

Proposed Changes in FERC Gas Tariff; Northern Natural Gas Co., Division of Enron Corp.

August 13, 1987.

Take Notice that on August 3, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing to become a part of Northern Natural Gas Company's (Northern) F.E.R.C. Gas Tariff, Third Revised Volume No. 1,

Third Revised Volume No. 1

First Revised Sheet No. 52c.2
Original Sheet No. 52c.2a
First Revised Sheet No. 52c.3
First Revised Sheet No. 52f.4

The First Revised Sheet Nos. 52c.2, 52c.3 and 52f.4 and Original Sheet Nos. 52c.3a and 52f.4a are being filed to expand the time period Northern will have available to schedule daily transportation volumes under Rate Schedules FT–1 and IT–1 effective September 2, 1987. Additionally, Northern proposes that its transportation customers confirm verbal nominations in writing.

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 the Commission's Rules of Practice & Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 19, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18858 Filed 8–17–87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87–52–009]

Compliance Filing; United Gas Pipe Line Co.

August 13, 1987.

Take notice that on August 7, 1987, United Gas Pipe Line Company (United) tendered for filing Revised Fourth Revised Sheet No. 9–A, Revised Second Revised Sheet No. 13, Revised Fourteenth Revised Sheet No. 14, Revised Twelfth Revised Sheet No. 25, and Revised Fifth Revised Sheet No. 26 to its FERC Gas Tariff, First Revised Volume No. 1, to comply with Ordering Paragraph (B) of the Commission's July 23, 1987, order in Docket No. RP87–52–002, *et al.* These tariff sheets reflect removal of the 75% nomination entitlement ratio for Rate Schedules DG, G and PL. United states that it is making this filing under protest and without prejudice to its application for rehearing of the Commission's May 8, 1987, order in Docket No. CP86–526–000, *et al.*

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 withh Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 18, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–18859 Filed 8–17–87; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 87-272, File Nos. BTCH851205HO and BTCH851205 HP]

Oyate, Inc.; Order to Show Cause, Hearing Designation Order, and Notice of Apparent Liability

Adopted: July 20, 1987; Released: July 31, 1987.

By the Commission:

1. The Commission has before it for consideration the license of the captioned licensee, Oyate, Inc. (Oyate), for Radio Station KQHU–FM, Yankton, SD, and two applications for transfer of control of Oyate, as hereinafter described. On December 5, 1985, Oyate submitted applications seeking simultaneous Commission approval of two separate transfers of control of the licensee corporation. The first (BTCH 85 1205HO), sought *nunc pro tunc* Commission approval of an October 1982 transfer of stock from the then majority shareholder, Willis F. Stanage, to then minority shareholder, Robert O. Link.[1] The second (BTCH 851205HP) requested approval of a transfer of control of Oyate from Link to North American Storage, Inc., a South Dakota Corporation, pursuant to an agreement between Link and North American, dated October 17, 1985.

2. Information supplied by Oyate in the applications for transfer of control and obtained as a result of a subsequent Commission inquiry into the actual ownership and control of the licensee, raises substantial and material questions as to whether the licensee possesses the requisite qualifications to be or remain a licensee of the captioned radio station and whether the public interest, convenience and necessity would be served by grant of either or both of the captioned applications. This information has come to the attention of the Commission since its grant of the renewal of Oyate's license and, if substantiated, could warrant revocation of the license,[2] or denial of the subject applications.[3]

3. Accordingly, it is ordered, that pursuant to section 312(a) of the Communitcations Act of 1934, as amended, Oyate, Inc. is directed to show cause why the license of Station KQHU–FM, Yankton, SD, should not be revoked, at a hearing to be held at a time and place specified in a subsequent Order, upon the following issues:

(a) To determine whether the principals of Oyate, Inc., engaged in unauthorized transfers of control of the license of KQHU–FM in violation of Section 310(d) of the Communications Act;

(b) To determine whether the principals of Oyate, Inc., made misrepresentations to the Commission, were lacking in candor in their dealings with the Commission or attempted to mislead or deceive the Commission as to the true ownership of the licensee in their 1982 renewal application (File No. 821129WF) and in a related Ownership Report filed November 29, 1982;

(c) To determine, whether Oyate, Inc. violated Section 73.3613(b) of the Commission's Rules by failing to report contracts or agreements affecting ownership of the licensee;

(d) To determine, in light of the evidence adduced under the foregoing issues, whether Oyate, Inc., possesses the requisite qualifications to be or remain a licensee of the captioned radio station; and

(E) If, in light of the evidence adduced pursuant to the foregoing issues, it is determined that revocation of license for station KQHU–FM Yankton, South Dakota, is not warranted, to determine, pursuant to Section 309(e) of the Communications Act of 1934, as amended, whether grant of the captioned applications will serve the public interest, convenience, and necessity.

4. It is further ordered, that the Chief, Mass Media Bureau, is directed to serve upon Oyate, Inc., within thirty (30) days of the release of this Order, a Bill of Particulars with respect to Issues (a) through (c) above.

5. It is further ordered, that pursuant to section 312(d) of the Communications Act of 1934, as amended, both the burden of proceeding with the evidence and the burden of proof shall be upon the Mass Media Bureau as to issues (a) through (d) inclusive.

6. It is further ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, both the burden of proceeding with the introduction of evidence and the burden of proof with respect to issue (e), shall be upon Oyate, Inc.

7. It is further ordered, that to avail itself of the opportunity to be heard, the licensee, pursuant to § 1.91(c) of the Commission's Rules, in person or by attorney shall file with the Commission within thirty (30) days of the receipt of the Order to Show Cause a written appearance stating it will appear at the hearing and present evidence on the matters specified in the Order. If the licensee fails to file an appearance within the time specified, the right to a hearing shall be deemed to have been waived. *See* § 1.92(a) of the Commission's Rules. Where a hearing is waived, a written statement in mitigation or justification may be submitted within thirty (30) days of the receipt of the Order to Show Cause. *See* 1.92(b) of the Commission's Rules. In the event the right to a hearing is waived, the presiding officer or the Chief Administrative Law Judge, if no presiding officer has been designated, will terminate the hearing proceeding and certify the case to the Commission in the regular course of business and an appropriate order will be entered. *See* § 1.92 (c) and (d) of the Commission's Rules. Because this matter involves allegations of consummated but not authorized transfers of control, we think it to be particularly well-suited for expedited treatment at the next stages. Accordingly, the presiding Administrative Law Judge and the Review Board are directed to accord this matter expedited treatment. In this regard, all concerned should be mindful of unnecessary delays and extensions of time.

8. It is further ordered, that if it is determined that the hearing record does not warrant an Order revoking the license of Oyate, Inc., for Radio Station KQHU–FM it shall also be determined if Oyate has willfully or repeatedly violated section 310(d) of the Communications Act of 1934, as amended (unauthorized transfer of control) and § 73.3613(b) of the Commission's Rules (failure to file contracts or agreements relating to transfer of stock in the licensee corporation). If so, it shall also be determined whether an Order for Forfeiture shall be issued pursuant to

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[1] Prior to the transfer, Stanage held 224 of the 400 issued and outstanding shares of the licensee representing a 56%, and controlling, interest. Link held 132 shares, which constituted a 33% interest.

[2] Section 312(a)(1) of the Communications Act of 1934, as amended, states that "[t]he Commission may revoke any station license or construction permit . . . for false statements knowingly made . . . in the application." Section 312(a)(2) permits the Commission to revoke a station license "because of conditions coming to the attention of the Commission which would warrant it in refusing to grant a license or permit on an original application." Section 312(a)(4) permits the Commisssion to revoke a station license for willful or repeated violation of, or failure to observe, any provision of the Act or the Commission's Rules.

[3] Section 309(e) of the Communications Act of 1934, as amended, states in pertinent part, that, "If, in the case of any application to which subsection (a) of this section applies, a substantial and material question of fact is presented or the Commission for any reason is unable to make the finding specified in such subsection, it shall formally designate the application for hearing. . . ."

section 503(b) of the Communications Act of 1934, as amended, in the amount of $20,000 for the willful or repeated violations of section 310(d) of the Communications Act of 1934, as amended and § 73.3613(b) of the Commission's Rules.

9. It is further ordered, that this document constitutes a Notice of Apparent Liability for a forfeiture for violations of section 310(d) of the Communications Act and § 73.3613(b) of the Commission's Rules.

The Commission has determined that, in every case designated for hearing involving revocation or denial of assignment, transfer, or renewal of license for alleged violations which also come with the purview of section 503(b) of the Communications Act of 1934, as amended, it shall, as a matter of course, include thus forfeiture notice so as to maintain the fullest possible flexibility of action. Since the procedure is this a routine or standard one, we stress that the inclusion of this notice is not to be taken as in any way indicating what the initial or final disposition of the case should be.

10. It is further ordered, that North American Storage, Inc. be made a party to this proceeding.

11. It is further ordered, that the Secretary, Federal Communications Commission, send a copy of this Order by *Certified Mail—Return Receipt Requested*, to:

Oyate, Inc., 904 West 23rd, P.O. Box 794, Yankton, SD 57078

and also to each of the following:

Robert O. Link, 16 Pine Street, Yankton, SD 57078

North American Storage, Inc., c/o Wesley Heppler, Cole, Raywid & Braverman, 1919 Pennsylvania Avenue NW., Washington, DC 20006

Dr. Willis F. Stanage, c/o Boyce, Murphy, McDowell & Greenfield, Northwest Center Suite 505, P.O. Box 5015, Sioux Falls, SD 57117–0515

Lawrence W. Magnuson, c/o Frederick A. Polner, Rothman, Gordon, Foreman & Groudine, P.A., 300 Grant Building, Pittsburgh, PA 15219

Federal Communications Commision.

William J. Tricarico,

Secretary.

[FR Doc. 87–18873 Filed 8–17–87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-646]

Liberty Savings Bank Marietta, OH; Final Action Approval of Conversion Application

Date: August 12, 1987.

Notice is hereby given that on August 10, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Liberty Savings Bank, Marietta, Ohio for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552 and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Cincinnati, 2000 Atrium TWO, Cincinnati, Ohio 45202.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87–18796 Filed 8–17–87; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-647]

Valley Federal Savings and Loan Association, Sheffield, AL; Final Action Approval of Conversion Application

Date: August 12, 1987.

Notice is hereby given that on August 10, 1987, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Valley Federal Savings and Loan Association, Sheffield, Alabama for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87–18797 Filed 8–17–87; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under OMB Review

August 12, 1987.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received on or before September 8, 1987.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to Room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once

approved may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)

Proposal To Approve Under OMB Delegated Authority the Extension, With Revision, of the Following Report

Report title: Report of Condition for Edge and Agreement Corporations
Agency from number: FR 2886b
OMB Docket number: 7100–0086
Frequency: Quarterly or Annually
Reporters: Edge and Agreement Corporations
Annual reporting hours: 4945 hours

Small businesses are not affected.

Note.—This notice is a correction of an earlier notice published July 1, 1987 Vol. 52, No. 126, p. 24531.

General Description of the Report

This reports collects balance sheet and income data from Edge and Agreement corporations. The data are used to supplement examination reports and support the applications process, to monitor aggregate institutional trends, and to measure the effect of and compliance with the Board's Regulation K. The proposed revisions consist of changes to Schedule E that are designed to maintain consistency with similar information collect from commercial banks in Schedule N of the Reports of Condition and Income (FFIEC 031–034). Under the proposal, the title of Schedule E would be changed to "Past Due, Nonaccrual Loans and Leases;" item 4, entitled Renegotiated "troubled" debt would be deleted; item 5, Total would be renumbered item 4; and a memorandum item would be added to collect restructured loans and leases included in the total reported in item 4.

This report is required and authorized by law [12 U.S.C. 602 and 605]. Certain respondent data are given confidential treatment [5 U.S.C. 552(b) (4) and (8)].

Board of Governors of the Federal Reserve System, August 12, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–18792 Filed 8–17–87; 8:45 am]

BILLING CODE 6210–01–M

Formations of, Acquisition by, and Mergers of Bank Holding Companies; NBS Bancorp et al.

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 September 10, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *NBS Bancorp*, New Brunswick, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of New Brunswick Savings Bank, New Brunswick, New Jersey, a mutual savings bank which will be converted to stock form.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Herky Hawk Financial Corp.*, Hopkinton, Iowa; to become a bank holding company by acquiring 80 percent of the voting shares of Citizens State Bank, Hopkinton, Iowa. Comments on this application must be received by September 4, 1987.

2. *Tri City Bankshares Corporation*, Oak Creek, Wisconsin; to acquire 100 percent of the voting shares of Tri City National Bank of Menomonee Falls, Menomonee Falls, Wisconsin, *de novo* bank. *Comments on this application must be received by September 2, 1987.*

C. **Federal Reserve Bank of St. Louis** (Randall C. Summer, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First City, Inc.*, Memphis, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of First City, A Federal Savings Bank, Memphis, Tennessee.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Union Savings Bancshares, Inc.*, Sedalia, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Union Savings Bank, Sedalia, Missouri.

Board of Governors of the Federal Reserve System, August 12, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–18824 Filed 8–17–87; 8:45 am]

BILLING CODE 6210–01–M

Acquisitions of Companies Engaged in Permissible Nonbanking Activities; Premier Bancorp, Inc., et al.

The organizations listed in this notice have 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.

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 on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the

offices of the Board of Governors not later than September 10, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Premier Bancorp, Inc.*, formerly Louisiana Bancshares, Inc., Baton Rouge, Louisiana; to acquire Terre Agency, Inc., Houma, Louisiana, and thereby engage in the sale of insurance that is directly related to extensions of credit by its affiliates, or that is directly related to the provision of other financial services by its affiliates pursuant to § 225.25(b)(8) of the Board's Regulation Y. These activities will be conducted in Louisiana or in adjoining states.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Valley Bancorporation*, Appleton, Wisconsin; to acquire Valley Bancard, Inc., Madison, Wisconsin, and thereby engage in credit card servicing activities pursuant to § 225.25(b)(1) of the Board's Regulation Y. Comments on this application must be received by September 2, 1987.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Canadian Imperial Bank of Commerce*, Toronto, Ontario, Canada, and Canadian Imperial Holdings, Inc., Wilmington, Delaware, to acquire CIBC Leasing Inc., Wilmington, Delaware, formerly Canadian Imperial Leasing Company, Chicago, Illinois, and thereby engage in the leasing of real and personal property pursuant to § 225.25(b)(5) of the Board's Regulation Y. Comments on this application must be received by September 4, 1987.

Board of Governors of the Federal Reserve System, August 12, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-18790 Filed 8-17-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 85F-0115]

Morton Thiokol, Inc.; Withdrawal of Good Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal without prejudice to future filing of a petition proposing that the food additive regulations be amended to provide for the safe use of *N*-(2-methyl-1-naphthyl)maleimide as a preservative in adhesives used in articles intended for packaging, transporting, or holding food.

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

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 29, 1985 (50 FR 12652), FDA published a notice that it had filed a petition (FAP 5B3850) from Morton Thiokol, Inc., Ventron Division, 150 Andover St., Danvers, MA 01923, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of *N*-(2-methyl-1-naphthyl)maleimide as a preservative in adhesives used in articles intended for packaging, transporting, or holding food. The firm has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: August 3, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition

[FR Doc. 87-18786 Filed 8-17-87; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Notice is hereby given that an Office of Rural Health has been established in the Immediate Office of the Administrator, Health Resources and Services Administration, effective July 31, 1987.

Date: August 3, 1987.

David N. Sundwall,

Administrator, Health Resources and Services Administration.

[FR Doc. 87-18784 Filed 8-17-87; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-87-1723; FR 2397]

Office of Lender Activities and Land Sales Registration Interstate Land Sales Registration Divison; Notice of Administrative Proceedings

AGENCY: Assistant Secretary for Housing—Federal Housing Commissioner, Office of Lender Activities and Land Sales Registration, Interstate Land Sales Registration Division, HUD.

ACTION: Notice of proceedings and opportunity for hearing.

SUMMARY: The Interstate Land Sales Registration Division gives public notice of its attempt to serve upon certain persons (defined by statute (15 U.S.C. 1701) as individuals, unincorporated organizations, partnerships, associations, corporations, trusts, or estates) at their last known addresses, a notice requiring revisions to their Statement of Record. Service of this notice was attempted by mail and was found to be undeliverable. Therefore, in accordance with 44 U.S.C. 1508, the Department is publishing this Notice of Proceedings and Opportunity for Hearing in order to effect constructive notice upon the persons listed in the attached Appendix.

DATE: Requests for hearings should be filed on or before September 2, 1987.

ADDRESSES: Requests shall be filed with the docket Clerk for Administrative Proceedings, Room 10251, HUD Building, 451 Seventh Street SW., Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Roger G. Henderson, Branch Chief, Land Sales Enforcement Branch, Department of HUD, Room 6278, Washington, DC 20410. Telephone: (202) 755-0502. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Notice of Proceedings and Opportunity for hearing is issued pursuant to the Interstate Land Sales Full Disclosure Act (15 U.S.C. 1706(d)) and related regulations at 24 CFR 1710.45(b)(1) and 24 CFR 1710.215. The Department hereby serves the following Notice of Proceedings and Opportunity for Hearing to the persons listed in the attached Appendix:

Notice of Proceedings and Opportunity for Hearing

I

Docket No. _____
In the matter of: (subdivision) _____
_____
(developer) _____
_____
Representative Respondent _____
OILSR No. _____

The Secretary in administering the Interstate Land Sales Full Disclosure Act of 1968, 15 U.S.C. 1701 et seq., and its Regulations finds his public files disclose that:

A. Respondent is a corporation organized under the laws of the State of _____ and has its principal office in _____.

B. The mailing address of Respondent's last known principal office or place of business is _____
_____

C. The Respondent filed a Statement of Record and Property Report for the above subdivision, located in _____ County, _____ State, which Statement of Record and Property Report, as amended, if any amendments have been filed, became effective on _____ and is still effective.

D. _____ is an authorized Representative of Respondent.

(Information for completing the above format follows. The captioned matters in the Appendix are listed alphabetically by subdivision in each State. Paragraph I of the Notice of Proceedings and Opportunity for Hearing includes the captions of the separate matters. Information for the completion of the captions of each of the matters is set out in columns 1 and 2 of the aforementioned Appendix. Information for Lines A, B and C above is set out in columns 3, 4 and 5 respectively of the Appendix. Information for Line D of Paragraph I is contained in the caption of the matter, and the same information is supplied in the last line of Column 1 of the Appendix. The entire Notice is completed by inserting the applicable information from the Appendix in the appropriate blanks of paragraph I. In this form it is constructively noticed that the Notice of Proceedings and Opportunity for Hearing is served upon the persons listed in column 1 of the Appendix.)

II

The Interstate Land Sales Registration Division (ILSRD) from its records or from other sources has obtained information which tends to show, and it so alleges, that the Statement of Record and Property Report of the subdivision captioned above include untrue statements of material fact, or omit to state material facts required to be stated therein or necessary to make the statements therein not misleading, to wit:

The developer has failed to file amendments (including an annual report of activity) to comply with revised regulations of the Interstate Land Sales Registration Division or, alternatively, to file documentation establishing that no such amendments are necessary by the time required in 24 CFR 1710.23(a) and/or 1710.310 (1984 Edition), as amended by 49 FR 31366 (August 6, 1984) (as codified in the 1985 edition).

III

In view of the allegations contained in Part II above, the Secretary will provide an opportunity for a public hearing to determine:

A. Whether the allegations set forth in Part II are true and in connection therewith to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest and for the protection of purchasers pursuant to the Interstate Land Sales Full Disclosure Act.

IV

If the respondent desires a hearing, he shall file a request for hearing accompanied by an answer within 15 days after service of this Notice of Proceedings. Respondent is hereby notified that if he fails to file a response pursuant to 25 CFR 1720.240 and 1720.245 within 15 days after service of this Notice of Proceedings, Respondent shall be deemed in default, and the proceedings shall be determined against him, the allegations of which shall be determined to be true, and an order suspending the Statement of Record will be issued. The said order shall remain in effect until the Statement of Record and Property Report have been amended in accordance therewith, and thereupon the order shall cease to be effective.

V

Any request for hearing, answer, motion, amendment to pleadings, offer of settlement or correspondence forwarded during the pendency of this proceeding shall be filed with the Docket clerk for Administrative Proceedings, Room 10251, HUD Building, 451 Seventh Street SW., Washington, DC 20410. All such papers shall clearly identify the type of matter and the docket numbers as set forth in this Notice of Proceedings.

VI

It is hereby ordered, that upon request of the Respondent a public hearing for the purpose of taking evidence on the questions set forth in Part III hereof be held before an Administrative Law Judge, HUD Building, 451 Seventh Street SW., Washington, DC 20410, at 10:00 a.m. on the 30th day after receipt of the answer or at such other time as the Secretary or a designee may fix by further order.

This Notice of Proceedings shall be served upon the Respondent pursuant to 24 CFR 1720.170 and/or 44 U.S.C. 1508.

Date: August 7, 1987.

Thomas T. Demery,

Assistant Secretary for Housing, Federal Housing Commissioner.

In the matter of (subdivision) developer, representative and title; respondent	OILSR No. and land sales enforcement branch docket No.	State of organization and location of principal office	Last known mailing address	Location of subdivision (county, State) and effective date
(1)	(2)	(3)	(4)	(5)
Arizona:				
Rancho Del Sol Lindo, Charles W. Rubinstein, Managing Co-owner Respondent.	0-05790-02-992, M-86-051, Order of Suspension returned as undeliverable.	Arizona, Tucson, AZ.	131 West Vista Grande, Tucson, AZ 85704	Pima County, AZ Jan. 23, 1981.
Golden Shores, The Dutch Golden Shores, Ltd. Robert J. Dorn, General Partner.	0-5838-2-998, M-87-026	Arizona, Las Vegas, NV.	438 East Sahara Avenue, Las Vegas, Nevada 89104	Mohave County, AZ, Aug. 1, 1981.
California:				
Victoria Estates, Bruce L. Johnsey, Partner, Victoria Estates, Limited Partnership.	C-0-06292-04-1048, M-86-046	California, Fresno, CA.	3040 E. Olive, Fresno, CA 93701 or 1001 Sylmar #101 Clovis, CA 93612.	Fresno County, CA, Aug. 31, 1984.
Medow Oaks Ranch Tract 13403, J. R. Brown, General Partner.	C-0-06381-04-1066, M-86-045	California, Irvine, CA.	2151 Michelson, Suite 200, Irvine, CA 92715	Riverside County, CA, Dec. 24, 1984.

In the matter of (subdivision) developer, representative and title; respondent	OILSR No. and land sales enforcement branch docket No.	State of organization and location of principal office	Last known mailing address	Location of subdivision (county, State) and effective date
(1)	(2)	(3)	(4)	(5)
Kentucky:				
Driftwood Estates, Keneth T. Turner, President.	0-03268-20-0051, M-86-021	Kentucky, Murray, KY	Post Office Box 621, Murray, Kentucky 42038	Lyon County, KY, Nov 9, 1973.
Tennessee:				
Starpoint Village, A Limited Partnership, Paul Scott, General Partner.	0-05747-48-15, M-86-049	Tennessee, Byrdstown, TN.	Post Office Box 163, Byrdstown, TN 38549	Pickett County, TN, Oct 2, 1980.

[FR Doc. 87-18846 Filed 8-17-87; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Intent for EIS on Placer Mining Activities; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare cumulative environmental impact statements on the Birch Creek drainage, the Beaver Creek drainage, portions of the Fortymile drainage, and selected streams draining into Minto Flats such as the Tolovana and Chatanika Rivers and Goldstream Creek; and to request comments on the scope of these environmental impact statements.

SUMMARY: Pursuant to section 102(2)c of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Bureau of Land Management (BLM) intends to prepare cumulative environmental impact statements for the Birch Creek drainage, the Beaver Creek drainage, portions of the Fortymile drainage and selected streams draining into Minto Flats such as the Tolovana and Chatanika Rivers and Goldstream Creek.

At issue are the direct, indirect and cumulative impacts to the human environment, in particular water quality and subsistence uses, stemming from placer mining operations in the watersheds of these streams.

The BLM manages the areas encompassed by these EISs under the following plans:

(1) The Beaver Creek area in accordance with the White Mountains National Recreation Area Resource Management Plan and the Beaver Creek Wild River Plan.

(2) The Birch Creek area in accordance with the Steese National Conservation Area Resource Management Plan and the Birch Creek Wild River Plan,

(3) The Fortymile River area in accordance with the Fortymile Management Framework Plan and the Fortymile Wild, Scenic and Recreation River Plan and

(4) Portions of the Minto Flats area as Public Domain. BLM regulates mining on Federal mining claims in all these areas in accordance with 43 CFR Part 3809, the BLM Alaska Handbook H 3809-1, the provisions of the Land Use and River Plans, and other applicable laws and regulations.

The orders of the United States District Court dated May 14, 1987 and May 28, 1987 require the BLM to evaluate the cumulative impacts of placer mining operations within the Birch Creek watershed, and the Beaver Creek drainage, determine the effects of placer mining on Alaska National Interest Lands Conservation Act (ANILCA) section 810 (subsistence) in the Minto Flats Area, and assess the cumulative impacts from placer mining and visual quality in the Fortymile drainage.

The purpose of each of the four environmental impact statements is to determine the cumulative impacts of placer mining within the affected watershed when such activities are conducted pursuant to the proposed State and Federal permitting and regulatory framework scenarios identified below as possible EIS alternatives.

Possible alternatives include: Allow placer mining to continue under current standards of review based upon existing regulations at 43 CFR 3809. Under this alternative, areas that are open remain open and existing operations are allowed to continue operating. BLM would review plans of operation according to existing BLM guidelines. The State of Alaska/Environmental Protection Agency (EPA) Clean Water Act (CWA) section 402 National Pollutant Discharge Elimination System (NPDES) permits would be approved in accordance with existing standards. The U.S. Army Corps of Engineers CWA section 404 (dredge and fill) and Rivers and Harbor (RHA) section 10 permits would be approved in accordance with existing standards. This is the Proposed Action.

Alternative 1. Allow placer mining to continue under revised standards of review based on existing regulations at 43 CFR Part 3809. Areas that are open to placer mining would remain open and existing operations would be allowed to continue operating. BLM would review plans of operation according to a revised set of BLM guidelines for surface management. The State of Alaska/EPA CWA section 402 NPDES permits would be approved in accordance with existing standards. The U.S. Army Corps of Engineers CWA section 404 (dredge and fill) and Rivers and Harbor (RHA) section 10 permits would be approved in accordance with existing standards. This alternative could be implemented solely using existing BLM authority.

Alternative 2. Allow placer mining to continue under revised standards of review based on existing regulations at 43 CFR 3809, a revised NPDES standard of discharge based upon EPA proposed regulations. Areas that are open to placer mining would remain open and existing operations would be allowed to continue operating. The BLM would review plans of operation according to a revised set of BLM guidelines for surface management. The State of Alaska/EPA CWA section 402 NPDES permits would be approved in accordance with the new proposed discharge standards. The U.S. Army Corps of Engineers CWA section 404 (dredge and fill) and Rivers and Harbor (RHA) section 10 permits would be approved in accordance with existing standards. BLM's implementation of this alternative is dependent upon State of Alaska/EPA action to adopt the more stringent discharge standards.

Alternative 3. Cease placer mining operations on the public lands by a partial or complete buy-out based on a finding of valid existing rights. Some or all of the areas that are currently open will be withdrawn from operations under the Mining Law of 1872. All existing placer mining operations on BLM administered lands would cease. If adopted, this alternative could require that land use plans be amended due to changes in land use allocations.

DATES:

The EIS and scoping meetings will be held at:

Name	Location	Date/Time
Central	Central School	Sept. 9, 1987 7-10 pm
Livengood	Road House	Sept. 10, 1987 7-10 pm
Chicken	School House	Sept. 15, 1987 7-10 pm
Fairbanks	Noel Wein Library	Sept. 16, 1987 7-10 pm
Anchorage	BLM Anchorage District Office.	Sept. 17, 1987 7-10 pm
Minto	Community Hall	Oct. 5, 1987 7-10 pm
Birch Creek Village	Community Hall	Oct. 6, 1987 7-10 pm

The purpose of these meetings is to identify EIS alternatives and issues to be considered. All interested parties are invited to participate in the scoping process

Federal and State agencies specifically invited to participate include, but are not limited to:

Alaska Department of Environmental Conservation
Alaska Department of Fish and Game
Alaska Department of Natural Resources
U.S. Army Corps of Engineers
U.S. Bureau of Indian Affairs
U.S. Environmental Protection Agency
U.S. Fish and Wildlife Service
U.S. National Park Service

ADDRESSES: To be considered in the scoping process, all written comments and suggestions must be received by Mike Penfold, State Director, Alaska State Office, Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513, no later than October 9, 1987.

FOR FURTHER INFORMATION CONTACT: Dick Dworsky, Project Manager, Bureau of Land Management, 701 C St., Box 13, Anchorage, Alaska 99513, (907) 271-3114.

Robert W. Arndorfer,

Acting State Director.

[FR Doc. 87-18781 Filed 8-17-87; 8:45 am]

BILLING CODE 4310-JA-M

[NV-030-07-4322-02]

Meeting; Carson City District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Carson City District Grazing Advisory Board will meet at 10:00 am on Wednesday, September 6, 1987 at the Carson District Office Conference Room, 1535 Hot Spring Road, #300, Carson City, Nevada.

The primary topics will be the FY 1988 Rangeland Improvement Projects, Allotment Management Plans and status of the Land Use Plans as they pertain to grazing.

FOR FURTHER INFORMATION CONTACT: Andy Anderson, Carson City District, Bureau of Land Management, 1535 Hot Spring Road, Suite 300, Carson City, Nevada, 89706 (702) 882-1631.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Interested persons may make oral statements at 1:00 pm or file written statements for the board's consideration.

James W. Elliott,

District Manager, Carson City District.

[FR Doc. 87-18774 Filed 8-17-87; 8:45 am]

BILLING CODE 4310-HC-M

[CA-020-07-4322-14]

California; Susanville District Advisory Council Meeting and Tour

AGENCY: Bureau of Land Management, Department of the Interior, Susanville District Advisory Council, Susanville, California 96130.

ACTION: Notice of meeting and tour.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 (FLPMA), that a District Advisory Council Meeting and tour will be held on September 22 and 23. The tour will leave from the front of the Surprise Resource Area Office, 602 Cressler Street, Cedarville, California at 1:00 p.m. The Hog Mountain Mine and High Rock Canyon will be toured by the Council. The meeting will begin at 7:00 p.m. on September 22 at Steven's Camp, which is located south of Nevada Highway 8A, east of Cedarville, California. The meeting will include discussions of issues involving the High Rock Canyon ACEC values. The meeting is open to the public and interested persons may make oral statements to the Council or file a written statement for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California, 96130 by September 15, 1987. Depending upon the number of persons wishing to make oral statements, a per person time limit may be established.

Summary minutes of the Council meeting will be maintained in the District Office, and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

For further information, contact John Bosworth, Planning and Environmental Coordinator, at (916) 257-5381.

C. Rex Cleary,

District Manager.

[FR Doc. 87-18775 Filed 8-17-87; 8:45 am]

BILLING CODE 4310-40-M

[NV-940-07-4220-10; N-37165]

Proposed Withdrawal and Opportunity For Public Meeting; Nevada

August 7, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw ten acres of public land to protect Lovelock Cave archaeological site. Notice of the proposed withdrawal has been published which closed the land for up to two years from surface entry and mining. This notice provides a public comment period and the opportunity for a public meeting.

DATE: Comments and requests for a public meeting must be received by November 16, 1987.

ADDRESS: Comments and meeting requests should be sent to the Nevada State Director, BLM, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna, Wolder, BLM Nevada State Office, 702-784-5481.

SUPPLEMENTARY INFORMATION: On July 23, 1987, a Notice of Proposed Withdrawal was published in the **Federal Register** 52 FR 27736 (FR Doc. 87-16750) (a copy of which will be supplied upon request) which segregated the land described therein from settlement, sale, location, or entry under the public land laws, including mining laws, for up to two years from the date of publication of that notice.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

Robert G. Steele

Deputy State Director, Operations, Nevada.

[FR Doc. 87-18776 Filed 8-17-87; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

[Information No. 16]

Endangered Species Convention; Foreign Law Notification, Laos

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Information No. 16.

Subject: Laos—Ban on Wildlife Importations.

This is a Schedule II notice.

Source of Foreign Law Information: United States Department of State. An October 28, 1986 Decree by the Council of Ministers of Laos prohibits the trading and exportation of all species of wildlife including birds, reptiles, and mammals.

Action by the Fish and Wildlife Service: The Service will detain wildlife imported from Laos until satisfied that the shipment was legally exported from that country. If acceptable proof of legal export is not provided, the Service will refuse clearance and may seize the wildlife involved. Seized wildlife may be subject to forfeiture proceedings.

EFFECTIVE DATE: Date of publication.

Expiration Date: None until further notice.

FOR FURTHER INFORMATION CONTACT: Nancy J. Roeper, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 28006, Washington, DC 20005, Telephone: 202-343-9242.

Dated: August 7, 1987.

Steve Robinson,

Deputy Director.

[FR Doc. 87-18807 Filed 8-17-87; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-3 (Sub-No. 65X)]

Missouri Pacific Railroad Co.; Abandonment Exemption in Omaha, NE

AGENCY: Interstate Commerce Commission.

ACTION: Notice of partial exemption and request for comments.

SUMMARY: Missouri Pacific Railroad Company (MP) has filed a petition seeking an exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, to abandon approximately 2.26 miles of railroad, known as the Omaha Belt Line, between milepost 492.33 and milepost 494.59, in Omaha, Douglas County, NE.

The Commission determined that the impact of the proposed abandonment on shippers cannot be ascertained with respect to the 1.59-mile portion of the line between milepost 493.00 and milepost 494.59, which following abandonment would be reclassified as yard track or switching track. Notice and comment procedures were ordered for this portion of the line, and MP was directed to serve a copy of the decision on affected shippers within 5 days of its service date.

The Commission exempted MP's abandonment of the remaining 0.67-mile portion of the line, between milepost 492.33 and milepost 493.00, subject to standard employee protective conditions.

DATES: Comments regarding the 1.59-mile portion must be filed with the Commission and served on MP's representative by September 8, 1987. Replies to comments must be filed by September 17, 1987.

The exeption of the 0.67-mile segment will be effective on September 17, 1987. Petitions to stay the effective date of the exemption must be filed by September 2, 1987, and petitions for reconsideration of the exemption must be filed by September 14, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB-3 (Sub-No. 65X) to:[1]

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Joseph D. Anthofer, 1416 Dodge Street, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245, (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4537 (assistance for the hearing impaired is available through TDD services (202) 275-1721) or by pickup from TSI in Room 2229 at Commission headquarters.

Decided: August 10, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-18801 Filed 8-17-87; 8:45 am]

BILLING CODE 7035-01M

[1] Send an original and 10 copies of comments and replies to the Commission and one copy to petitioner's representative.

[Docket No. AB-3 (Sub-No. 68X)]

Missouri Pacific Railroad Co. Abandonment and Discontinuance of Trackage Rights Exemption in Marion and Clinton Counties, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of partial exemption.

SUMMARY: Missouri Pacific Railroad Company (MP) has filed a petition seeking an exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, to abandon portions of a branch line of a railroad, known as the Sparta Branch, in Marion and Clinton Counties, IL, and to discontinue service over an intermediate segment of the line. Specifically, MP proposes: (1) To abandon that portion of the line between milepost 0.0 near Salem and milepost 11.1 near Branch Junction; (2) to discontinue service, performed under a trackage rights agreement with the Illinois Central Gulf Railroad Company, over that segment of the line between milepost 11.1 and milepost 13.9; and (3) to abandon the remaining portion of the line between milepost 13.9 and 14.4 near Centralia. The total distance involved is approximately 14.4 miles.

The Commission has determined that the impact of the proposed abandonment on shippers cannot be ascertained with respect to the 2.0-mile portion of the line between milepost 0.0 and milepost 2.0, which following abandonment would be reclassified as industrial track. Notice and comment procedures were ordered for this portion of the line and MP was directed to serve a copy of the decision on affected shippers within 5 days of its service date.

The Commission exempted MP's abandonment of, and discontinuance of service over, the remaining portions of the line, between milepost 2.0 and milepost 14.4, a distance of 12.4 miles, subject to standard employee protective conditions.

DATES: Comments regarding the 2.0-mile portion of the line must be filed with the Commission and served on MP's representative by September 8, 1987. Replies must be filed by September 17, 1987.

The exemption of the remaining 12.4-mile line segement will be effective on September 17, 1987. Petitions to stay the effective date of the exemption must be filed by September 2, 1987, and petitions for reconsideration of the exemption must be filed by September 14, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB-3, (Sub-No. 68X) to:[1]

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Joseph D. Anthofer, 1416 Dodge Street, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4537 (assistance for the hearing impaired is available through TDD services (202) 275-1721) or by pickup from TSI in Room 2229 at Commission headquarters.

Decided: August 10, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee

Secretary.

[FR Doc. 87-18802 Filed 8-17-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-33 (Sub-No. 46X)]

Abandonment of Railroad Line in Madison County, NE; Union Pacific Railroad Co.; Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F — *Exempt Abandonments* to abandon its .22-mile line of railroad between milepost 49.06 and milepost 49.28 near Norfolk, in Madison County, NE.

Applicant has certified that (1) no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result from this abandonment.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).[1]

The exemption will be effective on September 17, 1987 (unless stayed pending reconsideration). Petitions to stay must be filed by August 28, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by September 7, 1987 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, Law Department, 1416 Dodge St., Omaha, NE 68179.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 13, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-18937 Filed 8-17-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act;

In accordance with Section 122(d)(1)(A) of CERCLA as amended by SARA, notice is hereby given that a proposed Consent Decree in *United States, et al. v. Ottati & Goss, et al.*, Civil Action No. 80-225-L, has been lodged with the United States District Court for the District of New Hampshire, on August 10, 1987. The Consent Decree resolves an action brought by the United States under Sections 106 and 107 of CERCLA and 7003 of the Resources Conservation and Recovery Act and common law nuisance against K. J. Quinn and Company, Inc., and the State of New Hampshire against the same defendant under section 107(a) of CERCLA, the Hazardous Waste Management Act, statutory nuisance and common law nuisance. The decree resolves only the liability of the above-named defendant.

The Consent Decree requires Quinn, Inc., to pay $300,000 to the plaintiffs.

For thirty (30) days from the date of publication of this notice, the Department of Justice will receive written comments relating to the Consent Decree. 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, et al. v. Ottati & Goss, et al.*, D.J. Ref. No. 90-7-1-79.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of New Hampshire, Federal Building, 55 Pleasant Street, Concord, New Hampshire 03301; at the Region I Office of the Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts 02203; and at 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 proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-18809 Filed 8-17-87; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Final Judgment on Consent Pursuant to the Clean Air Act; Benjamin Kurzban & Son, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed final judgment (on consent) ("final judgment") in *United States v. Benjamin Kurzban and Son, Inc.*, Civil Action No. 85 Civ. 2267 (VLB), was lodged in the United States District Court for the Southern District of New York on July 24, 1987.

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[1] Send an original and 10 copies of comments and replies to the Commission and one copy to petitioner's representative.

[1] The Railway Labor Executives' Association filed a request for labor protection. The United Transportation Union joins in RLEA's request. Since this transaction involves an exemption from 49 U.S.C. 10903, whereby the imposition of labor protective conditions is mandatory, those conditions have been routinely imposed.

The proposed final judgment concerns alleged violations of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") for asbestos, codified at 40 CFR 61.20, *et seq.* (1983) and the Clean Air Act, 42 U.S.C. 7401, *et seq.*, during the removal of friable asbestos from buildings located on Ellis Island and 120 Church Street, New York, New York. The proposed final judgment requires the defendant to comply with the Clean Air Act and the asbestos NESHAP regulations, as well as continue its program to educate employees regarding proper methods of asbestos removal. The proposed final judgment also requires payment of a $5,000 civil penalty.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed final judgment. Comments should be addressed to the Assistant Attorney General for the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Benjamin Kurzban and Son, Inc.*, D.J Ref. No. 90–5–2–1–793.

The proposed final judgment may be examined at the Office of the United States Attorney, One St. Andrew's Plaza, New York, New York 10007, 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 Aveune, NW., Washington, DC 20530. A copy of the proposed final judgment may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

August 6, 1987.

[FR Doc. 87–18810 Filed 8–17–87; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–3629]

Notice of Proposed Exemption for Certain Transactions Involving the Equitable Life Assurance Society of the United States (Equitable) Located in New York City, NY

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt certain transactions that may occur as a result of the sharing of real estate investments among various Accounts maintained by Equitable, including the Equitable general account (the General Account) and the ERISA-Covered Accounts with respect to which Equitable is a fiduciary. As an acknowledged investment manager and fiduciary, Equitable is primarily responsible for the acquisition, management and disposition of the assets allocated to the ERISA-Covered Accounts.

EFFECTIVE DATE: If granted, this proposed exemption would be effective for transactions occurring on or after July 27, 1982, except as otherwise stated herein with reference to Section IV(e).

DATES: Written comments and requests for a public hearing must be received by the Department on or before October 16, 1987.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Application No. D–3629. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, DC 20216.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed by Equitable pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

1. Equitable is a mutual life insurance company organized under the laws of the State of New York and subject to supervision and examination by the Superintendent of Insurance of the State of New York. It is the third largest life insurance company in the United States. Among the wide variety of insurance products and services it offers, Equitable provides funding, asset management and other services for several thousand employee benefit plans subject to the provisions of Title I of the Act. Equitable maintains several pooled separate accounts in which pension, profit-sharing and thrift plans participate, and also manages all or a portion of the assets of a number of large plans pursuant to various single customer separate accounts and advisory accounts (the ERISA-Covered Accounts). A number of ERISA-Covered Accounts invest in equity interests in real estate or in mortgage loans. These include Equitable's open-end real estate pooled separate account (Separate Account No. 8), its closed-end "New Property Fund" pooled separate account (Separate Account Series No. 16), and various of its real estate single customer separate accounts and investment advisory accounts. The ERISA-Covered Accounts, the General Account (including the general accounts of Equitable affiliates which are managed by Equitable), accounts maintained by Equitable for foreign pension plans and other "non-ERISA" investors, and accounts which Equitable may establish in the future (collectively, the Accounts) may participate in the transactions which are the subject of this proposed exemption.

2. The applicant represents that in recent years real estate has proven to be an excellent form of investment for employee benefit plans and has, therefore, gained increasing popularity among plan sponsors. Various high quality commercial real estate investments from time to time become available which offer the potential for a higher rate of return than do other real estate investments. Because there are relatively few potential investors for large scale investments such as office buildings, shopping centers, and industrial parks, the owner or developer of such real estate investments must offer a higher return in order to attract

investors. In many cases, Equitable's real estate accounts would be precluded from acquiring these investments on an individual basis because such investments would require the commitment of a disproportionately large percentage of account assets to one or a few investments. By sharing these investments, Equitable is able to maximize investment opportunities for its contractholders, including its employee benefit plan contractholders, consistent with appropriate account portfolio diversification. In addition, some smaller properties may be of such high quality that it is advisable to share the investment opportunity among more than one account.

3. The real estate investments which Equitable proposes to share may either take the form of a direct investment in real property or an interest in a joint venture partnership which holds title to, manages, and/or develops real property. Equitable's investments in joint venture partnerships frequently include an equity interest in the joint venture and a debt interest in mortgages to which the joint venture property is subject. Development joint venture arrangements are customarily "leveraged"; that is, acquisition and development costs are met by the equity contribution of the joint venture partners and by substantial loans to the partnership which are secured by the joint venture's interest in its real property. Frequently, Equitable on behalf of its Accounts will own 50 percent of the joint venture partnership and provide 100 percent of the debt financing.

4. The applicant represents that, ordinarily, where a real estate investment is to be shared, each Account participating in the investment will participate in the equity and debt components on a proportionate basis. For example, assume that Equitable intends to hold a 50 percent interest in a joint venture partnership and that P, a developer unrelated to Equitable, will hold the other 50 percent interest. Assume further that Equitable and P each contribute $1,000,000 as an equity investment in the partnership and that Equitable makes a $20 million loan to the partnership. If Equitable's General Account is allocated a 75 percent share of Equitable's investment in the joint venture and an ERISA-Covered Account is allocated a 25 percent share, $750,000 of the equity interest and $15 million of the loan (75 percent of $20 million) will be allocated to the General Account and $250,000 of the equity interest and $5 million of the loan (25 percent of $20 million) will be allocated to the ERISA-Covered Account.

5. During the course of Equitable's holding of a real estate investment, certain situations may arise which require a decision to be made with regard to the management or disposition of the investment. For example, there may be a need for additional contributions of operating capital, or there may be an offer to purchase the investment by a third party or a joint venture partner. When Equitable shares these investments among more than one Account, a potential for conflict arises since the same decision may not be in the best interest of each Account. Therefore, the applicant has submitted a framework of proposed safeguards to protect the interests of any participating ERISA-Covered Account in the resolution of potential or actual conflicts. With respect to these safeguards, all conditions applicable to the General Account are also applicable to the general accounts of Equitable affiliates.

6. Until recently, all of Equitable's real estate investment activities with respect to the Accounts were conducted by Equitable's Realty Operations Area, a division of Equitable, which was responsible for developing recommendations regarding the acquisition, management and disposition of properties for the Accounts to be considered by the Investment Committee of Equitable's Board of Directors. The Realty Operations Area was also responsible for overseeing the management of equity investments for the Accounts and the servicing of debt investments (mortgage loans). On May 18, 1984, Equitable created Equitable Real Estate Investment Management, Inc. (EREIM) as an indirect wholly-owned subsidiary and has assigned to EREIM the responsibilities previously performed by the Realty Operations Area. Equitable continues to be the investment manager for each of the existing Accounts and to be responsible for all investment management decisions made for the Accounts, but it allocates all or a portion of the investment management fees it receives from the Accounts to EREIM. The fees payable by an Account to Equitable for investment management services provided to the Accounts have not changed by virtue of the creation of EREIM.

7. The origination and the initial evaluation of an investment opportunity is usually the responsibility of EREIM's regional office staff. In evaluating a possible investment opportunity, the regional offices perform numerous key functions, including on-site inspections of properties, property appraisals, and credit analyses of potential borrowers, real estate developers and the proposed major tenants for a property. The regional offices also analyze other relevant investment factors, such as the size, location and use of a property, financing terms and conditions, taxes, insurance, title requirements, and general compliance with environmental and zoning laws. The regional offices also initially determine whether a prospective investment meets Equitable's investment and financial standards and, based on its review and analysis of all relevant factors, makes a recommendation as to whether the investment should be made.

8. Investment opportunities that are recommended by the regional offices are reviewed in detail by personnel at EREIM's home office. As a part of its overall review, the home office may concur in or reject a regional office recommendation. The home office also works with the regional office staff to establish the financial structure (i.e., the equity and debt components) of the investment. At this time, the possible sharing of an investment among two or more Accounts may become an important factor in determining whether an investment will be made. For example, a very large real estate investment may satisfy Equitable's investment and financial standards, but may nevertheless be an inappropriate investment for any single Account, other than the General Account, because it would result in an unacceptable concentration of the Account's assets or because of the lack of sufficient available funds in the Account. By allocating a portion of such a large investment to two or more Accounts, each participating Account may be able to take advantage of the investment at the level best suited to each Account's particular investment needs. Thus, in determining whether an investment recommendation should be made, EREIM will consider not only whether the investment meets the investment and financial standards of Equitable, but also whether an investment could be allocated to an Account (or Accounts) in a manner suited to meet each particular Account's portfolio requirements.

9. Each real estate Account maintained by Equitable, including ERISA-Covered Accounts, has a portfolio manager who is an employee of EREIM. The main function of a portfolio manager is to make investment recommendations to senior Equitable officials designed to fulfill Equitable's responsibilities to manage the assets of

an Account in accordance with investment policies and objectives established for the Account. The investment recommendations made by a portfolio manager are, in turn, based on his or her analysis of the appropriateness for a particular Account of investment opportunities and investment decisions recommended by the real estate operations staff of EREIM.

10. A portfolio manager is also responsible for making recommendations to senior Equitable officials regarding the appropriate management of Account assets. Asset management functions typically include the establishment of leasing guidelines for Account properties, the financial management of properties (*e.g.*, taxes, insurance, capital expenditures, etc.), and the hiring and oversight of property managers for Account properties. In addition, a portfolio manager is responsible for making recommendations regarding the disposition of Account investments.

11. Preliminary determinations with respect to the acquisition and allocation of real estate investments for particular accounts are made at monthly meetings of the portfolio managers. In carrying out these functions, a portfolio manager takes into account, among other things, the investment policies and objectives of the Account, the Account's size, liquidity needs and asset diversification needs, the availability of funds in the Account, and whether a proposed investment is compatible with the Account's existing investment portfolio. Equitable's Investment Policy Committee, which is composed of senior officers of Equitable, including the chief executive officer of EREIM, reviews and makes recommendations with respect to these preliminary acquisition and allocation determinations.

12. Overall responsibility for the making of real estate investments rests with the Investment Committee, which is composed primarily of directors who are otherwise unaffiliated with Equitable, or EREIM. The Investment Committee must approve all decisions involving the acquisition, allocation, management and disposition of real estate equity and debt investments involving more than $35 million. In the case of real estate investments of $35 million or less, the authority to make the decisions to invest and to allocate the investments to particular Accounts has been delegated by the Investment Committee to the chief investment officer of Equitable. The chief investment officer has subdelegated this authority to the chief executive officer of EREIM, who is also an officer of Equitable. If any such investment is to be shared by more than one Account, however, the allocation of the investment must be approved by the Investment Committee. In the case of shared investments that involve the participation of one or more ERISA-Covered Accounts, certain additional requirements, regardless of the size of the investment, have been added, as detailed below.

13. Each plan contractholder participating in an ERISA-Covered Account that shares or proposes to share real estate investments must be furnished with a written description of the transactions that may occur involving such investments which might raise questions under the conflict of interest prohibitions of the Act with respect to Equitable's involvement in such transactions and which are the subject to this proposed exemption. This description must discuss the reasons why such conflicts of interest may be present (*i.e.*, because the General Account participates in the investment and may benefit from the transaction or because the interests of the various Accounts participating in the investment may be adverse with respect to the transaction). The description must detail the relationship between Equitable and EREIM and indicate that the ERISA-Covered Account has its own portfolio manager who is an employee of EREIM. The description must also disclose the principles and procedures to be used to resolve anticipated impasses, as will be outlined below. In addition, each contractholder in an ERISA-Covered Account that currently shares investments must receive a copy of this notice of pendency within thirty days of its publication, and a copy of the exemption when granted.

14. With respect to new contractholders in an ERISA-Covered Account that currently participates in the sharing of investments, each prospective contractholder must be provided with the above mentioned written description, a copy of the notice of pendency and a copy of the exemption as granted before the contractholder begins to participate in the Account. With respect to contractholders who are already in an ERISA-Covered Account that proposes to participate in the sharing of investments in the future, each such contractholder must be provided with the description outlined above, a copy of the notice of pendency and a copy of the exemption as granted before the Account begins to participate in the sharing of investments. A plan contractholder may withdraw from a single customer or open-end pooled ERISA-Covered Account by providing written notice to Equitable. A plan contractholder in a closed-end pooled ERISA-Covered Account does not have a right to have its interest redeemed prior to the predetermined termination date, but it may sell its interest to a third party.

15. An independent fiduciary or independent fiduciary committee must be appointed on behalf of each ERISA-Covered Account participating in the sharing of investments. The independent fiduciary, acting on behalf of the ERISA-Covered Account, shall have the responsibility and authority to approve or reject recommendations made by Equitable or its affiliates regarding the allocation of shared real estate investments to the ERISA-Covered Account and recommendations concerning those transactions occurring subsequent to the allocation which are the subject of this proposed exemption. The independent fiduciary is informed of the procedures set forth in the proposed exemption for the resolution of anticipated impasses prior to his or its acceptance of the appointment. Equitable and its affiliates shall provide the independent fiduciary with the information and materials necessary for the independent fiduciary to make an informed decision on behalf of the ERISA-Covered Account. No allocation or transaction which is the subject of the proposed exemption will be undertaken prior to the rendering of such informed decision by the independent fiduciary. The independent fiduciary shall also review on an as-needed basis, but not less than twice annually, the shared real estate investments in the ERISA-Covered Account's portfolio to determine whether the shared real estate investments are held in the best interest of the ERISA-Covered Account.[1]

[1] For example, in the case of an investment shared by the General Account and an ERISA-Covered Account, if the independent fiduciary of the ERISA-Covered Account determined, after its review of the account's shared investment portfolio and financial information relating thereto, that the ERISA-Covered Account's interest in the shared investment should be disposed of, Equitable would be required to carry out the decision of the independent fiduciary. If the portfolio manager of the General Account agreed that its interest in the shared investment should also be disposed of, then Equitable would sell the entire shared investment. If the portfolio manager of the General Account did not agree that its interest in the shared investment should be sold, Equitable would first try to sell only the ERISA-Covered Account's interest in the shared investment. However, to the extent that it is not feasible or possible to sell the ERISA-Covered Account's interest alone, the entire shared

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16. The independent fiduciary must be unrelated to Equitable or its affiliates. The independent fiduciary may not be, or consist of, any officer, director or employee of Equitable, or be affiliated in any way with Equitable or any of its affiliates. The independent fiduciary must be either (1) a business organization which has at least five years of experience with respect to commercial real estate investments, (2) a committee comprised of three to five individuals who each have at least five years of experience with respect to commercial real estate investments, or (3) the plan sponsor (or its designee) of a plan or plans that is the sole participant in an ERISA-Covered Account. An organization or individual may not serve as an independent fiduciary for an ERISA-Covered Account for any fiscal year if the gross income received by such organization or individual (or any partnership or corporation of which such organization or individual is an officer, director, or ten percent or more partner or shareholder) from Equitable and its affiliates for that fiscal year exceeds five percent of its or his annual gross income from all sources for the prior fiscal year. If such organization or individual had no income for the prior fiscal year, the five percent limitation shall be applied with reference to the fiscal year in which such organization or individual serves as an independent fiduciary. The income limitation will include services rendered to the Accounts as independent fiduciary under any prohibited transaction exemptions granted by the Department. In addition, effective for transactions occurring after the date of publication of this notice of pendency, no organization or individual who is an independent fiduciary, and no partnership or corporation of which such organization or individual is an officer, director or ten percent or more partner or shareholder, may (i) acquire any property from, sell any property to, or borrow any funds from, Equitable, its affiliates, during the period that such organization or individual serves as an independent fiduciary and a period of six months after such organization or individual ceases to be an independent fiduciary, or (ii) negotiate any such transaction during the period that such organization or individual serves as independent fiduciary. A plan sponsor (or its designee) of a plan participating in an ERISA-Covered Account may not serve as independent fiduciary with respect to any pooled ERISA-Covered Account. A business organization or committee member may not serve as an independent fiduciary of more than one ERISA-Covered Account.

17. In the case of a single customer ERISA-Covered Account, if the plan sponsor or its designee decides not to act as the independent fiduciary, the independent fiduciary or independent fiduciary committee will be selected initially by Equitable. The independent fiduciary must be approved by the plan sponsor or another plan fiduciary prior to the commencement of its fiduciary responsibilities on behalf of the ERISA-Covered Account. In the case of a closed-end pooled ERISA-Covered Account, the appropriate plan fiduciary of each participating plan will be required to approve the initial selection of the independent fiduciary or the membership of the independent fiduciary committee proposed by Equitable prior to the commencement of its fiduciary responsibilities on behalf of the ERISA-Covered Account. In the case of an open-end pooled ERISA-Covered Account, the independent fiduciary or the independent fiduciary committee will be selected initially by Equitable. The applicant represents that because these Accounts often include several hundred plan contractholders, the independent fiduciary will not be approved initially by plan contractholders. The selection of the independent fiduciary, however, must be approved by a majority of the contractholders in such an Account within twelve months after the selection has been made.

18. For both single customer and pooled ERISA-Covered Accounts, prior to the making of any decision to approve the selection of an independent fiduciary, plan contractholders must be furnished appropriate biographical information pertaining to the independent fiduciary or members of the independent fiduciary committee. This biography must set forth the background and qualifications of the fiduciary (or fiduciaries) to serve in that capacity. In the case of any biographical information furnished after the date of this proposed exemption, the information must also disclose the total amount of compensation received by the fiduciary (or each member of a fiduciary committee) from Equitable or an Equitable affiliate during the preceding year, including pension or other deferred compensation paid to fiduciaries who may be former employees of Equitable, and compensation for any business services performed by the fiduciary or any affiliate for Equitable or its affiliates. The disclosure relating to compensation must be updated annually thereafter. Subsequent disclosures must also include the amount of fees and expenses paid for independent fiduciary services. The plans will be able to use this information to determine whether to approve Equitable's initial selection of the fiduciary or fiduciary committee and whether to continue such approval each year thereafter.[2]

19. Once an independent fiduciary committee or organization is appointed, the members of the committee or the organization will continue to serve subject to an annual vote by each of the plans participating in the ERISA-Covered Account. An independent fiduciary or committee member may be removed by a majority vote of the Account's contractholders or, in the case of a committee member, "for cause" by a majority vote of the other members of the committee. The term "for cause" means that there must be sufficient and reasonable grounds for removal and the reasons for removal must be related to the ability and fitness of an individual to perform his or her required duties. Equitable will not have the authority to remove an independent fiduciary or a member of an independent fiduciary committee. If a vacancy occurs by virtue of the death, resignation or removal of a member of an independent fiduciary committee, replacement members of the committee will be appointed by a majority vote of remaining members of the committee. Possible replacements may be suggested by anybody, including members of the committee or Equitable. If an organization acting as independent fiduciary is removed by majority vote of the Account's contractholders, the procedure described above for the initial selection of an independent fiduciary will apply to the replacement.

20. The independent fiduciary will be compensated by the ERISA-Covered Account. Equitable will indemnify any independent fiduciary or members of an independent fiduciary committee with

investment would be sold notwithstanding the non-acquiescence of the General Account.

[2] Equitable represents that the contractholders in its single customer and pooled closed-end real estate Accounts are knowledgeable and sophisticated investors who fully understand the operation of the ERISA-Covered Accounts. As an example, the plans participating in Separate Account No. 16 (the only pooled separate Account presently sharing real estate investments) are all plans of large corporations. These plans range in size from $43 million in total assets to more than $2 billion in total assets. In addition, no plan's investment in the Account exceeds 3 percent of the total assets of the plan. Separate Account No. 141 (the only single customer account presently that will share real estate investments) is maintained on behalf of a large corporate plan. The plan has more than $10 billion in assets and the plan's investment in the account will equal less than 3.5 percent of the total assets of the plan.

respect to any action or threatened action to which such person is made a party by reason of his or her service as an independent fiduciary. Indemnification will be provided as permitted under the laws of the State of New York and subject to the requirement that such person acted in good faith and in a manner he or she reasonably believed to be solely in the interests of the participants and beneficiaries of the plans participating in the Account.

21. Written minutes must be taken and maintained in connection with all meetings involving independent fiduciary committees of ERISA-Covered Accounts. Such minutes must include a rationale as to why decisions were made. Where the independent fiduciary is a committee, decisions will be made on the basis of a majority vote. Any dissenting committee member will provide a written rationale for his dissent. Where the independent fiduciary is a single entity (e.g., a business organization) for which no minutes of meetings would be maintained, all decisions of such independent fiduciary and rationale thereof must be set forth in writing and maintained by Equitable pursuant to the recordkeeping requirements outlined in the General Conditions below.

22. The independent fiduciary of each ERISA-Covered Account is required to approve any recommendation by Equitable involving a shared investment. Situations may arise where a conflict of interest may develop and the independent fiduciaries of the ERISA-Covered Accounts may not agree on what the appropriate course of action should be with respect to a proposed transaction. In such cases, Equitable will make recommendations, which may be outlined as alternatives, to the independent fiduciaries regarding the proposed transaction. If an alternative course of action is not found that is acceptable and the independent fiduciaries of such Accounts are in effect stalemated, a procedure has been developed by Equitable to ensure that a decision can be made.

23. This stalemate procedure is designed to provide a result that is the same as would be followed in comparable situations where unrelated parties to a transaction were dealing at arm's length. This means that the action that will be taken in such cases is the one that does not require an ERISA-Covered Account to invest new money and will not change the terms of an existing agreement or the existing relationship between the Accounts. For example, in the case of a proposed modification to a debt investment shared by two ERISA-Covered Accounts, if the independent fiduciaries cannot agree on such modification, no modification will be made. Rather, the terms of the loan agreement, as originally stated, will be carried out. Or, in the case of a joint venture interest shared by two ERISA-Covered Accounts, the exercise of a buy-sell provision in the joint venture agreement by a co-venturer will require the two ERISA-Covered Accounts which share Equitable's interest in the joint venture to either sell their join venture interest to the co-venturer at a stated price, as determined by the joint venture agreement, or buy the co-venturer's interest at the stated price. If the independent fiduciaries cannot agree on the action to be taken and no alternative course of action is found to be acceptable, the ERISA-Covered Accounts will be required to sell their interest to the co-venturer. This action would be taken because the other (purchase) option would require the expenditure of additional funds by an objecting Account.

Specific Transactions

I. Direct Real Estate Investments

(a) *Transfers between Accounts.* 24. Following the initial sharing of investments, it may be in the best interests of the Accounts participating in the investment for one Account to sell its interest to the other(s). Such a situation may arise, for example, when one Account experiences a need for liquidity in order to satisfy the cash needs of the plans participating in the Account, while for the other Account(s) the investment remains appropriate. One possible means of reconciling this situation is for the "selling" Account to sell its interest in the shared investment to the remaining participating Account(s) or to another Account(s) at current fair market value. Such sales may not, however, be appropriate in all circumstances. An inter-Account transfer will only be permitted when it is determined to be in the best interests of each Account that would be involved in the transaction. Where two or more separate accounts are involved in such a transfer, the transfer would also be subject to the approval of the New York State Insurance Department. In addition, Equitable had determined that no such transfers will be permitted between the General Account and an ERISA-Covered Account. Because Equitable would be acting on behalf of both the "buying" and "selling" Accounts in such an inter-Account transfer, the transfer might be deemed to constitute a prohibited transaction under section 406 of the Act. Accordingly, exemptive relief is requested herein for the sale or transfer of an interest in a shared real estate investment by one ERISA-Covered Account to another Account of which Equitable is a fiduciary. Such transfers would have to be at fair market value and approved by the independent fiduciary for each ERISA-Covered Account involved in the transfer. See section I(a).

(b) *Joint Sales of Property.* 25. In situations involving shared real estate investments, an opportunity may arise to sell the entire investment to a third, party, and it may be determined for all of the participating Accounts that the sale is desirable. When Equitable's general account is participating in the investment, and the sale is therefore determined to be in the best interests of the General Account (in addition to being in the interests of the other Account(s)), the sale might be deemed to constitute a prohibited transaction under section 406 of the Act and section 4975 of the Code.[3] Similarly, Equitable may be acting on behalf of two ERISA-Covered Accounts or an ERISA-Covered Account and a non-ERISA-Covered Account other than the General Account. Accordingly, exemptive relief is requested for these joint sales. The sales would have to be approved by the independent fiduciary for each ERISA-Covered Account involved in the sale. See section I(b).

(c) *Additional Capital Contributions.* 26. On occasion, commercial real estate investments require infusions of additional capital in order to fulfill the investment expectations of the property. For example, developmental real estate investments sometimes require additional capital in order to complete the construction of the property. In addition, the cash flow needed to improve or operate completed buildings may also result in the need for additional capital. Such additional capital is frequently provided by the owners of the property. In the case of a property that is owned entirely by Equitable on behalf of the Accounts, it is contemplated that needed additional capital will ordinarily be contributed in connection with the investment in the form of an equity capital contribution made by each participating Account in an amount equal to such Account's existing percentage equity interest in the

[3] The Department notes that all future references to the provisions of the Act shall be deemed to include the parallel provisions of the Code.

shared investment;[4] that is, in the first instance, each Account would be afforded the opportunity to contribute additional capital on a fully proportionate basis. In the case of ERISA-Covered Accounts all decisions regarding the making of additional capital contributions must be approved by the independent fiduciary for the Account. The making of an additional capital contribution could be deemed to involve a prohibited transaction under section 406 of the Act. If one or more participating Accounts in a shared investment is unable to provide it share of the needed additional capital, various alternatives may be appropriate, including having the other Account(s) make a disproportionate contribution. For example, where the General Account and an ERISA-Covered Account participate in a shared investment and the need for additional capital arises, it might be determined for liquidity reasons or other factors involving the ERISA-Covered Account that the additional contribution should not be made by that Account. As a result, the additional equity capital may be provided entirely by the General Account with the further consequence that the General Account would thereafter have a larger interest in the investment and, therefore, a larger share in the appreciation and income to be derived from the property.[5] Such an adjustment in ownership interests might be deemed to constitute a prohibited (indirct sales) transaction under section 406 of the Act. In addition, these situations could also occur where two ERISA-Covered Accounts are involved or an ERISA-Covered Account and a non-ERISA-Covered Account. Accordingly, the applicant is requesting exemptive relief that would permit the contribution of additional equity capital for a shared investment by Accounts participating in the investment (including the General Account). Any decision made or action taken by an ERISA-Covered Account (*i.e.*, the contribution of either no additional capital, the Account's pro rata share of additional capital, less than or more than the Account's pro rata share, etc.) must be approved by such independent fiduciary. See section I(c).

(d) *Lending of Funds to Meet Additional Capital Requirements.* 27. If the General Account and an ERISA-Covered Account participate in a shared investment that experiences the need for additional capital, and it is determined that the ERISA-Covered Account does not have sufficient funds available to meet the call for additional capital, The General Account might be willing and able to loan the required funds to the ERISA-Covered Account. Prior to any loan being made, it must be approved by the independent fiduciary for the ERISA-Covered Account. Such loan will be unsecured and non-recourse, will bear interest at a rate that will not exceed the prevailing interest rate on 90-day Treasury Bills, will not be callable at any time by the General Account, and will be prepayable at any time without penalty at the discretion of the independent fiduciary of the ERISA-Covered Account. See section I(d).

(e) *Shared Debt Investments.* 28. Equitable occasionally makes real estate investments consisting of interim construction loans or medium or long-term mortgage loans on a property. In some instances, Equitable may have the opportunity to obtain an equity ownership interest in the underlying real property upon maturity of the debt or at the election of Equitable. It is possible that shared real estate debt investments might raise questions under sections 406 of the Act in essentially two situations: (1) a material modification in the terms of a loan agreement, or (2) a default on a loan. From time to time, the terms of outstanding real estate loans need to be modified to take into account new developments. Such modifications may commonly include extensions of the term of the loan, revised interest rates, revised repayment schedules, changes in covenants or warranties to permit, for example, additional financing to be provided. These situations require a decision on behalf of the lender whether it would be in its own interest to make the modifications in question. Similarly, when a borrower commits an act of default under a loan agreement, the lender must determine, in its own interest, what action, if any, it wishes to take. Such action might involve foreclosure on the loan, a restructuring of the loan arrangement, or, in some cases as appropriate, no action at all. When a debt investment is shared among Accounts, a decision must be made on behalf of each Account with respect to the action to be taken when a loan modification or loan default situation occurs. In some cases, moreover, it is conceivable that different actions might be desired by different Accounts. Normally, however, only one unified course of action is possible in the situation. Since Equitable maintains each of these Accounts, the action it decides to take for the participating Accounts may raise questions under section 406 of the Act. Accordingly, exemptive relief is being requested that will permit Equitable on behalf of the Accounts to take appropriate action with respect to the modification of the material terms of a loan or with respect to a default situation when the loan is a shared investment involving one or more ERISA-Covered Accounts. Each such action would require approval of the independent fiduciary for each ERISA-Covered Account. If there is an agreement among the independent fiduciaries as to the course of action to follow with regard to a proposed loan modification, or an adjustment in the rights upon default, such modification or adjustment will be implemented. If, upon full discussion of the matter, no course of action can be agreed upon by the independent fiduciaries, no modification of the terms of the loan or adjustment in the rights upon default would be made. The terms of the loan agreement as originally stated would be carried out. See section I(e).

II. Joint Venture Investments

29. Many real estate investments are structured as joint venture arrangements (rather than 100 percent ownership interest in property) in which Equitable and another party, such as a real estate developer or manager, participate as joint venturer partners (or co-venturers). Generally, Equitable's co-venturer acts as managing partner of the joint venture. Equitable, in turn, may allocate its interest in the venture to more than one Equitable account. Joint venture investments typically involve several particular features by virtue of the terms and conditions of the joint venture agreements that may, when Equitable's joint venture interest is shared, result in possible violations of section 406 of the Act.

(a) *Additional Capital Contributions to Joint Ventures.* 30. As in the case of investments made entirely by Equitable, joint venture real estate investments sometimes require additional operating capital. Typically, the joint venture agreements entered into by Equitable and many other real estate investors provide for a capital call by the general partner of the joint venture to be made to each joint venturer and that each venturer provide the needed capital on a

[4] In any case where the General Account participates in a shared investment with one or more ERISA-Covered Accounts and a call for additional capital is made, the General Account will always make a capital contribution that is at least equivalent proportionately to the highest capital contribution made by an ERISA-Covered Account.

[5] In the case of shared real estate investments owned entirely by Equitable accounts, if an Account contributes capital equalling less than its pro rata interest in the investment (or makes no contribution at all), that Account's equity interest will be re-adjusted and reduced based on the change in the fair market value of the property caused by the infusion of new capital.

pro rata basis either in the form of an equity contribution or a loan to the joint venture. If one joint venturer refuses to contribute its pro rata equity share of the capital call, the other joint venturer(s) may contribute additional capital to cover the short-fall and thereby "squeeze down" the interest in the venture of the non-contributing joint venturer.[6] Alternatively, if sufficient additional capital is not provided by the joint venturers, other financing may be sought, or the joint venture may be liquidated. In the case of a capital call where Equitable's joint venture interest is shared by two or more Accounts, a determination must be made on behalf of each Account participating in the shared investment with respect to whether it is appropriate for the Account to provide its proportionate share of additional capital requested by the joint venture. The general rule that Equitable will follow is that each Account will be given the opportunity to provide its pro rata share of the capital call, but for some Accounts it may be determined to be appropriate to provide less than a full share or no additional capital at all. In such cases, the interest of the Account would be reduced proportionately on a fair market basis. In the case of ERISA-Covered Accounts, all decisions regarding the making of additional capital contributions must be approved by the independent fiduciary for the Account. In addition to situations where some Accounts participating in the ownership of Equitable's joint venture interest may not be in a position to provide their share of a capital call, other situations may arise where the co-venturer is unable to make its additional capital contributions. Both of these situations may result in prohibited transactions under section 406 of the Act.

31. *Equitable Shortfall.* The General Account and an ERISA-Covered Account may experience a capital call from the general partner of the joint venture for either an additional equity or debt contribution. If it is determined that the ERISA-Covered Account does not have sufficient funds available to meet its contribution requirement,[7] the General Account will not make an additional equity contribution to the joint venture to cover the ERISA-Covered Account's shortfall. However, the General Account may make a loan to the ERISA-Covered Account to enable the ERISA-Covered Account to make its required pro rata capital contribution. Accordingly, subject to the conditions of the proposed exemption, Section II(a)(2) would provide relief for loans of this type. Prior to any loan being made, it would have to be approved by the independent fiduciary for the ERISA-Covered Account. Such loan will be unsecured and non-recourse, will bear interest at a rate that will not exceed the prevailing interest rate on 90-day Treasury Bills, will not be callable at any time by the General Account, and will be prepayable at any time without penalty at the discretion of the independent fiduciary of the ERISA-Covered Account. In this way, the needed capital may be provided without causing a "squeeze down" in the equity interest of the participating ERISA-Covered Account. A similar situation may arise where two ERISA-Covered Accounts, or an ERISA-Covered and a non-ERISA-Covered Account, participate in a joint venture investment. If one Account is unable or unwilling to provide its proportionate share of a capital call, the other Account (but not the General Account) may be interested in making up the shortfall. This might be accomplished by means of an equity contribution with a resulting re-adjustment on a current fair market value basis in the equity ownership interests of the participating Accounts. Thus, any of these disproportionate contribution situations between Accounts (other than the General Account) might result in a violation of section 406(b)(2) of the Act. Subject to the generally applicable conditions of this proposed exemption, Section II(a)(3) provides limited relief for these disproportionate contributions.

32. *Co-Venturer Shortfall.* In some cases, Equitable's co-venturer in a joint venture investment may be unable to meet its additional capital obligation, and Equitable may deem it advisable for some or all of the participating Accounts to contribute capital in excess of the pro rata share of Equitable's Accounts in the joint venture in order to finance the operation of the property (and thereby squeeze down the equity interest of the co-venturer).[8] The applicant is requesting exemptive relief that would permit additional capital contributions to be made by participating Accounts (including the General Account) on a non-proportionate basis if the need arises. Any instance involving the infusion of additional capital to a joint venture will be considered by the independent fiduciary for each ERISA-Covered Account participating in the investment and any action to be taken by the Account must be approved by the independent fiduciary. These actions might include contributing a pro rata share of additional equity capital (including a capital contribution that squeezes down the interest of a co-venturer on the basis provided in the joint venture agreement), contributing more or less than a pro rata share, or contributing no additional capital. See Section II(a)(4).

(b) *Third Party Purchases of Joint Venture Properties.* 33. Under the terms of certain joint venture agreements entered into by Equitable and other real estate investors, if an offer is received from a third party to purchase the assets of the joint venture, and one joint venture partner (irrespective of the percentage ownership interest of the joint venture partner) wishes to accept the offer, the other joint venture partner must either (1) also accept the offer, or (2) buy out the first partner's interest at the portion of the offer price that is proportionate to the first partner's share of the venture. For example, if Equitable on behalf of the Accounts and a real estate developer are joint venture partners in a property and an offer is received from another person to acquire the entire property that the developer wants to accept, Equitable on behalf of the Accounts would be obligated either to sell its interest also to the third party or to buy out the interest of the developer at the portion of the price offered by the third party proportionate to the developer's share of the venture.

[6] In the case of a call for additional capital involving a typical joint venture arrangement entered into between parties dealing at arm's-length, the joint venture agreement may commonly provide that the equity interest of any non-contributing venturer be re-adjusted, or "squeezed down", on a capital interest basis. This involves re-adjusting the equity interests of the venturers solely on the basis of the percentage of total capital contributed without taking into account any appreciation on the underlying property. This "capital interest" adjustment can substantially diminish the equity interest of the non-contributing venturer in the actual current market value of the underlying property. Thus, this type of re-adjustment is intended to provide an incentive to all venturers to make their proportionate capital contributions so that improvements can be made and the operation of a property continued without burdening the other venturers.

[7] In any case where the General Account and one or more ERISA-Covered Accounts share Equitable's interest in a joint venture, the General Account will always make a capital contribution that is at least equivalent proportionately to the highest capital contribution made by an ERISA-Covered Account (but not higher than the General Account's pro rata share of the required additional capital except, as described in paragraph 32, in the event of a co-venturer shortfall). Thus, the General Account will never be the cause as between the Accounts of a capital contribution shortfall by Equitable that would result in a capital basis squeeze down by a co-venturer.

[8] In any case involving a shared joint venture interest held by the General Account and an ERISA-Covered Account, if it is determined that the ERISA-Covered Account will contribute its pro rata share of extra capital, The General Account would also contribute at least its pro rata share of such capital.

When Equitable's interest in a real estate joint venture is shared by two or more Accounts, it is likely that the same decision will be appropriate for each Account in any third-party purchase situation. See Sections I(b) and II(b)(1). It is also possible, however, that it might be in the interests of some Accounts to reject the offer and buy-out the partner, while other Accounts might not have the funds to do so or, for some other reason, would elect to sell to the third party. The joint venture agreements typically require, however, that Equitable on behalf of the Accounts provide the co-venturer with a buy or sell reply. Thus, in making a buy or sell decision in any of these cases involving an ERISA-Covered Account, Equitable might be deemed to be acting in violation of section 406 of the Act. Further, in order to resolve situations where the same reply is not appropriate for all participating Accounts, various alternatives may be adopted. For example, the Account(s) that wishes to continue owning the property may be willing and able itself to buy-out not only the co-venturer, but also the other participating Account(s) that wishes to accept the third party offer to sell. The General Account, however, will not participate in the buy-out of another Account(s). Or, one Account may itself be willing and able to buy-out the co-venturer while the other Account chooses to continue holding its original interest in the property. Alternatively, all of the Accounts may choose to participate in the buy-out, but on a basis that is not in proportion to their existing ownership interests. Such alternatives, when an ERISA-Covered Account is involved, while all possibly desirable from case to case, may also raise questions under section 406 of the Act, whether or not the General Account is a participant in the investment. Accordingly, the applicant is requesting exemptive relief that would permit Equitable to respond to third-party property purchase offers as appropriate under the circumstances. Such a response might involve acceptance of the offer on behalf of all participating Accounts, a buy-out of a co-venturer by some or all of the participating Accounts on a pro rata or non-pro rata basis, or a buy-out of the interest of one participating Account (and of the co-venturer) by other participating Accounts. Any action by any ERISA-Covered Account in these situations will be required to be approved by the independent fiduciary for the Account. Futher, in any case involving the sharing of a joint venture interest between the General Account and an ERISA-Covered Account, Equitable has determined that the action taken by the General Account in such third-party purchase offer situations will not be inconsistent with the action approved for the ERISA-Covered Account by the independent fiduciary for such Account. For example, where Equitable recommends that a third-party purchase offer be accepted and the independent fiduciary nevertheless determines that the interest of the co-venturer should be bought out, both Accounts will buy out the interest of the co-venturer on a proportionate basis, unless a disproportionate buy-out is agreeable to both Equitable and the independent fiduciary. However, where an offer to sell is acceptable to the co-venturer (and Equitable has the option of selling to the third party or buying out the co-venturer) and it is determined that the General Account is willing and able alone to buy out the co-venturer's interest, the independent fiduciary may elect that the ERISA-Covered Account retain its existing ownership interest. In such case, the General Account may buy out the co-venturer pursuant to Section II(b)(1). In any case in which more than one ERISA-Covered Account participates in a shared joint venture investment and there is a lack of agreement among the independent fiduciaries with respect to whether to accept a "sell" offer or to buy-out a co-venturer, Equitable, as indicated above, must nevertheless provide a unified response to the co-venturer on behalf of all participating Accounts. Accordingly, in these instances, all participating Accounts will be required to accept the "sell" offer, unless the Account or Accounts that prefer the buy-out can buy-out both the co-venturer's and the "selling" Account's interest, or unless one Account elects to retain its original ownership interest while the other Account(s) alone buys out the joint venturer's interest. The applicant represents that this action is preferred because the purchase option would require the expenditure of additional funds by an objecting Account.[9] See section II(b).

(c) *Rights of First Refusal in Joint venture Agreements.* 34. Under the terms of certain joint venture agreements entered into by Equitable and other real estate investors, if a joint venture partner wishes to sell its interest in the venture to a third party, the other joint venture partner must be given the opportunity to exercise a right of first refusal to purchase the first partner's interest at the price offered by the third party. For example, if Equitable and a real estate developer are joint venture partners and the developer decided to sell its interest to a third party, Equitable would have the right to purchase the developer's interest at the price offered by the third party. In the case of shared real estate joint ventures, the decision by Equitable on behalf of the Accounts with respect to whether or not to exercise a right of first refusal might raise questions under section 406 of the Act since each Account participating in the investment might be affected differently by such decision. Because, under the terms of the joint venture agreement, only one option (exercise or not exercise) may be chosen by Equitable on behalf of the Accounts, exemptive relief is being requested that would permit Equitable to exercise or not exercise a right of first refusal as may be appropriate under the circumstances. Any action taken on behalf of an ERISA-Covered Account regarding the exercise of such a right would have to be approved by the independent fiduciary. Further, under the requested exemption, if the General Account and an ERISA-Covered Account share a joint venture investment, even though Equitable may initially decide on behalf of the General Account not to make a purchase under a right of first refusal option, the General Account will be required to participate in the purchase of the other joint venturer's interest if the independent fiduciary determines that it is appropriate for the ERISA-Covered Account to participate in the exercise of the right of first refusal on at least a pro rata basis. If, however, two Accounts other than the General Account participate in a joint venture and agreement cannot be reached on behalf of the Accounts on whether to exercise a right of first refusal, the right will not be exercised and the co-venturer will be permitted to sell its interest to the third party, unless one Account decides to buy-out the co-venturer alone. In this regard, it is conceivable that some participating Accounts may elect to take advantage of a right of first refusal opportunity and buy-out a co-venturer without other participating Accounts taking part in the transaction. For example, in the case of a shared joint venture investment involving the General Account (or any other Account) and an ERISA-Covered Account, if the

[9] Similarly, in any case involving an ERISA-Covered Account and a non-ERISA-Covered Account, if there is a lack of agreement between the independent fiduciary and, for example, the trustees of a foreign or public plan (or Equitable in the case of a discretionary non-ERISA-Covered Account), all participating Accounts will be required to accept the "sell" offer unless an alternative accommodation as described above is made.

co-venturer wishes to accept an offer to sell its interest and the independent fiduciary of the ERISA-Covered Account decides not to have the account participate in purchasing the co-venturer's interest, the General Account (or other participating Account) would be free to make the purchase on its own. The exercise of a right of first refusal on such a disproportionate basis might also raise questions under section 406 of the Act for which exemptive relief may be needed. See section II(c).

(d) *Buy-Sell Provisions in Joint Venture Agreements.* 35. Certain joint venture agreements entered into by Equitable may provide that one joint venture partner may demand that the other partner either sell its interest to the first partner at a price as determined by the terms of the joint venture agreement or buy out the interest of the first partner at such price. If the other joint venture partner refuses to exercise either option within a specified period, it must sell its interest to the first partner at the stated price. These "buy-sell" provisions are generally used to resolve serious difficulties or impasses in the operation of a joint venture, but generally a joint venture agreement permits the buy-sell provision to be exercised at any time. As in the situations discussed above, the decision by Equitable on behalf of the Accounts to make a buy-sell offer, or its reaction to such an offer made by a co-venturer, may affect various participating Accounts differently. Accordingly, any decision make by Equitable in these cases involving ERISA-Covered Accounts might raise questions under section 406 of the Act. The applicant is requesting exemptive relief that would permit Equitable to make an appropriate decision under the circumstances on behalf of all participating Accounts to make a buy-sell offer to a co-venturer or to react to a buy-sell offer from a co-venturer. Any such decision must be approved by the independent fiduciary for each ERISA-Covered Account participating in the investment. Further, under the requested exemption, if Equitable decides to exercise (i.e., initiate) a buy-sell option with respect to the co-venturer's interest and the independent fiduciary of a participating ERISA-Covered Account objects, the buy-sell option will not be exercised. Similarly, if the buy-sell option is initiated by the co-venturer and there is a split among the independent fiduciaries of participating ERISA-Covered Accounts with respect to whether to buy or sell, all such Accounts will be required to sell, unless the Account(s) that wishes to buy-out the co-venturer (or the co-venturer and the other participating Account) can do so without the participation of the other Accounts. Also, where a buy-sell option is initiated by the co-venturer and Equitable determines that the General Account should purchase the co-venturer's interest, if the independent fiduciary of a participating ERISA-Covered Account determines that, as between "buy" or "sell", such Account's interest should be sold, Equitable's entire joint venture interest will be sold unless the independent fiduciary agrees that it would be preferable for the ERISA-Covered Account to retain its share of the joint venture interest and Equitable determines that the General Account is willing and able to purchase the entire interest of the co-venturer. Any such disproportionate purchases may, however, also raise questions under section 406 of the Act. See section II(d).

(e) *Transactions with Joint Venture Party in Interest.* 36. The applicant represents that when the General Account holds a 50 percent or more interest in a joint venture, the joint venture itself may be deemed to be a party in interest under section 3(14)(G) of the Act. Thus, any subsequent transaction involving the joint venture and a separate Account or investment advisory Account that is also participating in the venture (*e.g.*, an additional contribution of capital) may be deemed to be a transaction between the plans participating in an ERISA-Covered Account and a party in interest (the joint venture itself) in violation of section 406. Accordingly, the applicant is requesting exemptive relief from the restrictions of section 406(a) of the Act, only, which would permit: (1) any additional equity or debt capital contributions to a joint venture by an ERISA-Covered Account which is participating in an interest in the joint venture, where the joint venture is a party in interest solely by reason of the ownership on behalf of the General Account of a 50 percent or more interest in such joint venture; or (2) any material modification in the terms of, or action taken upon default with respect to, a loan to the joint venture in which the ERISA-Covered Account has an interest as a lender. Either action would be conditioned upon the approval of the independent fiduciary for the ERISA-Covered Account. See section III.

Initial Proportionate Allocations

Pending review by the Department of the investment structure and post-initial allocation transactions described in this notice, the applicant, Equitable, has not requested exemptive relief for the initial allocation of shared real estate investments by Equitable among two or more Accounts, at least one of which is an ERISA-Covered Account, where each of the Accounts participating in a real estate investment participates in the debt and equity interests in the same relative proportions as described in paragraph 4 above. It is the applicant's position that the initial sharing of a real estate investment pursuant to the described allocation by two or more accounts maintained by Equitable (which may include both its General Account and one or more ERISA Accounts) does not involve a *per se* violation of sections 406(a)(1)(D) and 406(b)(1) and (b)(2) of the Act.

Regulations under section 408(b)(2) of the Act (29 CFR 2550.408b–2(e)) provide that the prohibitions of section 406(b) are imposed on fiduciaries to deter them from exercising the authority, control or responsibility which makes them fiduciaries when they have interests which may conflict with the interests of the plans for which they act. In such cases, the regulation states that the fiduciaries have interests in the transactions which may affect the exercise of their best judgment as fiduciaries. It is the Department's view, however, that a fiduciary does not violate section 406(b)(1) with respect to a transaction involving the assets of a plan if he does not have an interest in the transaction that may affect his best judgment as a fiduciary.

Similarly, a fiduciary does not engage in a violation of section 406(b)(2) in a transaction involving the plan if he represents or acts on behalf of a party whose interests are not adverse to those of the plan. Nonetheless, if a fiduciary causes a plan to enter into a transaction where, by the terms or nature of that transaction, a conflict of interest between the plan and the fiduciary exists or will arise in the future, that transaction would violate either section 406(b)(1) or (b)(2) of the Act. Moreover, if, during the course of a transaction which, at its inception, did not involve a violation of section 406(b)(1) or 406(b)(2), a divergence of interests develops between the plan and the fiduciary, the fiduciary must take steps to eliminate the conflict of interest in order to avoid engaging in a prohibited transaction.

In the view of the Department, the mere investment of assets of a plan on identical terms with a fiduciary's investment for its own account and in the same relative proportions as the fiduciary's investment would not, in itself, cause the fiduciary to have an interest in the transaction that may

affect its best judgment as a fiduciary. Therefore, such an investment would not, in itself, violate section 406(b)(1). In addition, such shared investment, or an investment by a plan with another account maintained by a common fiduciary, pursuant to reasonable procedures established by the fiduciary would not cause the fiduciary to act on behalf of (or represent) a party whose interests are adverse to those of the plan, and therefore, would not, in itself, violate section 406(b)(2).[10]

With respect to section 406(a)(1)(D) of the Act which prohibits the transfer to, or use by or for the benefit of a party in interest (including a fiduciary) of the assets of a plan, it is the opinion of the Department that a party in interest does not violate that section merely because he derives some incidental benefit from a transaction involving plan assets. We are assuming, for purposes of this analysis, that the fiduciary does not rely upon and is not otherwise dependent upon the participation of plans in order to undertake its share of the investment.

Thus, with respect to the investment of plan assets in shared investments which are made simultaneously with investments by a fiduciary for its own account on identical terms and in the same relative proportions, it is the view of the Department that any benefit that the fiduciary might derive from such investment under these circumstances is incidental and would not violate section 406(a)(1)(D) of the Act.

Accordingly, since it appears that the method by which the interests in the real estate investments are allocated to the Accounts maintained by Equitable does not result in *per se* prohibited transactions under the Act, the Department has not proposed exemptive relief with respect to the initial sharing of these investments.

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption include fiduciaries and participants of plans investing in ERISA-Covered Accounts which are engaging in transactions described in the proposed exemption. Because of the number of affected persons, the Department has determined that the only practical form of providing notice to interested persons is the distribution, by Equitable, of the notice of proposed exemption as published in the **Federal Register** to the plan sponsor of each plan described above. The distribution will occur within 30 days of the publication of the notice of proposed exemption in the **Federal Register.**

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Section I—Exemption for Certain Transactions Involving the Management of Investments Shared by Two or More Accounts Maintained by Equitable

If the exemption is granted, as indicated below, the restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions if the conditions set forth in section IV are met:

(a) *Transfers Between Accounts*—The restrictions of section 406(b)(2) of the Act shall not apply to the sale or transfer of an interest in a shared investment (including a shared joint venture interest) between two or more Accounts (except the General Account), provided that each ERISA-Covered Account pays no more, or receives no less, than fair market value for its interest in a shared investment.

(b) *Joint Sales of Property*—The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale to a third party of the entire interest in a shared investment (including a shared joint venture interest) by two or more Accounts, provided that each ERISA-Covered Account receives no less than fair market value for its interest in the shared investment

(c) *Additional Capital Contributions*—The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply either to the making of a pro rata equity capital contribution by one or more of the Accounts to a shared investment; or to the making of a Disproportionate (as defined in Section V(d)) equity capital contribution by one or more of such Accounts which results in an adjustment in the equity ownership interests of the Accounts in the shared investment on the basis of the fair market value of such interests subsequent to such contribution, provided that each ERISA-Covered Account is given an opportunity to make a pro rata contribution.

(d) *Lending of Funds*—The restrictions of section 406(a), 406(b)(1)

[10] This analysis does not address any issues which may arise under section 406(b)(2) where investments are shared solely by two or more separate accounts maintained by a common fiduciary and the participation of one account is relied upon to support the initial investment of the other account.

and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional pro rata contribution, provided that such loan—

(A) is unsecured and non-recourse with respect to participating plans,

(B) bears interest at a rate not to exceed the prevailing rate on 90-day Treasury Bills,

(C) is not callable at any time by the General Account, and

(D) is prepayable at any time without penalty.

(e) *Shared Debt Investments*—In the case of a debt investment that is shared between two or more Accounts, including one or more of the ERISA-Covered Accounts, (1) the restrictions of section 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to any material modification in the terms of the loan agreement resulting from a request by the borrower or any decision regarding the action to be taken, if any, on behalf of the Accounts in the event of a loan default by the borrower, and (2) the restrictions of section 406(b)(2) of the Act shall not apply to any decision by Equitable thereof on behalf of two or more ERISA-Covered Accounts: (A) not to modify a loan agreement as requested by the borrower; or (B) to exercise any rights provided in the loan agreement in the event of a loan default by the borrower, even though the independent fiduciary for one (but not all) of such Accounts has approved such modification or has not approved the exercise of such rights.

Section II—Exemption for Certain Transactions Involving the Management of Joint Venture Interests Shared by Two or More Accounts Maintained by Equitable

If the exemption is granted, the restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions resulting from the sharing of an investment in a real estate joint venture between two or more Accounts, if the conditions set forth in Section IV are met:

(a) *Additional Capital Contributions*—(1) The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the making of additional pro rata capital contributions by one or more Accounts participating in the joint venture.

(2) The restrictions of section 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional pro rata capital contribution, provided that such loan—

(A) is unsecured and non-recourse with respect to the participating plans,

(B) bears interest at a rate not to exceed the prevailing rate on 90-day Treasury Bills,

(c) is not callable at any time by the General Account, and

(D) is prepayable at any time without penalty.

(3) The restrictions of section 406(b)(2) of the Act shall not apply to the making of Disproportionate additional equity capital contributions (or the failure to make such additional contributions) in the joint venture by ERISA-Covered Accounts which result in an adjustment in the equity ownership interests of the ERISA-Covered Accounts in the joint venture on the basis of the fair market value of such joint venture interests subsequent to such contributions, provided that each ERSIA-Covered Account is given an opportunity to provide its proportionate share of the additional equity capital contributions; and

(4) In the event a co-venturer fails to provide all or any part of its pro rata share of an additional equity capital contribution, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the making of Disproportionate additional equity capital contributions to the joint venture by the General Account and an ERISA-Covered Account up to the amount of such contribution not provided by the co-venturer which result in an adjustment in the equity ownership interests of the Accounts in the joint venture on the basis provided in the joint venture agreement, provided that such ERISA-Covered Account is given an opportunity to participate in all additional equity capital contributions on a proportionate basis.

(b) *Third Party Purchase Offers*—(1) In the case of an offer by a third party to purchase any property owned by the joint venture, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the acquisition by the Accounts, including one or more ERISA-Covered Account[s], on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with a decision on behalf of such Accounts to reject such purchase offer, provided that each ERISA-Covered Account is first given an opportunity to participate in the acquisition on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any acceptance by Equitable on behalf of two or more Accounts, including one or more ERISA-Covered Account[s], of an offer by a third party to purchase a property owned by the joint venture even though the independent fiduciary for one (but not all) of such ERISA-Covered Account[s] has not approved the acceptance of the offer, provided that such declining ERISA-Covered Account[s] are first afforded the opportunity to buy out both the co-venturer and "selling" Account's interests in the joint venture.

(c) *Rights of First Refusal*—(1) In the case of the right to exercise a right of first refusal described in a joint venture agreement to purchase a co-venturer's interest in the joint venture at the price offered for such interest by a third party, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the acquisition by such Accounts, including one or more ERISA-Covered Account[s], on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with the exercise of such a right of first refusal, provided that each ERISA-Covered Account is first given an opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by Equitable on behalf of the Accounts not to exercise such a right of first refusal even though the independent fiduciary for one (but not all) of such ERISA-Covered Accounts has approved the exercise of the right of first refusal, provided that none of the ERISA-Covered Accounts that approved the exercise of the right of first refusal

decides to buy-out the co-venturer on its own.

(d) *Buy-Sell Options*—(1) In the case of the exercise of a buy-sell option set forth in the joint venture agreement, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the acquisition by one or more of the Accounts on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with the exercise of such a buy-sell option, provided that each ERISA-Covered Account is first given the opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by Equitable on behalf of two or more Accounts, including one or more ERISA-Covered Account[s], to sell the interest of such Accounts in the joint venture to a co-venturer even though the independent fiduciary for one (but not all) of such ERISA-Covered Accounts[s] has not approved such sale, provided that such disapproving ERISA-Covered Account is first afforded the opportunity to purchase the entire interest of the co-venturer.

Section III—Exemption for Transactions Involving a Joint Venture or Persons Related to a Joint Venture

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply, if the conditions in Section IV are met, to any additional equity or debt capital contributions to a joint venture by an ERISA-Covered Account that is participating in an interest in the joint venture, or to any material modification in the terms of, or action taken upon default with respect to, a loan to the joint venture in which the ERISA-Covered Account has an interest as a lender, where the joint venture is a party in interest solely by reason of the ownership on behalf of the General Account of a 50 percent or more interest in such joint venture.

Section IV—General Conditions

(a) The decision to participate in any ERISA-Covered Account that shares real estate investments must be made by plan fiduciaries who are totally unrelated to Equitable and its affiliates.

(b) Each contractholder or prospective contractholder in an ERISA-Covered Account which shares or proposes to share real estate investments is provided with a written description of potential conflicts of interest that may result from the sharing, a copy of the notice of pendency, and a copy of the exemption as granted.

(c) An independent fiduciary must be appointed on behalf of each ERISA-Covered Account participating in the sharing of investments. The independent fiduciary shall be either

(1) a business organization which has at least five years of experience with respect to commercial real estate investments,

(2) a committee comprised of three to five individuals who each have at least five years of experience with respect to commercial real estate investments, or

(3) the plan sponsor (or its designee) of a plan (or plans) that is the sole participant in an ERISA-Covered Account.

(d) The independent fiduciary or independent fiduciary committee member shall not be or consist of Equitable or any of its affiliates.

(e) No organization or individual may serve as an independent fiduciary for an ERISA-Covered Account for any fiscal year if the gross income received by such organization or individual (or any partnership or corporation of which such organization or individual is an officer, director, or ten percent or more partner or shareholder) from Equitable and its affiliates for that fiscal year exceeds five percent of its or his annual gross income from all sources for the prior fiscal year. If such organization or individual had no income for the prior fiscal year, the five percent limitation shall be applied with reference to the fiscal year in which such organization or individual serves as an independent fiduciary.

In addition, effective for transactions occurring after the date of publication of this notice of pendency, no organization or individual who is an independent fiduciary, and no partnership or corporation of which such organization or individual is an officer, director or ten percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from, Equitable, its affiliates, or any Account maintained by Equitable or its affiliates, during the period that such organization or individual serves as an independent fiduciary and continuing for a period of six months after such organization or individual ceases to be an independent fiduciary, or negotiate any such transaction during the period that such organization or individual serves as independent fiduciary.

(f) The independent fiduciary acting on behalf of an ERISA-Covered Account shall have the responsibility and authority to approve or reject recommendations made by Equitable or its affiliates for each of the transactions in this proposed exemption. Equitable and its affiliates shall involve the independent fiduciary in the consideration of contemplated transactions prior to the making of any decisions, and shall provide the independent fiduciary with whatever information may be necessary in making its determinations.

In addition, the independent fiduciary shall review on an as-needed basis, but not less than twice annually, the shared real estate investments in the ERISA-Covered Account to determine whether the shared real estate investments are held in the best interest of the ERISA-Covered Account.

(g) Equitable maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (h) of this Section to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Equitable or its affiliates, the records are lost or destroyed prior to the end of the six-year period.

(h)(1) Except as provided in paragraph (2) of this subsection (h) and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in subsection (g) of this Section are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in an ERISA-Covered Account who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an ERISA-Covered Account or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an ERISA-Covered Account, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this subsection (h) shall be authorized to examine trade secrets of Equitable, any of its affiliates, or commercial or financial information which is privileged or confidential.

Section V—Definitions

For the purposes of this exemption:

(a) An "Affiliate" of Equitable includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Equitable,

(2) Any officer, director or employee of Equitable or person described in section V(a)(1), and

(3) Any partnership in which Equitable is a partner.

(b) An "Account" means the General Account (including the general accounts of Equitable affiliates which are managed by Equitable), any separate account managed by Equitable, or any investment advisory account, trust, limited partnership or other investment account or fund managed by Equitable.

(c) An "ERISA-Covered Account" means any Account (other than the General Account) in which employee benefit plans subject to Title I or Title II of the Act participate.

(d) "Disproportionate" means not in proportion to an Account's existing equity ownership interest in an investment, joint venture or joint venture interest.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

FOR FURTHER INFORMATION CONTACT: Linda Shore of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

Signed at Washington, DC, this 13th day of August, 1987.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87–18815 Filed 8–17–87; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–4950A]

Notice of Proposed Exemption for Certain Transactions Involving the Metropolitan Life Insurance Company (Metropolitan) Located in New York City, New York

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1986 (the Code). The proposed exemption relates to the initial allocation and sharing by Metropolitan of certain real estate investments between the general account of Metropolitan and the commingled separate account (Account RE or the Account) of Metropolitan in which employee benefit plans invest. Metropolitan is a fiduciary with respect to the assets of plans invested in Account RE and is responsible for the acquisition, management and disposition of the assets of Account RE.

EFFECTIVE DATE: If granted, this proposed exemption would be effective January 1, 1975.

DATES: Written comments and rquests for a public hearing must be received by the Department on or before October 16, 1987.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administraion, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Application No. D–4950A. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC 20216.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by Metropolitan pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

1. Metropolitan is a mutual life insurance company organized under the laws of the State of New York. Metropolitan has under management, in its general account and all of its separate accounts, a portfolio of mortgage loans and real estate equities of approximately $22.1 billion. In 1986, approximately $3.8 billion was invested in real estate investments. As of December 31, 1986, real estate investments comprised approximately 27 percent of all assets of Metropolitan.

2. Metropolitan organized Account RE in 1972. Account RE is a spearate account within the meaning of section 3(17) of the Act, under which income and gains and losses, whether or not realized, from assets allocated to the Account are credited or charged against the Account without regard to other income, gains, or losses of Metropolitan. Account RE is "open-ended" both with respect to investments and participation. Participation in Account RE is effected pursuant to group annuity contracts issued to participating employee benefit plans (or plan sponsors) which provided, among other things, that amounts received under the contracts are applied to Account RE and that the investment experience of the Account will be credited or charged, as the case may be, to the participating contracts proportionately to the relative interests of such contracts in the assets held in the Account. Account RE invests in equity and debt interests in real estate. The value of the real estate interests held in Account RE as of June 30, 1987 was approximately $332 million, and 27 pension plans were then participating in the Account.

3. Metropolitan is an investment manager/fiduciary with respect to the investment of the assets of Account RE and, as such, seeks to make investments in real estate for Account RE on a shared or parallel basis with Metropolitan's general account, pursuant to the Operational Investment Guidelines for Separate Account RE (the Investment Guidelines) established by the Investment Committee of Metropolitan's Board of Directors. Metropolitan represents that an inherent advantage of parallel or shared investments in real estate is the opportunity to enhance the diversity of investments available to Account RE and its participating plans. Where the resources of a plan or a number of plans participating in a separate account must be applied to the full ownership of discrete real estate investments, each dollar invested will of necessity buy

interests in fewer separate properties than where the greater portion of each investment has been acquired by the general account of Metropolitan. In order to maintain diversity which will permit an account to avoid the risk of large losses, all but the largest accounts may be forced to invest in smaller investments which, in Metropolitan's view, typically generate less return than the larger, more prestigious properties. By investing on a parallel or shared basis with the general account, Account RE can obtain the advantage of interests in the largest number of high quality properties, regardless of cost. Further, Metropolitan represents that shared or parallel investment frequently results in substantial savings associated with administrative and start-up costs. Costs such as legal fees, architectural inspections, engineering reports and title insurance, are ordinarily not proportional to the size of the investment, so that sharing of such costs allows Account RE to reduce its administrative costs per investment dollar.

4. The Account's investments are ordinarily in the form of equity interests in joint venture partnerships which hold title to, manage and/or develop real properties such as hotels and office buildings, and also in debt interests in the mortgages to which the properties are subject. Development joint venture arrangements are customarily "leveraged"; that is, acquisition and development costs are met by the equity contribution of the joint venture partners and by substantial loans to the partnerships which are usually made on a nonrecourse basis. Such financing generally takes the form of a mortgage loan made by Metropolitan on behalf of its general account and Account RE to the joint venture partnership which is secured by the joint venture partnership's interest in its real property. Pursuant to the Investment Guidelines, Metropolitan, on behalf of its general account and Account RE, typically owns 50 percent of the equity interest in the joint venture partnership and provides 100 percent of the debt financing. Ordinarily, the real estate developer-partner will own the remaining 50 percent of the equity of the joint venture partnership. However, from time to time the general account may acquire, on its own behalf, 50 percent or more of the equity interest in a joint venture partnership. Under these circumstances, the applicant notes that the joint venture partnership would be a party in interest within the meaning of section 3(14)(G) of the Act. Thus, (in addition to the exemptive relief requested for the allocation and sharing of debt and equity interests in any real estate joint venture investment pursuant to the Investment Guidelines), the applicant has requested exemptive relief for the (continuing) extension of credit that arises in connection with the initial allocation by Metropolitan of a debt interest in such party in interest joint venture partnership to Account RE.

The applicant represents that the long term debt element of the joint venture arrangement is primarily a result of the investment requirements of the real estate developer-partner. Developer-partners, whose expertise Metropolitan considers essential to the success of the joint venture partnership, need and expect long term mortgage financing to leverage their equity interest. The actual interest rate for the mortgage financing is the result of arm's-length negotiation between Metropolitan and the developer-partner and is subject to competitive market demands.

5. The developer-partner, in addition to participating in the joint venture itself, generally acts as the managing partner of the venture, receiving for its services a percentage of the gross income of the venture. Major decisions with respect to the joint venture are specified in the establishing partnership agreement and are made jointly by the developer and Metropolitan, acting for the general account and Account RE. Under this structure, the managing partner is responsible for the implementation of the decisions of the venturers and for conducting the ordinary day-to-day affairs of the venture. The building manager will ordinarily be an affiliate of the developer, and, in such case, the building manager would normally be compensated from the management fee received by the developer. The fee paid to the developer as managing partner is established on a fully competitive basis and reflects the market rate for similar services. Metropolitan generally retains the right to terminate the management authority of the developer and/or of the building manager with or without cause at any time.

In certain cases where Metropolitan, acting for its general account and Account RE, invests in a project prior to or during its construction phase, the debt portion of Metropolitan's investment may include construction financing as well as the long-term mortgage investment described above. In addition, in some transactions Metropolitan, acting for its general account and Account RE, will make an "equity" loan to its developer-partner in the joint venture. An equity loan is a personal loan made to a joint venture partner to enable the partner to finance its equity position in the joint venture. The loan is secured by the partner's interest in the joint venture. Pursuant to the Investment Guidelines, the portion of any construction loan or equity loan which would be obtained by Account RE would be the same as its percentage of the mortgage investment.

6. Commitments for investments for the general account and Account RE are issued pursuant to resolutions of the Investment Committee of the Board of Directors of Metropolitan. However, the decision with respect to the investment by Account RE in a joint venture partnership is specifically made by a senior real estate officer of Metropolitan who is responsible for real estate investments for separate accounts and acts solely on behalf of Account RE in making the decision. The commitments for investments are made in the name of Metropolitan. As a result, Metropolitan is required in its corporate capacity to meet the commitment and is prepared in each case to take the entire investment into its general account if for any reason Account RE cannot take its allocated share.

7. Investments made by Metropolitan have been shared by the Account, to the extent funds have been available therein, from time to time. Metropolitan represents that the relative amounts of assets available for investment by Metropolitan's general account and Account RE are such that the general account in no way relies upon investment by Account RE to support or complete its investment but rather provides the latter Account access to relatively small interests in larger investments which would be made for the general account in any event.

8. Under the Investment Guidelines, the maximum share of an eligible investment made by Metropolitan which is to be allocated to Account RE is fixed from time to time by the Investment Committee of Metropolitan's Board of Directors. The maximum share to be allocated to the Account remains in effect and is applicable to all eligible investments until the allocation policy is superseded by another policy with similar general applicability. Each investment on behalf of Account RE can only be made on the basis of the Investment Guidelines which have been established by Metropolitan to carry out these determinations.

In addition to describing the participation of Metropolitan's general account and Account RE in the debt and equity elements of an investment, the Investment Guidelines describe the role

and interests of the real estate developers which act as joint venture partners in Account investments, as well as the exceptions to participation by Account RE in general account investments due to legal restrictions, diversification requirements or the availability of funds for investment. Under the initial policy established at the inception of Account RE in 1972, the Account participated in eligible investments, subject to availability of assets for a particular transaction, to the extent of 10 percent of Metropolitan's equity interest in the joint venture and 10 percent of Metropolitan's debt investment with respect to the property. Under this "proportionate" method of allocation, if, for example, Metropolitan acquires (on behalf of its general account and Account RE a total of) 50 percent of the equity and 100 percent of the debt of a joint venture, Account RE would be allocated 5 percent of the equity interest and 10 pecent of the debt interest in the joint venture. However, under the current policy established by Metropolitan pursuant to Board authorization, Account RE participates in eligible investments, subject to the availability of assets for the particular transaction, to the extent of 25 percent of Metropolitan's equity interest in the joint venture and a percentage of Metropolitan's debt investment with respect to the property which is equal to the Account's percentage equity ownership fo the joint venture. Under this "equity equivalent" method of allocation (more fully described hereinafter), generally the Account will obtain a 12.5 percent interest in both the equity of the joint venture and the debt on the property. As a result, generally, Metropolitan will obtain for its general account a 37.5 percent interest in the joint venture and 87.5 percent of the debt on the property. However, if Account RE does not have sufficient funds to acquire its maximum share of an investment, the Account's respective shares in both the debt and equity elements of the investment would be reduced on an equivalent percentage basis but not below a minimum investment in each element of 5 pecent. The Investment Guidelines allow for no discretion by Metropolitan or Account RE to select soley the debt or equity element of any investment; nor may the equivalent percentages of Account RE's debt and equity participation be altered on a transaction by transaction basis.

9. As currently structured, the actual allocation of appropriate investments to Account RE is essentially an automatic process. A fixed maximum percentage of each eligible investment commitment is allocated to Account RE if funds are available therein when the investment is closed. If the amount of new contributions to Account RE, plus available earnings and proceeds of sales, is sufficient to cover its allocated share of the investment, such share will be placed in the Account. Except for appropriate reserves of operating capital to meet expected cash requirements, all funds in the Account are considered available for investment. Investments by Account RE are funded in the order in which investments are closed. If two such investments were to close on the same day, Account RE would first participate in the investment that had the earliest commitment date. Occasionally, the amount of cash in Account RE available for investment is sufficient to purchase only a *de minimis* interest in an investment; in such event, the Account will not participate in the investment but rather will accumulate cash for the next eligible investment.

If, by reason of the nature of the investments being acquired from time to time by the general account, and the fact that the general account was making real estate equity investments prior to the establishment of Account RE in 1972, Account RE's participation in a particular kind of investment would cause the diversification of the Account to diverge significantly from the appropriate diversification requirements of the Account (which are generally similar to the general account's real estate equity investments), the Account may forego certain investments. To date, this has occurred only once; under a policy in early 1982, Account RE suspended investment in interests in hotel properties.

10. The investment decision to acquire units of participation in the Account is made by the fiduciaries (independent of Metropolitan) responsible for the investment management of the plan. However, Metropolitan, as administrator for a pension plan covering its employees and agents, is a participant in Account RE. Prior to its initial investment in Account RE, a prospective contractholder (or plan fiduciary) is provided detailed information regarding the structure and investment policy of Account RE. Moreover, a prospective contractholder (or plan fiduciary) also receives prior to investment a statement of the financial condition of the Account and a description of the particular investments which are held by the Account. Such information also apprises the prospective contractholder of the fees and expenses charged as well as the economic effects of the combined debt and equity interests which ordinarily comprise such investments. Following investment in Account RE, each contractholder receives a quarterly written report which reflects the transactions in, and the current status of, the Account. The Investment Guidelines are revised by Metropolitan only infrequently. Any modification will be subject to the review and approval of an independent fiduciary (the Independent Fiduciary).

11. Because the applicant was uncertain whether the initial sharing of investments between the accounts, and specifically whether investments allocated and shared primarily on an "equity equivalent basis" pursuant to the Investment Guidelines, would result in prohibited transactions under the Act, a prohibited transaction exemption was sought.[1]

[1] In this regard, the Department has considered the application of the prohibited transaction provisions of section 406 of the Act to the initial allocation of shared investments by a fiduciary among two or more accounts, at least one of which contains plan assets, where each of the accounts participates in the debt and equity components of an investment on a proportionate basis.

In the view of the Department, the mere investment of assets of a plan on identical terms with a fiduciary's investment for its own account and in the same relative proportions as the fiduciary's investment would not, in itself, cause the fiduciary to have an interest in the transaction that may affect its best judgment as a fiduciary. Therefore, such an investment would not, in itself, violate section 406(b)(1). In addition, such shared investment, or an investment by a plan with another account maintained by a common fiduciary, pursuant to reasonable procedures established by the fiduciary would not cause the fiduciary to act on behalf of (or represent) a party whose interests are adverse to those of the plan, and therefore, would not, in itself, violate section 406(b)(2).

With respect to section 406(a)(1)(D) of the Act which prohibits the transfer to, or use by or for the benefit of a party in interest (including a fiduciary) of the assets of a plan, it is the opinion of the Department that a party in interest does not violate that section merely because he derives some incidental benefit from a transaction involving plan assets. We are assuming, for purposes of this analysis, that the fiduciary does not rely upon and is not otherwise dependent upon the participation of plans in order to undertake its share of the investment.

Thus, with respect to the investment of plan assets in shared investments which are made simultaneously with investments by a fiduciary for its own account on identical terms and in the same relative proportions, it is the view of the Department that any benefit that the fiduciary might derive from such investment under these circumstances is incidental and would not violate section 406(a)(1)(D) of the Act.

Accordingly, to the extent that real estate investments are allocated to accounts maintained by Metropolitan on a "proportionate" basis as described above, no exemptive relief is necessary for the initial allocation of such shared investments. However, the applicant has requested exemptive relief for the continuing extension of credit that arises in connection with the initial "proportionate" allocation by Metropolitan of a debt interest in a

Continued

12. The applicant believes that the method by which investments are shared under the described circumstances meets the requirements necessary for an administrative exemption in that inherent in the investment is an allocation procedure and structure which, at least at the outset of any joint venture investment, curtails any conflict between the interests of Metropolitan and Account RE. The applicant asserts that where Account RE obtains an equal percentage of the debt and equity of the joint venture partnership, the aggregate income that will be realized by the Account from both elements of the investment will be effectively insulated from the effect of any action which may be taken by Metropolitan with respect to the joint venture partnership. Various examples are furnished in order to demonstrate that Account RE's typical 12.5% interest in both the debt and equity provides Account RE with a 12.5% overall interest in the income which would be generated by the property or properties owned by the joint venture, whether such income is in the form of debt service on the mortgage or distributions of the net income or gains of the partnership.

Similarly, the applicant represents that under the joint venture partnership investment structure, Account RE will at all times retain a 12.5% ownership interest in the property or properties owned by the joint venture, regardless of actions which may be taken by Metropolitan with respect to the long term mortgage loan. Thus, upon repayment of the long term mortgage loan, Account RE will have an unencumbered 12.5% equity interest in the property. Conversely, if the joint venture partnership were to fail and a foreclosure proceeding were to be brought, Account RE's 12.5% interest in the mortgage loan would, in effect, preserve its 12.5% interest in the property or properties owned by the joint venture.

joint venture partnership where the partnership itself is a party in interest solely by reason of the ownership on behalf of the general account of a 50 percent or more interest in such joint venture partnership. With respect to the "equity equivalent" method of allocation, which forms the principal basis for this application (or any other method for the initial allocation of shared investments), the Department is unwilling to provide advance assurance that such allocation method(s) and the consequent sharing of investments would not result in *per se* violations of section 406 of the Act. Thus, this proposed exemption relates primarily to the initial allocation and sharing of investments between the general account of Metropolitan and Account RE pursuant to the "equity equivalent" procedures currently utilized.

With respect to transactions subsequent to the initial allocation of shared investments that present additional issues under section 406 of the Act, the Department notes that the applicant has applied for a separate prohibited transaction exemption (D-4950B). The Department has not completed its consideration of this application for additional relief.

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption include fiduciaries and participants of plans which have invested or which may invest in Account RE. Because of the number of plans which currently invest in the Account RE, the Department has determined that the only practical form of providing notice to interested persons is the distribution, by Metropolitan, of the notice of proposed exemption as published in the **Federal Register** to these plan fiduciaries. Such distribution will occur within 30 days of the publication of the notice of proposed exemption in the Federal Register.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relive a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

And interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above.

All comments will be made a part of the record. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

Section I—Exemption for Certain Transactions Involving the Allocation of Shared Joint Venture Partnership Investments to the General Account of Metropolitan and Account RE by Metropolitan

If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975(c)(1) (A) through (E) of the Internal Revenue Code (the Code) shall not apply t the following transactions if the conditions set forth in Section II are met:

(a) The initial allocation by Metropolitan of equity and debt interests in a joint venture partnership investment that is shared between the general account of Metropolitan and Account RE;

(b) The making of an "equity" loan to a developer-partner in a joint venture partnership by Metropolitan on behalf of the general account of Metropolitan and Account RE; and

(c) The making of the initial equity and debt contributions to a joint venture partnership by Metropolitan on behalf of the general account of Metropolitan and Account RE, where the joint venture partnership is a party in interest solely by reason of the ownership on behalf of the general account of a 50 percent or

more interest in such joint venture partnership.

Section II—General Conditions

(a) The decision to participate in Account RE is made by plan fiduciaries independent of Metropolitan and its affiliates following full disclosure to such fiduciaries of all relevant information regarding Account RE. Such information includes, but is not limited to, a detailed description of the structure and investment policy of Account RE, a description of the fees and expenses typically charged Account RE, a statement of the financial condition of the Account, a description of the particular investments held by the Account, and a description of the economic effects of the combined debt and equity interests which ordinarily comprise Account RE investments. In addition, a quarterly written report is provided to plan fiduciaries which reflects the transactions in, and the current status of, the Account. This condition shall not apply to plans covering employees of Metropolitan.

(b) On the basis of written Investment Guidelines that are available upon request to all plan investors, the Board of Directors of Metropolitan adopts, and then applies consistently, a policy which, until formally superseded, determines the maximum share of the debt and equity interests in a real estate joint venture investment that is allocated and shared between the general account and Account RE.

(c) As result of any initial allocation, the equity interest of Account RE in the joint venture partnership is equivalent to Account RE's debt interest in such partnership.

(d) The rights and obligations of Metropolitan's general account and Account RE in their respective debt and equity holdings in a joint venture partnership, as well as in their respective interests in any "equity" loan to a developer-partner, are identical.

(e) Metropolitan does not rely upon the participation of the assets of Account RE in order to undertake, support or complete investments in real estate joint ventures on behalf of the Metropolitan general account.

(f) Account RE's interest in any "equity" loan to a developer-partner is equivalent to Account RE's debt interest in the joint venture partnership.

(g) After September 16, 1987, any material modification of the Investment Guidelines is subject to the review and approval of an Independent Fiduciary.

(h) Sections II(b), (c), (f) and (g) do not apply to transactions described in Section I(c) of this exemption, if the debt and equity interests of the joint venture partnership which are allocated by Metropolitan to Account RE are in the same relative proportions as the debt and equity interests held by Metropolitan on behalf of its general account.

Section III—Definitions

For purposes of this exemption:

(a) an "affiliate" of Metropolitan includes:

(1) any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Metropolitan; (2) any officer, director or employee of Metropolitan or person described in this subparagraph III(a)(1); and (3) any partnership in which Metropolitan is a partner.

(b) the term "debt" means any debt of a joint venture partnership described herein, including construction or long term mortgage loans.

(c) The term "equity" loan means any loan to a developer-partner in a joint venture partnership described herein which is secured by the developer-partner's equity interest in the joint venture partnership.

FOR FURTHER INFORMATION CONTACT: Linda Shore of the Department, telephone (202) 523-8671. (This is not a toll-free number).

Signed at Washington, DC, this 13th day of August, 1987.

Elliot I. Daniel,

Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 87-18814 Filed 8-17-87; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefits Plans; Work Group Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Employee Stock Ownership Plans (ESOP) of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 2:00 p.m., Tuesday, September 15, 1987, in Room N-3437A,B, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This nine-member work group was formed by the Advisory Council to study varius ERISA issues relating to employee stock ownership plans (ESOP's).

The purpose of the September 15 meeting is to review and consider a draft report on the use of ESOPs in conjunction with leveraged buyouts involving multiple investors.

Individuals, or representatives of organizations, wishing to address the work group should submit written requests on or before September 10, 1987 to Charles W. Lee, Jr., Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Consitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 10, 1986.

David M. Walker,

CPA, Assistant Secretary-Designate for Pension and Welfare Benefits.

Signed at Washington, DC.

[FR Doc. 87-18870 Filed 8-17-87; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 87-67]

Intent To Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: NASA hereby gives notice of intent to grant to Integrated Chemical Sensors Corporation, of Newton, Massachusetts, a limited, exclusive, royalty-bearing, revocable license to practice the invention as described in U.S. Patent No. 4,055,072 for an "Apparatus for Measuring a Sorbate Dispersed in a Fluid Stream," which issued on October 25, 1977, to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 60 days of the date of the Notice, the Director of Patent Licensing receives written

objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the exclusive license.

DATE: Comments to this notice must be received by October 19, 1987.

ADDRESS: National Aeronautics and Space Administration, Code GP Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 453–2420.

Dated: August 7, 1987.

Edward A. Frankle,

Deputy General Counsel.

[FR Doc. 87–18772 Filed 8–17–87; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Proposed Records Schedules; Availability and Request for Comment

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATE: Requests for copies must be received in writing on or before October 2, 1987. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal Agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force (N1–AFU–87–28). Information concerning Foreign Military Attaches.

2. Department of the Air Force (N1–AFU–87–30). Food service records.

3. Department of Agriculture, Office of Information and Records Management (N1–16–87–1). Update of disposition standards for records of offices served by the Assistant Secretary for Administration.

4. Department of Agriculture, Forest Service, Human Resource Programs (N1–95–86–3). General correspondence and routine administrative and housekeeping records, relating to human resources programs.

5. Department of Agriculture, Forest Service, Policy Analysis Staff (N1–95–87–4). General correspondence regarding conditions related to the need for economic or social analysis.

6. Office of the Secretary of Defense, Department of Defense Dependent Schools (DODDS) (N1–330–87–1). Files relating to routine administrative operations of the DODDS.

7. Environmental Protection Agency, Office of Pesticide Programs (NC1–412–85–24). Comprehensive schedule for pesticide program records.

8. Federal Communications Commission, Common Carrier Bureau (N1–173–86–3). Accounting and Audits Division records.

9. Federal Deposit Insurance Corporation, Division of Bank Supervision (N1–34–87–1). Comprehensive schedule for the Division.

10. Department of the Interior, Bureau of Land Management (N1–49–86–1). Records of several branches of the former General Land Office, 1900–1972.

11. Small Business Administration, Office of Administrative Services (N1–309–87–1). Change in retention period for time and attendance records covered by General Records Schedule 2, item 3a.

12. Department of State, Bureau of International Organization Affairs (N1–59–86–6). Comprehensive schedule providing for the permanent retention of policy documentation and the destruction of facilitative records and duplicate copies.

13. Department of State, Bureau of Administration, Office of Foreign Buildings (N1–59–87–11). Real Estate Management System.

14. Department of State, Bureau of Administration, Commissary and Recreation Staff (N1–59–87–12). Financial statements relating to non-government activities.

15. Tennessee Valley Authority, Division of Property and Services (N1–142–87–8). Correspondence, photographs, and drawings that do not have sufficient value for documenting the construction of prefabricated housing.

16. Department of Treasury, Internal Revenue Service (N1–58–87–8). IRS Form 2031, Waiver Certificate to Collect Social Security.

Dated: August 12, 1987.

Claudine J. Weiher,

Acting Archivist of the United States.

[FR Doc. 87–18808 Filed 8–17–87; 8:45 am]

BILLING CODE 7515-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Hydropower Assessment Steering Committee Meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Hydropower Assessment Steering Committee to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Hydro Assessment Study report
- Other
- Public comment

DATE: August 25, 1987, 10:00 a.m.

ADDRESS: The meeting will be held in the Council's central office, 850 S.W. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Peter Paquet, 503–222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 87–18805 Filed 8–17–87; 8:45 am]

BILLING CODE 0000–00–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22–17124]

Application and Opportunity for Hearing; American Airlines, Inc.

August 11, 1987.

Notice is hereby given that American Airlines, Inc. (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that (a) the trusteeships in a single transaction of the Connecticut National Bank ("CNB") under certain indentures that are not subject to qualification under the Act and two or more indentures to be qualified under the Act and (b) the trusteeships of CNB under one or more of such qualified indentures and under a certain other indenture described below not subject to qualification under the Act, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify CNB from acting as trustee under such qualified indentures or the other indentures.

Section 310(b) of the Act provides, in part, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall within ninety days after ascertaining that it has such conflicting interest either eliminate such conflicting interest or resign. Subsection (1) of such section provides, with certain exceptions, that a trustee is deemed to have a conflicting interest if it is acting as trustee under another indenture under which any other securities of the same obligor are outstanding.

The Applicant alleges that:

1. CNB currently acts as indenture trustee (the "Loan Trustee") under six separate leveraged lease indentures (each, a "Lease Indenture") entered into in 1986, each of which relates to a separate leveraged lease transaction in which an owner trustee (the "Owner Trustee") for the benefit of certain institutional investors acting as equity participants issued in a private placement loan certificates (the "Loan Certificates") to institutional investors acting as loan participants.

2. The proceeds of the Loan Certificates issued under each Lease Indenture were used by the relevant Owner Trustee to finance approximately 80% of the cost of one McDonnell Douglas aircraft (each an "Aircraft") that was then leased by such Owner Trustee to the Applicant. The Applicant is not a party to any of the Lease Indentures, but the Applicant's unconditional obligation to make rental payments under the relevant lease is the only credit source for payments of the related Loan Certificates.

3. The Loan Certificates issued with respect to each Lease Indenture are secured by a security interest in the Aircraft to which such Lease Indenture relates and the right of the Owner Trustee to receive rentals on such Aircraft from the Applicant. No Aircraft is covered by more than one Lease Indenture or by the Other Indenture (as defined below) and the Loan Certificates issued pursuant to any one Lease Indenture are separate from the Loan Certificates issued pursuant to any other Lease Indenture.

4. None of the Lease Indentures is subject to the Act and, accordingly, none contains the language regarding conflicts required by section 310(b) of the Act for qualified indentures.

5. The Applicant has filed a Registration Statement on Form S–3 (the "Registration Statement") covering the proposed public offering of Equipment Note Pass Through Certificates (the "Pass Through Certificates") representing fractional undivided interests in one or more grantor trusts (each, a "Grantor Trust"), each to be formed under a Trust Agreement between CNB, as Trustee (the "Pass Through Trustee"), and the Applicant. Each Trust Agreement will be qualified as an Indenture under the Act and is referred to herein as a "Qualified Indenture".

6. The Loan Certificates issued under each Lease Indenture are to be refinanced by means of the relevant Owner Trustee issuing multiple series (anticipated to be seven) of new Loan Certificates (such new Loan Certificates being referred to as "Equipment Notes") to CNB as Pass Through Trustee under an equal number of Grantor Trusts. The Equipment Notes purchased by the Pass Through Trustee under each Grantor Trust will be purchased with the proceeds of the public offering of Pass Through Certificates relating to such Grantor Trust issued pursuant to the related Qualified Indenture. The proceeds from such purchases will be applied to redeem in full the outstanding Loan Certificates under the Lease Indentures.

7. Each series of the Equipment Notes issued by the Owner Trustee under a Lease Indenture will have a maturity and interest rate that differs from the other series issued thereunder, but a series issued under one Lease Indenture will have an identical maturity and interest rate to the corresponding series issued under each of the other five lease Indentures. For tax reasons, it is not desirable for Pass Through Certificates to be issued under a single Qualified Indenture relating to multiple series of Equipment Notes having different maturities and interest rates. Accordingly, the six corresponding series of Equipment Notes issued under the six Leased Indentures that have an identical maturity and interest rate will be issued to a single Grantor Trust that will then issue a single series of Pass Through Certificates under a Qualified Indenture. The other series of Equipment Notes under each Lease Indenture, each series having a different maturity and interest rate, will be issued to separate Grant or Trusts issuing Pass Through Certificates under separate Qualified Indentures. Although the number of series of Equipment Notes to be issued under each Lease Indenture has not been finally established, it is currently anticipated that there will be seven series and that, accordingly, seven series of Pass Through Certificates will be issued under seven Qualified Indentures.

8. Each Qualified Indenture will provide, pursuant to Section 310(b) of

the Act, for the resignation of the Pass Through Trustee in the event that it does not eliminate a conflicting interest, and will provide that trusteeship under another indenture of the Applicant constitutes a conflicting interest, provided, however, that the Applicant may apply to the Commission for a finding that no material conflict exists.

9. CNB acts as indenture trustee under an indenture, dated as of October 15, 1986, between CNB and Wilmington Trust Company ("WTC"), which relates to a leveraged lease transaction in which WTC, as owner trustee for the benefit of certain institutional investors acting as equity participants, issued in a private placement loan certificates to institutional investors acting as loan participants. Such loan certificates have a final maturity date of January 2, 2005.

10. The proceeds of the issuance of the loan certificates issued under the Other Indenture were used by the owner trustee to purchase one Boeing aircraft that was then leased by such owner trustees to the Applicant. The Applicant is not a party to the Other Indenture but the Applicant's unconditional obligation to make rental payments under the lease relating to such Other Indenture is the only credit source for principal and interest payments on the loan certificates.

11. The loan certificates issued under the Other Indenture are secured by a security interest in the aforementioned Boeing aircraft and the right of the owner trustee to receive rentals on such aircraft from the Applicant. Such aircraft is not covered by any of the Lease Indentures or any other indentures, and the loan certificates issued under the Other Indenture are separate from the Loan Certificates issued under the Lease Indentures and from loan certificates issued under any Other Indenture.

12. The Other Indenture is not subject to the Act and, accordingly, does not contain the language regarding conflicts required by Section 310(b) of the Act for qualified indentures.

The Applicant waives notice of hearing and waives hearing and waives any and all rights to specify procedures under the Rules of Practice of the Commission with respect to the application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, File No. 22–17124, which is a public document on file in the offices of the Commission at the Public Reference Room, 450 Fifth Street, NW., Washington, DC.

Notice is further given that any interested person may, not later than August 31, 1987, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Jonathan G. Katz, Secretary, Securities and Exchange Commission, Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–18806 Filed 8–17–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC—15911; 812–6683]

Notice of Application; Gold Reserve Corp.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Gold Reserve Corporation.

Relevant 1940 Act Sections: Order requested under section 3(b)(2) of the 1940 Act or, alternatively, under section 6(c) granting a temporary exemption from all provisions of the 1940 Act.

Summary of Application: Applicant seeks an order declaring it not to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities or, alternatively, granting it an exemption from all provisions of the 1940 Act and the rules and regulations thereunder until July 31, 1988.

Filing Date: The application was filed on April 13, 1987 and amended on June 3, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the Application will be granted. Any interested person may request a hearing on this Application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on September 4, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, DC 20549. Applicants: c/o Robert L. Magnusom, Witherspoon, Kelley, Davenport & Toole, Old National Bank Building, Spokane, Washington 99201.

FOR FURTHER INFORMATION CONTACT: Curtis R. Hilliard, Special Counsel (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the Application; the complete Application is available for a fee from either the Commission's Public Reference Branch in person, or the Commission's commercial copier (800) 231–3282 (in Maryland (301) 258–4300)

Applicant's Representations

1. The Applicant was organized in 1956 for the purpose of exploring and developing mining properties. For the last thirty years the Applicant has been engaged in the business of exploring, developing and mining mineral properties. In addition to its own exploration and development activities, the Applicant owns a forty-three percent partnership interest in the U.S. Mining Limited Partnership, a limited partnership engaged in the exploration for natural resources properties.

2. Until June 1986, the Applicant's principal assets consisted of patented and unpatented claims to property known as the Zortman Mine, a gold and silver mine in Montana, and certain property located in Nevada known as the Florida Canyon property. The Applicant explored, developed and, through a joint venture with Pegasus Gold Inc. ("Pegasus"), placed the Zortman Mine into commercial production. From 1980 to 1985, the Zortman Mine produced over 190,000 ounces of gold and 339,000 ounces of silver, and employed over 150 workers during its most active period. The Applicant also owned a fifteen percent working interest in patented and unpatented claims to the Florida Canyon property in Nevada which it acquired in 1983. The Applicant, through a joint venture with Pegasus, jointly managed and operated the Florida Canyon property.[1] In 1984 and 1985, the parties

[1] The Applicant and Pegasus shared common management from June 1976 until February 1987.

Continued

developed ore reserves in the Florida Canyon property in order to commence operating it as a mine. In late 1985, the Applicant and Pegasus announced that the property would enter into commercial production. Placing the Florida Canyon property into production would have required a substantial additional capital contribution from the Applicant. Moreover, since the Zortman Mine had been actively mined for five years, the Applicant recognized that its proven and probable reserves might soon be depleted.

3. Due to the high cost involved in putting the Florida Canyon property into commercial production and the depleting ore reserves at the Zortman Mine, on June 27, 1986 the Applicant transferred its interest in these properties to Pegasus in exchange for 1,240,000 shares of Pegasus common stock (the "Exchange Transaction"). The shares received pursuant to this exchange are "restricted securities" under the Securities Act; the two-year holding period required by Rule 144 will not lapse until June 27, 1988. As a result of the Exchange Transaction, the value of the shares owned by the Applicant exceeds forty percent of the value of its total assets and thus Applicant falls within the definition of an investment company in section 3(a)(3) of the 1940 Act. Since completion of the Exchange Transaction, the Applicant has been relying on the transient investment company exemption under Rule 3a–2 of the 1940 Act. the Company also has been relying on the exception to the definition of an investment company contained in section 3(b)(1) of the 1940 Act.

4. The Applicant's ownership of the shares marks a transitional phase for the Applicant. Notwithstanding Applicant's ownership of the Pegasus stock, it has been and continues to be, actively involved in the mining business and it has been actively searching both independently and with other mining companies for additional properties to develop. Applicant owns a forty-three percent partnership interest in U.S. Mining L.P., a Washington limited partnership that is engaged in the exploration for mining properties. Since November 1983 the Applicant has independently investigated over thirty properties and regularly employs a geological consulting firm to inspect properties under consideration. Since it was formed in 1985, the Partnership has explored over 300 properties. The Applicant plans to finance any acquisitions through the sale or pledge of the Pegasus shares consistent with federal and state securities laws.

5. The Applicant believes that it meets the requirements of section 3(b)(1) both in letter and spirit and is not an investment company because it is engaged directly in a business other than that of investing, reinvesting, owning, holding or trading in securities. Accordingly, if the Commission finds that the Applicant is "primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding or trading in securities," the Applicant is entitled to an order declaring it not to be an investment company under the provisions of section 3(b)(2). In the alternative, the Applicant requests that the Commission grant a temporary exemption under section 6(c) of the 1940 Act from all provisions of the 1940 Act and the rules and regulations thereunder until July 31, 1988.

6. Applicant argues that it has always been primarily engaged in the business of mining, through its exploration, development and mining of the Zortman Mine and its exploration and development of the Florida Canyon property. In addition, the Applicant has been and continues to be actively engaged in investigating new mining properties, both in its own capacity and as a partner of U.S. Mining Limited Partnership, a Washington limited partnership that is engaged in the exploration for mining properties.

7. The Applicant has never held itself out as an investment company. Every Form 10-K report, Form 10-Q report, annual report and proxy statement has emphasized the Applicant's mining business. Moreover, through December 31, 1986, the Pegasus shares were carried by the Applicant as an equity investment, not as marketable securities. The Applicant's public communications have uniformly dealt with the Applicant's participation in the mining business. The activities of the Applicant's officers, directors and employees are exclusively devoted to investigating, exploring and developing mining properties. The officers and directors have no professional training or experience in managing investment portfolios; they do not devote any professional time to investment portfolio activities for the simple fact that the Applicant neither trades in any securities nor owns any securities other than the Pegasus shares.

8. The Applicant contends that a review of the nature of its assets supports the conclusion that the Applicant is primarily engaged in a business other than that of investing, holding or trading securities. The transaction in which Applicant acquired the Pegasus stock was a commercial transaction opposed to an investment transaction. The Applicant's interest in Pegasus merely reflects a changed form of participation in the mining business. The Applicant ultimately plans to sell or pledge the Pegasus shares and reinvest the proceeds of such sales in other mining ventures. The Applicant has already sold approximately 36,000 shares of Pegasus stock it acquired through a series of open market transactions before the Exchange Transaction. The Applicant has used the proceeds of these sales to finance exploration and operation costs.

9. The Applicant also contends that its revenues and expenditures contradict any claim that it is an investment company. Its revenues from securities constitute a fraction of its total revenues. Even including 1986, during which the Applicant sold the Zortman and Florida Canyon properties, such securities revenues (which included dividends and gain on sale of Pegasus) equaled only three percent of the total revenues of the Applicant over the last four years. During that four-year period, approximately 91% of Gold Reserve's total revenues came from its interest in mining operations at the Zortman Mine. These figures do not include the Applicant's equity in earnings from the Pegasus shares. Since its sale of the Zortman and Florida Canyon properties in 1986, the Applicant's cash flow has consisted solely of the proceeds from the sale of Pegasus shares acquired prior to the Exchange Transaction and interest income, which revenue has been expended on the Applicant's exploration activities and daily operations. The applicant anticipates that revenues will increase as soon as it is able to find suitable mining property to explore, develop and put into commercial production.

10. Recently, the Applicant received an offer to be acquired by Pegasus. On May 14, 1987, the parties signed a Proposed Acquisition Agreement (the "Agreement") and the parties recently signed a definitive agreement whereby the Applicant will merge with a wholly-owned susidiary of Pegasus and the Applicant's shareholders will receive 0.3050 of a share of Pegasus common stock for each share of common stock of the Applicant. The merger is subject to the approval of the Applicant's shareholders and a favorable ruling from the Internal Revenue Service. Upon the merger of the Applicant into a subsidiary of Pegasus, Applicant will be exempt from the definition of an

when Hobart Teneff, the Applicant's President, resigned as President and Chairman of the Board of Pegasus.

investment company under section 3(b)(3) of the 1940 Act and Rule 3a-3 thereunder.

11. The transaction contemplated by the Agreement presents additional grounds for the Commission to grant an exemption from the requirements of the 1940 Act under Section 6(c). Upon such merger, the Applicant will be exempt from the definition of an investment company under Section 3(b)(3) and Rule 3a-3 of the 1940 Act. Accordingly, the Applicant requests that the Commission consider its proposed acquisition by Pegasus and the impact of Section 3(b)(3) of the 1940 Act and Rule 3a-3 in reviewing its exemptive application.

12. Accordingly, for the foregoing reasons, the Applicant has requested that the Commission grant an order under Section 3(b)(2) of the 1940 Act, finding and declaring that the Applicant is primarily and directly engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities. In the alternative, the Applicant has requested an order under section 6(c) of the 1940 Act granting a temporary exemption from all provisions of the 1940 Act and the rules and regulations promulgated thereunder until July 31, 1988.

Applicant's Conditions

1. Applicant will not engage in trading in securities for short-term speculative purposes; and

2. Applicant will continue to be primarily engaged in non-investment company businesses.

Temporary Order

The request for temporary exemptive relief pending a final determination on the application by the Commission has been considered, and it is found that, in view of the circumstances set forth above and in the application, that it is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act to grant an immediate temporary order as requested by Applicant. Accordingly,

It is ordered, pursuant to section 6(c) of the Act, that the application for a temporary order exempting Applicant from all provisions of the 1940 Act be and hereby is, granted, during the period from April 13, 1987 until the Commission shall make a final determination upon the request for exemption set forth in the application, subject to the undertakings to which Applicant has consented and which are set forth above and in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Date: August 11, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-18866 Filed 8-17-87; 8:45am]

BILLING CODE 8010-01-N

[Rel. No. IC-15917; 812-6487]

Application for Exemption; Provident Mutual Life Insurance Co. of Philadelphia et al.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Provident Mutual Life Insurance Company of Philadelphia ("Provident Mutual"), Provident Mutual Variable Growth Separate Account, Provident Mutual Variable Money Market Separate Account, Provident Mutual Variable Bond Separate Account, Provident Mutual Variable Managed Separate Account, Provident Mutual Variable Zero Coupon Bond Separate Account, (collectively, "Modified Separate Accounts"), Provident Mutual Variable Growth Separate Account A, Provident Mutual Variable Money Market Separate Account A, Provident Mutual Variable Bond Separate Account A, Provident Mutual Variable Managed Separate Account A, (collectively, "Scheduled Separate Accouts"), and PML Securities Company ("PML").

Relevant 1940 Act Sections: Order requested under sections 11(a) and 11(c), approving the terms of an exchange offer, under section 17(d) and Rule 17d-1 approving participation of Applicants in such offers of exchange, and under section 6(c) for exemption from the provisions of section 22(d).

Summary of Application: Applicants seek an order of the Commission approving the terms of certain offers by Applicants, to exchange variable life insurance contracts issued through the Scheduled Separate Accounts for somewhat different variable life insurance contracts issued through the Modified Separate Accounts and permitting the participation of the Applicants in such offers of exchange, and an order of exemption from the provisions of section 22(d) to permit the exchanges.

Filing Date: The application was filed on September 29, 1986 and amended on July 30, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on September 8, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send a copy to the Secretary of the SEC, along with proof of service by affidavit, or in the case of an attorney-at-law, by certificate. Request notification of the date of hearing by writing to the Secretary of the SEC.

ADDRESSES. Secretary SEC, 450 5th Street, NW., Washington, DC 20549; Provident Mutual and PML, 1600 Market Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: David S. Goldstein, Staff Attorney (202) 272-2622 or Lewis B. Reich, Special Counsel (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the Commission's Public Reference Branch in person or the Commission's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations

1. Provident Mutual, a mutual life insurance company, currently issues Modified Premium Variable Life Insurance Policies ("Modified Policies") through the Modified Separate Accounts. The Modified Separate Accounts are collectively registered as a single unit investment trust under the 1940 Act. Each Account invests in a single portfolio of the Market Street Fund ("Series Fund") or in one of three series of The Stripped ("Zero") U.S. Treasury Securities Fund, Provident Mutual Series A ("Zero Coupon Trust").

2. Provident Mutual offers Scheduled Premium Variable Life Insurance Policies ("Scheduled Policies") through the Scheduled Separate Accounts. It no longer issues new Scheduled Policies. The Scheduled Separate Accounts are registered as a unit investment trust under the 1940 Act and invest in the same portfolios of the Series Fund as do the Modified Separate Accounts.

3. The Modified Policy provides for the payment of both scheduled and unscheduled premium payments. Additional premiums must be paid for supplemental benefits and for Policies issued on a substandard basis. If all scheduled premiums are paid when due, the Policy cannot lapse, even if adverse

investment experience results in no cash value. Ordinarily, the Policy will lapse if scheduled premiums are not paid on or before the end of the grace period; however, in certain circumstances, the owner can skip scheduled premium payments for the following year without causing the Policy to lapse. Unscheduled premiums may be paid at any time, subject to certain limitations described in the Policy.

4. Under the Modified Policy a $1.00 processing charge is deducted from scheduled and unscheduled premiums. In addition, two other charges are deducted from each scheduled and unscheduled premium: (1) a state premium tax charge equal to 2.5% of each scheduled premium or unscheduled premium; and (2) a sales charge equal to 5% of each scheduled premium or unscheduled premium.

5. Under the Modified Policy, a monthly deduction is made from the cash value of each Policy on the policy date and on each monthly anniversary of the policy date for the cost of insurance, the monthly administrative charge, the first year monthly policy charge and the death benefit guarantee. Cost of insurance rates will be based on the insured's sex, attained age and smoking status. These rates will not be greater than the rates based on the 1980 Commissioners' Standard Ordinary Mortality Table with Smoker/Nonsmoker modifications. The monthly administrative charge is $3.25 per policy plus $.015 per $1,000 of face amount. The first year monthly policy charge is $5.00 per Policy per month. The death benefit guarantee charge is $0.01 per $1,000 of face amount per Policy per month.

6. The Modified Policy imposes, during the first nine policy years, a surrender charge consisting of a contingent deferred administrative charge and a contingent deferred sales charge if the Policy is surrendered or remains in default past its grace period. The contingent deferred administative charge will be $5.00 for each $1,000 of face amount on surrenders or lapses occurring on or before the Policy's fifth anniversary. For Policies that surrender or lapse in policy years 6, 7, 8, and 9 the deferred administrative charge will be $4.00, $3.00, $2.00, and $1.00 per $1,000 of face amount, respectively. The maximum deferred sales charge equals 25% of the first year's scheduled premium payments and 5% of the scheduled premium payments for the next four policy years (or 9% of the total scheduled premium payments for the first five policy years).

7. The Modified Policy also imposes a mortality and expense risk charge at an effective annual rate of 0.60% against the assets of all five Modified Accounts. In addition, an asset charge of up to an effective annual rate of .50% is made against the Zero Coupon Account to cover transaction costs incurred in purchasing units of the Trust.

8. Under the Modified Policy, the death benefit at any time is equal to the greatest of: (1) The face amount; (2) the face amount plus the excess of the current cash value over an amount equal to the net single premium which, if paid in one sum, would keep the Policy in force until maturity (based on certain assumptions including current cost of insurance rates, current expense charges, a death benefit equal to the face amount and an interest rate of 7.5%); and (3) the Policy's cash value times the death benefit factor which depends on the insured' sex, attained age and smoker/nonsmoker classification. This death benefit factor will be calculated using the 1980 Commissioners' Standard Ordinary Mortality Table with Smoker/Nonsmoker modifications and 4% interest. The minimum guaranteed death benefit is equal to the face amount of the Policy.

9. The Modified Policy may be surrendered at any time for its net cash surrender value, however, a partial withdrawal of cash value may be made only to the extent that the cash surrender value (the cash value decreased by any surrender charge) exceeds by $300 an amount equal to the net single premium which, if paid in one sum, would keep the Policy in force until maturity.

10. The Scheduled Policy provides for the payment of scheduled premium payments which, if paid, guarantee continuation of coverage. Additional premiums must be paid for supplemental benefits and for Policies issued on a substandard basis. Failure to pay a premium on or before the end of the grace period will cause the Policy to lapse.

11. The Scheduled Policy requires an annual administrative charge of $35. The Scheduled Policies also provide for an additional first year administrative charge of not more than $5.00 per $1,000 of face amount; a state premium tax charge of 2% of the basic (remaining) annual premium; a death benefit guarantee charge of 1.2% of the basic annual premium; and a sales charge guaranteed not to exceed 30% of the first year basic annual premium, 14% of the second year basic annual premium and 9% of the basic annual premium for the third year and each year thereafter.

12. Under the Scheduled Policy, a mortality and expense risk charge at an effective annual rate of 0.35% is made against the assets of all four Scheduled Accounts. A charge for the cost of insurance is deducted from the cash value of each Policy daily and deducted from the amount provided for investment at the end of each policy year. The amount of the charge is computed based upon the amount of insurance provided during the year, the 1958 Commissioners' Standard Ordinary Mortality Table, and the insured's attained age.

13. Under the Scheduled Policy, the death benefit is equal to the greater of: (i) The face amount; and (ii) the face amount plus, if positive, the variable adjustment amount. The minimum guaranteed death benefit is equal to the face amount.

14. The Scheduled Policy may be surrendered at any time for its cash value less any indebtedness. Partial surrenders are permitted with certain restrictions while the insured is still living. A partial surrender reduces the minimum death benefit.

15. Applicants propose to offer the owners of Scheduled Policies an exchange of their Scheduled Policies for Modified Policies. Under the exchange, a Modified Policy will be issued by Provident Mutual at the insured's then-current attained age and with an issue date equal to the date of exchange. Upon exchange, Provident Mutual will refund all charges previously deducted from the premiums paid under the Scheduled Policy and any unearned premiums in connection with optional term insurance. The refunded charges, the unearned premiums (if any), plus the cash value of the Scheduled Policy immediately prior to the exchange (the "proceeds") must be applied by the exchanging owner to the purchase of a Modified Policy. Sales charges under the Modified Policy will be waived on the amount of proceeds applied to the Modified Policy which is in excess of the premium payments made under the Scheduled Policy.

16. This exchange offer does not constitute an effort on the part of Applicants to impose additional sales charges. No sales charge will be imposed on any transferred amounts in excess of the premium payments made under the Scheduled Policy. Morover, in contrast to the front-end sales charge imposed under the Scheduled Policy, a portion of the sales charge under the Modified Policy is deferred and contingent upon the withdrawal of contract value within a specified perioid of time. Thus, the total sales charge under the Modified Policy may be less than the sales charge under the Scheduled Policy.

17. The Modified Policy offers greater investment flexibility than is available under the Scheduled Policy because the Modified Policy also enables an owner to allocate his or her investment to the Zero Coupon Trust. The Modified Policy also offers greater flexibility with respect to the payment of premiums and partial withdrawals than is available under the Scheduled Policy.

Under the Modified Policy the owner is permitted, subject to certain restrictions, to make unscheduled premium payments. Also, under certain circumstances, scheduled premium payments are not required to keep the Modified Policy in force. Under the Modified Policy an owner is permitted to make partial withdrawals.

18. The proposed exchange is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

19. The proposed exchange offer is not on a basis less advantageous to any one participant than to another, its terms are fair and reasonable, and it does not involve overreaching on the part of any of the Applicants.

20. Notwithstanding that an exchanging owner will be able to purchase the Modified Policy without the full sales charge described in the prospectus in the circumstances presented, the second sentence of section 22(d) (which provides that the subsection may not prevent a sale made pursuant to an offer of exchange permitted by section 11 of the 1940 Act) contemplated exchange offers such as this. The waiver of sales charges on amounts representing appreciation under the exchanged contract is consistent with the purpose of section 11 to prevent the imposition of additional sales charges in connection with exchanges of securities and is appropriate in the public interest and consistent with the protection of investors. Therefore, the requested exception from section 22(d) of the Act meets the statutory standards of section 6(c) of the 1940 Act.

Applicants' Conditions:

If the requested order is granted the Applicants agree to the following conditions:

1. A written offer of exchange, including a currently effective prospectus under the Securities Act of 1933 describing Provident Mutual, the Modified Accounts, the Modified Policy and the terms of the exchange offer, will be mailed to owners of Scheduled Policies.

2. The exchange offer will remain valid in any given jurisdiction for a period of six months commencing on the date which is the later of the date that the Modified Policy becomes available for purchase in that jurisdiction and the date that a Post-Effective Amendment to the Registration Statement for the Modified Policies (which provides disclosure with respect to the offer of exchange described in the application) is declared effective by the Commission.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Date: August 11, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-18867 Filed 8-17-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15913; File No. 812-6780]

Application for Exemption; Harmony Investment Trust

August 11, 1987

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Harmony Investment Trust.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 13(a)(2), 18(f)(1), 22(f) and 22(g) and approval requested under section 17(d) and Rule 17d-1 thereunder

Summary of Application: Applicant seeks an order of the SEC granting exemptions from the Act to the extent necessary to implement a deferred compensation plan for its Trustees (the "Plan").

Filing Date: June 30, 1987

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 8, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 1350 Avenue of the Americas, New York, NY 10019.

FOR FURTHER INFORMATION CONTACT: Heidi Stam, Staff Attorney, (202) 272-3017 or Lewis B. Reich, Special Counsel, (202) 272-2061, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Harmony Investment Trust (the "Applicant"), was organized as a business trust under the laws of the Commonweaalth of Massachusetts on August 29, 1986. It is registered under the Act as an open-end, diversified management investment company.

2. On May 1, 1987, Applicant acquired the investment-related assets and liabilities of Separate Account Nos. 301, 302, 303 and 304 of The Equitable Life Assurance Society of the United States ("Equitable"), a New York mutual life insurance company.

3. Applicant currently offers its shares exclusively to separate accounts of Equitable and certain subsidiaries of Equitable, including Integrity Life Insurance Company ("Integrity") and National Integrity Life Insurance Company ("National Integrity"). The Applicant's investment adviser is Equitable Capital Management Corporation ("Equitable Capital"), an indirect wholly-owned subsidiary of Equitable and Integrity.

4. Applicant currently intends to have only disinterested Trustees. None of the six members of Applicant's present Board of Trustees is an "interested person," as defined in the Act, of Applicant, Equitable, Integrity, National Integrity, Equitable Capital, or any of Equitable's other subsidiaries. Each Trustee will receive from Applicant an annual retainer fee of $12,000 and fees of $1,000 per Board meeting (four are regularly scheduled annually), $600 per committee meeting attended and $600 for each day spent performing special services for the Applicant as may be requested by the Chairman or the President. The meeting fee paid to the Trustee acting as meeting Chairman will be increased by 50%.

5. The purpose of the Plan is to permit any Trustee to elect to defer the receipt of all or a portion of the fees he or she is due for services as a Trustee of Applicant. A Trustee may wish to defer fees in order to delay the payment of income taxes, avoid a loss or reduction of social security benefits, or for other reasons. The Applicant believes that the

Plan will better enable Applicant to attract and retain high caliber Trustees, thereby benefitting Applicant, its shareholders and ultimately the holders of contracts and policies supported by shares of Applicant.

6. Each Trustee electing to defer the receipt of fees will enter into an Agreement with Applicant and an account will be established under the Plan for each Trustee with whom Applicant has entered into an Agreement ("Account"). The deferred fees will be credited to the Account. In addition, Applicant states that it will, from time to time, credit to the Account balance interest in an amount equal to the interest rate credited to fixed income accounts under Equitable's Investment Plan for Employees, Managers and Agents ("Equitable's Investment Plan"). Applicant has reserved the right to prospectively change the rate of interest credited to Account balances. Payments of deferred fees and credited interest are to commence on an initial disbursement date specified by the Trustee, which may be the earlier of the Trustee's retirement from the Board or the attainment of a designated age. The payments will be made in monthly installments for the number of years elected by the Trustee, or until the amount credited under the Account is exhausted. Account balances will continue to be credited with interest during the pay out period.

7. The amounts credited to an Account, including deferred fees and accrued interest, will represent an unsecured obligation of Applicant to the Trustee, payable solely from the Applicant's general assets. Applicant will not purchase any of its share for any Account, nor create any specified fund or segregate any of its assets for purposes of the Plan. Trustees will have the status of general creditor. Neither the Plan, nor any Agreement or Account, will create a trust or fiduciary relationship between Applicant and any Trustee, nor will those arrangements constitute a security interest of any kind in any of Applicant's assets. No provision of the Plan requires Applicant to retain a Trustee on its Board or to pay a Trustee any level of fee income. Account balances may not be assigned, commuted or encumbered by the Trustee. The amounts to be paid under the Plan will not depend upon, or in any way reflect, the investment performance of Applicant.

8. Applicant states that the interest rate for fixed income accounts under Equitable's Investment Plan is inherently no different from a prime rate, the interest rate on U.S. Treasury Bills or other assumed rates of interest for fixed retirement-type obligations. Accordingly, Applicant submits that the interest rate under Equitable's Investment Plan will merely be used as a reference Applicant believes to be fair in crediting interest to Account balances.

9. Applicant requests exemption from sections 13(a)(2), 18(f)(1), 22(f) and 22(g) of the Act, and an order pursuant to section 17(d) and Rule 17d-1 thereunder, to the extent necessary to permit implementation of the Plan described above.

10. With respect to sections 13(a)(2) and 18(f)(1), Applicant submits that the Agreements are contractual arrangements, not in the nature of securities, and do not give rise to any of the concerns of Congress that led to the enactment of sections 13(a)(2) or 18(f)(1). In that regard, Applicant states that it will not be "borrowing" from its Trustees for securities speculation; the Agreements will not disturb the perception of an investment company as a mutual enterprise with mutuality of risk; they will not provide an opportunity for manipulation of expenses and profits; and control of Applicant will not be affected. Applicant further submits that in view of the widespread use of deferred compensation arrangements today and the immaterial amounts expected to be involved relative to Applicant's size, the Plan will not confuse investors, make it difficult for them to value Applicant's shares or convey a false impression of safety.

11. As to section 22(f), Applicant represents that the Agreements will plainly set forth applicable restrictions against the assignment, commutation and encumbrance of any amounts credited to an Account under the Plan. These restrictions, Applicant states, are designed to benefit Trustees and would not adversely affect their interests or the interests of any shareholder of Applicant.

12. Applicant's position with respect to section 22(g) is that the Agreements will not be "issued" for services, but for Applicant not having to pay Trustees' fees on a current basis. Applicant notes that the deferred fees would, in any event, be due the Trustee independent of the Plan, and that the Trustees' compensation arrangements, including the right to defer fees under the Plan, will be described in Applicant's proxy statements pursuant to the Commission's disclosure requirements.

13. Applicant submits, with respect to section 17(d) and Rule 17d-1, that the Agreements do not possess "profit-sharing" characteristics as contemplated by Rule 17d-1 and that the participating Trustees will be deferring fees they are otherwise entitled to receive on a current basis. In support of its requested order, Applicant points out that the amounts deferred will remain as assets of Applicant until eventually paid to the Trustee; there will be no segregation of any monies or assets for purposes of the Plan; and Trustees will not share in any increase or decrease in the value of amounts retained by Applicant or otherwise participate in its investment experience. Applicant further states that except for accrued interest to be paid on Account balances, the Trustee will receive the same fixed amount he or she would have received if fees were paid on a current, rather than on a deferred basis. Applicant asserts that the deferral of Trustees' fees will have a negligible effect on its assets, liabilities and net income per share, and that, under the Plan, the Trustees essentially will be in the same position as if their fees were paid on a current basis. In Applicant's view, its "participation" in the Plan would not be different from or less advantageous than that of the Trustees in all the circumstances.

14. Applicant believes that the benefits to its shareholders will outweigh any benefit that may be realized by a Trustee under the Plan because Applicant will be in a better position to attract and retain qualified Trustees if it is able to offer them the opportunity to defer receipt of their fees.

15. Applicant submits that the requested order is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-18868 Filed 8-17-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-87-19]

Petition for Exemption; Summary of Petitions Received, Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: September 2, 1987.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 7, 1987.

Denise D. Hall,

Acting Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
25224	American Cyanamid	14 CFR 135.169(a)	To allow petitioner to continue to operate certain aircraft without complying with the seat cushion flammability standards of Section 25.853 until the next replacement of the cabin interiors or until the present interiors are 5 years old, whichever occurs first.
25293	Martin Aviation, Inc	14 CFR 135.169	To allow petitioner to continue to operate certain aircraft without complying with the seat cushion flammability requirement of Section 25.285 for a period of time that would be determined.
25258	Jet East International Airlines, et al	14 CFR 25.853(c) and 121.312(b)	To allow clients of petitioner to operate all-cargo aircraft without complying with the seat cushion flammability requirements of those sections which become effective November 26, 1987.
20048	Chalk's International Airlines	14 CFR 135.175(a)	To allow petitioner to conduct day visual flight rules operations, in large transport category aircraft, to specific points in Florida, Nassau, and the Bahamas without having approved radar equipment installed in the airplanes. *Granted, July 24, 1987.*
22469	Parks College of St. Louis University	14 CFR Part 141, Appendices A, C, D, and F	To allow petitioner to graduate students after they have been trained to a performance standard instead of requiring a minimum number of flight hours. *Granted, July 24, 1987.*
22872	Air Transport Association of America	14 CFR 61.157(a) and 121.424 (a) and (b), Item I(b) of Appendix A of Part 61, and Item I(a) of Appendix E of Part 121.	To allow: (1) a pilot employee of a certificate holder, who is a candidate for a type rating in a large airplane requiring only two flight crewmembers for its operation, to use approved advanced pictorial means for the preflight visual inspection practical test requirement without conducting an actual visual inspection of the passenger cabin compartment and the exterior of the airplane and to use an approved training device for the flight deck portion of the preflight visual inspection; and (2) a pilot employee of a certificate holder who is enrolled in that certificate holder's course of instruction in a large airplane requiring only two crewmembers, to use an approved training device for the flight deck portion of the preflight visual inspection. *Granted, July 24, 1987.*

[FR Doc. 87-18770 Filed 8-17-87; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

Motor Vehicle Safety Research Advisory Committee; Request for Nominations

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

ACTION: Request for nominations.

SUMMARY: The National Highway Traffic Safety Administration is seeking nominations for initial appointment to the Motor Vehicle Safety Research Advisory Committee (MVSRAC). This Committee was established to provide information and advice to the agency on vehicle safety research, and to serve as a forum for communication of research issues. The Committee Charter was published at 52 FR 18318 (May 14, 1987).

The Committee will be composed of fifteen (15) members, two (2) from the Department of Transportation and thirteen (13) from outside the Federal Government, who are appointed by the Secretary of Transportation after consultation with private and public organizations that have an established expertise in vehicle safety research. By this notice, NHTSA is requesting those organizations and any other interested groups or persons to recommend individuals for appointment to this Committee. Each person nominated should have the appropriate technical expertise to permit effective representation of the organization or concern. Nominations will be reviewed by NHTSA, and appointments will then be made by the Secretary.

DATES: Requests for nomination forms should be submitted as indicated below and received by the agency not later than August 28, 1987. All completed nomination forms should be received by NHTSA by September 15, 1987.

ADDRESS: Any interested organization or person should write to Todd Wyatt, Executive Secretariat, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 5221, Washington, DC 20590, or for further information call (202) 366-2870.

Sharon Goldstein,

Director, Executive Secretariat.

[FR Doc. 87-18871 Filed 8-17-87; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 12, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: Schedule S (Form 706)
Type of Review: New Collection
Title: Increased Estate Tax on Excess Retirement Accumulations
Description: Schedule S (Form 706) is used by estates to compute and pay the increased estate tax imposed by Internal Revenue Code section 4981A(d). IRS uses the information to determine whether the tax was correctly computed and paid.
Respondents: Individuals or households
Estimated Burden: 729 hours

OMB Number: 1545–0051
Form Number: 990–C
Type of Review: Revision
Title: Farmers' Cooperative Association Income Tax Return
Description: Form 990–C is used by farmers' cooperatives to report the tax imposed by section 1381. IRS uses the information to determine whether the tax is being properly reported.
Respondents: Farms, Businesses or other for-profit
Estimated Burden: 74,320 hours

OMB Number: 1545–0070
Form Number: 2350
Type of Review: Revision
Title: Application for Extension of Time to File U.S. Income Tax Return
Description: Form 2350 is used to request an extension of time to file in order to meet the bona fide residence or physical presence tests required to gain the benefits permitted under section 911. The information furnished is used to determine if the extension should be granted.
Respondents: Individuals or households
Estimated Burden: 12,924 hours

Clearance Officer: Garrick Shear (202) 566–6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,
Department Reports Management Officer.

[FR Doc. 87–18798 Filed 8–17–87; 8:45 am]
BILLING CODE 4810-25-M

Internal Revenue Service

Commissioner's Advisory Group; Open Meeting

There will be a meeting of the Commissioner's Advisory Group on September 9 and 10, 1987. The meeting will be held in Room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Avenue, NW., Washington, DC. The meeting will begin at 9:00 A.M. on Wednesday, September 9 and 9:00 A.M. on Thursday, September 10. The agenda will include the following topics:

Wednesday, September 9, 1987

Introduction to Compliance
Unreported Income (Tax Gap)
Penalties

Thursday, September 10, 1987

Role of the Practitioner
General Discussion

The meeting, which will be open to the public, will be in a room that accommodates approximately 50 people, including members of the Commissioner's Advisory Group and IRS officials. Due to the limited conference space, notification of intent to attend the meeting must be made with Robert F. Hilgen, Executive Secretary, no later than September 1, 1987. Mr. Hilgen may be reached on (202) 566–4143 (not toll-free).

If you would like to have the committee consider a written statement, please call or write Robert F. Hilgen, Executive Secretary, 1111 Constitution Ave., NW., Room 3014, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Robert F. Hilgen, Executive Secretary, (202) 566–4143 (Not toll-free).

Lawrence B. Gibbs,
Commissioner.

[FR Doc. 87–18850 Filed 8–17–87; 8:45 am]
BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department of staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Elaina Norden, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: August 12, 1987.
By direction of the Administrator

David A. Cox
Associate Deputy Administrator for Management

Extension

1. Office of Budget and Finance (Controller)
2. Work Study Time Record (Veteran-Student Services)
3. VA Form 4–8690
4. This information is used by education institutions and the VA for posting the number of actual hours worked by a work study student under the VA Work Study Program. The information on this form is required to process payment for services rendered, similar to a time card.
5. On occasion
6. Small businesses or organizations
7. 41,520 responses
8. 10,380 hours
9. Not applicable

[FR Doc. 87–18771 Filed 8–17–87; 8:45am]
BILLING CODE 8320-01-M

Agency Information Collection Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an reinstatement and lists the following information: (1) The department or staff office issuing the information collection requirement, (2) the title of the information collection, (3) the agency form numbers if applicable, (4) a description of the need and use, (5) frequency of reporting, (6) who will be required or asked to report, (7) an estimate of the number of response, (8) an estimate of the total number of hours needed to complete the report, and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the regulations and supporting documents may be obtained from Patti Viers, Agency Clearance Office (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Elaina Norden, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: August 13, 1987.

By direction of the Administrator.

David A. Cox,

Associate Deputy Administrator for Management.

Reinstatement

1. Office of Equal Opportunity.
2. Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, 38 CFR 18.406(c), Self-Evaluation.
3. VA Form N/A.
4. This information is needed to assist recipients of Federal financial assistance and the VA in ensuring nondiscrimination on the basis of handicap in Federally assisted programs and activities. It will be used by recipients and the VA to evaluate compliance with 29 U.S.C. 794 and implementing regulations.
5. One time basis.
6. State or local governments; Businesses or other for-profit; Non-profit institutions; and Small businesses or organizations.
7. 163 responses.
8. 28 hours.
9. Not applicable.

Reinstatement

1. Office of Equal Opportunity.
2. Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, 38 CFR 18.422(e), Transition Plan.
3. VA Form N/A.
4. This information is needed to assist recipients of Federal financial assistance in achieving program accessibility for handicapped individuals, in cases where alteration or modification of existing facilities is necessary to ensure program accessibility. The information will be used by recipients, the VA and the public in assessing compliance with 29 U.S.C. 794.
5. One time basis.
6. State or local governments; Businesses or other for-profit; Non-profit institutions; and Small businesses or organizations.
7. 163 responses.
8. 13 hours.
9. Not applicable.

Extension

1. Office of Budget and Finance (Controller).
2. Application for Refund of Educational Contributions.
3. VA Form 4–5281.
4. This information is needed prior to processing the claimant's request for disenrollment in the Veterans Educational Assistance Program and constitutes the authorization for refund payment.
5. One-time.
6. Individuals or households; and Federal agencies or employees.
7. 78,000 responses.
8. 13,000 hours.
9. Not applicable.

[FR Doc. 87–18841 Filed 8–17–87; 8:45 am]

BILLING CODE 8320-01-M

Meeting of the Geriatrics and Gerontology Advisory Committee

The Veterans Administration gives notice under Pub. L. 92–463 that a meeting of the Geriatrics and Gerontology Advisory Committee will be held in the Administrator's Dining Room on the 10th floor of the Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, DC, on September 4, 1987. The purpose of the Geriatrics and Gerontology Advisory Committee is to advise the Administrator and the Chief Medical Director relative to the care and treatment of the aging veterans, and to evaluate the Geriatric Research, Education and Clinical Centers established by the Department of Medicine and Surgery.

The morning session on September 4 will convene at 8:30 a.m. and conclude at noon. That session will be open to the public up to the seating capacity of the room. Topics to be discussed at the morning session will include an overview of the VA treatment and plans for patients with Dementia, the quality of care and life in long term care settings, the progress and impact of geriatric education, and a brief description of the VA Day Care Program. Because this capaicty is limited, it will be necessary for those wishing to attend to contact Mrs. Jacqueline Holmes, Program Assistant, Office of the Assistant Chief Medical Director for Geriatrics and Extended Care, Veterans Administration Center Office (phone 202/233–3781) prior to August 22, 1987.

The afternoon session will convene at 1 p.m. and conclude at 5 p.m. This session will be closed since they will be evaluating the research, education and clinical services being provided through the Geriatric Research, Education and Clinical Centers as requested by Public Law 96–330.

The closed portion of the meetings involve: discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols, and similar documents. The discussion and recommendations will deal with qualifications of personnel conducting these studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. Closure of these meetings is in accordance with subsection 10(d) of Pub. L. 92–463, as amended by Public Law 94–409, and as cited in 5 U .S.C. 552(c)(6) and (9)(B).

Dated: August 10, 1987.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

TENTATIVE AGENDA.—GERIATRICS AND GERONTOLOGY ADVISORY COMMITTEE, VA CENTRAL OFFICE, 810 VERMONT AVENUE, NW.

September 4, 1987		
8:30	Opening Remarks—Introduction of new Members.	William Hazzard, MD, Chairman, GGAC

TENTATIVE AGENDA.—GERIATRICS AND GERONTOLOGY ADVISORY COMMITTEE, VA CENTRAL OFFICE, 810 VERMONT AVENUE, NW.—Continued

	September 4, 1987	
8:45	Chief Medical Director Comments.	John A. Gronvall, MD
9:00	Welcome	ACMD for Geriatrics and Extended Care
9:15	Dementia in the VA	Karen Boies
9:45	Break—Coffee	
10:00	Quality of Care and Life in LTC.	Frank Conrad, MD
10:30	Geriatric Education	Marsha Goodwin, RN
11:00	VA Day Care Program	James Kelly
11:30	Lunch	
	Closed Session	
1:00	Oral Health in Elderly Report Update.	Robert Rhyne, DDS
	GEU Update	William Hazzard, MD
1:30	Gainesville GRECC	
2:30	Break	
2:45	Future of GGAC	
	Has Mission Been Accomplished?.	
	Is Termination Eminent?.	

[FR Doc. 87-18840 Filed 8-17-87; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 159
Tuesday, August 18, 1987

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).

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of subsections (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Wednesday, August 12, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Mr. Robert J. Herrmann, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Memorandum re: Petition requesting the Corporation to issue a regulation establishing criteria for determining when a bank being considered for open bank assistance under section 13(c) of the Federal Deposit Insurance Act has met the "essentially test" of that statute.

By the same majority vote, the Board further determined that no earlier notice of this change in the subject matter of the meeting was practicable.

The Board further determined, by the same majority vote, that Corporation business required the withdrawal from the agenda for consideration in open session and the addition to the agenda for consideration at the Board's closed meeting held at 2:30 p.m. the same day, of the application of Gateway American Bank of Florida, a proposed new bank to be located at 1451 N.W. 62nd Street, Fort Lauderdale, Florida, for Federal deposit insurance.

In voting to move this matter from open session to closed session, the Board further determined, by the same majority vote, that the public interest did not require consideration of the matter in a meeting open to public observation; that the matter could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)); and that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: August 13, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-18875 Filed 8-14-87; 9:35 am]

BILLING CODE 6714-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

August 12, 1987.

TIME AND DATE: 10:00 a.m., Wednesday, August 19, 1987.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Emery Mining Corporation,* Docket Nos. WEST 86-35-R, WEST 86-36-R. (Issues include whether the violations occurred as a result of the operator's unwarrantable failure.)
2. *Youghiogheny & Ohio Coal Company,* Docket No. LAKE 86-56. (Issues are same as above.)

It was determined by a unanimous vote of Commissioners that these items be considered in closed session.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 87-18878 Filed 8-14-87; 10:58 am]

BILLING CODE 6735-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

August 12, 1987.

TIME AND DATE: 10:00 a.m., Thursday, August 20, 1987.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. White Country Coal Corporation, Docket No. LAKE 86-58-R, etc. (Issues include consideration of requirements for taking enforcement actions under Section 104(d) of the Mine Act, 30 U.S.C. 814(d).)
2. Greenwich Collieries, Docket No. PENN 85-188-R, etc. (Issues are same as above.)

It was determined by a unanimous vote of Commissioners that these items be discussed in closed session.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 87-18879 Filed 8-14-87; 10:58 am]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, August 24, 1987.

PLACE: Marriners S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: August 14, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-18965 Filed 8-14-87; 3:56 pm

BILLING CODE 6210-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 17, 24, 31, and September 7, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 17

No commission meetings

Week of August 24—Tentative

No commission meetings

Week of August 31—Tentative

Wednesday, September 2

10:30 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Thursday, September 3

2:00 p.m.
Briefing on Status of Decommissioning Activities (Public Meeting)

Week of September 7—Tentative

Wednesday, September 9

2:00 p.m.
Briefing on Performance of Sandia Containment Tests (Public Meeting)

Thursday, September 10

2:00 p.m.
Discussion of Integration of AEOD Reports into the Regulatory Process (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634–1410.

Robert B. McOsker,

Office of the Secretary.

August 13, 1987.

[FR Doc. 87–18952 Filed 8–14–87; 3:38 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [52 FR 28509 July 30, 1987].

STATUS: Closed/open meetings.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Friday, July 24, 1987.

CHANGE IN THE MEETING: Additional meeting/deletion.

The following item was considered at a closed meeting on Thursday, August 6, 1987, at 9:00 a.m.

Status report of judicial proceeding.

The following item was not considered at an open meeting on Thursday, August 6, 1987, at 10:00 a.m.

Consideration of whether to propose changes in Forms 10–K and 10–Q that would require registrants, after reasonable inquiry, to provide information not filed in Form 3 and 4 reports required during the reporting period and identify any of their directors, officers, or ten percent security holders that have failed to file all of their Form 3 and 4 reports required during the reporting period in a timely manner. Copies of the Form 3 and 4 would be required to be sent to the registrant to aid its monitoring of such filings. In addition, the Commission will consider proposing to condition the safe harbor of Rule 144 upon the seller having filed all required Forms 3 and 4 in a timely manner during the 12 months preceding filing of Form 144 and any sales pursuant to the Rule. Form 144 would be amended to include a positive representation concerning the seller's compliance with Section 16(a) of the Securities Exchange Act of 1934. For further information, please contact Brian Lane at (202) 272–2589.

Commissioner Grundfest, as duty officer, determined that Commission business required the above changes.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Douglas Michael at (202) 272–2467.

Jonathan G. Katz,

Secretary.

August 13, 1987.

[FR Doc. 87–18966 Filed 8–14–87; 3:59 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of August 17, 1987:

A closed meeting will be held on Wednesday, August 19, 1987, at 2:30 p.m. An open meeting will be held on Thursday, August 20, 1987, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Peter, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Wednesday, August 19, 1987, at 2:30 p.m., will be:

Institution of an administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.
Litigation matters.
Formal order of investigation.
Institution of injunctive actions.
Opinion.

The subject matter of the open meeting scheduled for Thursday, August 20, 1987, at 10:00 a.m., will be:

Consideration of whether the Commission should agree in principal to the revision of Investment Advisers Act Release No. 770 (August 31, 1981) that would update and clarify the views expressed and to state that the revised release was developed jointly by the staff of the Division of Investment Management and the North American Securities Administrators Association, Inc. in order to provide uniform interpretations of federal and state investment adviser laws as they apply to financial planners and other persons. For further information, please contact A. Thomas Smith at (202) 272–2810.

As times changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bernard Black at (202) 272–2468.

August 12, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–18865 Filed 8–13–87; 4:29 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 52, No. 159
Tuesday, August 18, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-07-4212-11; N-43395]

Realty Action; Lease/Purchase for Recreation and Public Purposes; Clark County, NV

Correction

In notice document 87-16621 appearing on page 27591 in the issue of Wednesday, July 22, 1987, make the following correction:

In the second column, under **Mount Diablo Meridian, Nevada,** in the fifth line, "E½SE¼" should read "E½SW¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 601

Statement of Procedural Rules

Correction

In proposed rule document 87-16836 beginning on page 28000 in the issue of Monday, July 27, 1987, make the following corrections:

1. On page 28001, in the first column, in the ninth line, "(c)(4)(viii)" should read "(c)(3)(viii)".

§ 601.702 [Corrected]

2. On the same page, in the second column, in the second line "§ 601.702" should read "§ 601.701".

3. On page 28002, in the second column, in § 601.702(c)(4), in the second line, "(1)" should read "(i)".

4. On page 28003, in the second column, in § 601.702(c)(7)(1)(ii), in the 25th line, after "request" insert ". Any fees involved in complying with the request".

5. On page 28004, in the first column, in § 601.702(c)(11), in the 11th line, "is" should read "in".

6. On the same page, in the second column, in § 601.702(d)(2), in the third line, "no" should read "not".

7. On page 28005, in the second column, in § 601.702(f)(2)(iv) in the second line, "solely" was misspelled.

8. On page 28006, in § 601.702(f)(3)(i)(C), in the first column, in the third line "public" was misspelled.

9. On the same page, in § 601.702(f)(3)(i)(E), in the first column, in the first line "requester" was misspelled.

10. On the same page, in § 601.702(f)(5)(i)(D), in the third column, in the fourth line, insert "cost" after "actual".

In § 601.702(g) make the following corrections:

11. On page 28008, in the first column, under "Augusta District", in the ninth line, "64" should read "68".

12. On the same page, in the third column, under "Baltimore District", in the fifth line, "Office" should read "Officer".

13. On the same page, in the same column, under "Newark District", in the fifth line, "Office" should read "Officer".

14. On page 28009, in the first column, under "Philadelphia Service Center", in the fourth line, "Request" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 77 (Revision 21)]

Delegation of Authority

Correction

In the notice document beginning on page 26624 in the issue of Wednesday, July 15, 1987, make the following corrections:

1. On the same page, in the third column, the seventh line should read--

Effective date: June 29, 1987.

2. On page 26625, the file line at the end of the document was omitted and should have appeared as follows:

[FR Doc. 87-16040 Filed 7-14-87; 8:45 am]

BILLING CODE 1505-01-D

Federal Register

Tuesday
August 18, 1987

Part II

Department of Energy

48 CFR Part 970

Acquisition Regulations on Management and Operating Contractor Purchasing; Proposed Rule

DEPARTMENT OF ENERGY

48 CFR Part 970

Acquisition Regulations on Management and Operating Contractor Purchasing

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) today proposes a rule which will provide a standard for the purchasing activities of DOE's management and operating (M&O) contractors. DOE's M&O contractors are employed in the operation of Government-owned facilities, the design and production of nuclear weapons, energy research and development, and the performance of other services. In carrying out these various missions, these M&O contractors perform large numbers of purchasing transactions for all types of supplies, property, and equipment, and services. The purchasing activities of these M&O contractors are not generally subject to the Federal Acquisition Regulation (FAR). Currently, those purchasing activities are regulated principally in the Department of Energy Acquisition Regulation (DEAR) at Subpart 970.44. Many applicable standards are, however, discussed throughout DEAR Part 970. The purposes of this proposed rule are to centralize the DEAR coverage in one subpart; to make that coverage comprehensive; and to update and appropriately alter the existing provisions applicable to purchasing by M&O contractors.

DATE: Written comments must be received on or before October 2, 1987.

ADDRESS: Written comments must be addressed to: Robert M. Webb, MA–421, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Robert M. Webb, Department of Energy, Office of Policy, MA–421, 1000 Independence Avenue SW., Washington, DC 20585, Telephone (202) 586–8247 or (FTS) 896–8247.

Paul Sherry, Department of Energy, Office of the Assistant General Counsel for Procurement and Finance, GC–34, 1000 Independence Avenue SW., Washington, DC 20585, Telephone (202) 586–1526 or (FTS) 896–1526.

SUPPLEMENTARY INFORMATION:

I. Background

A. Discussion

Throughout the history of American involvement in the development of atomic energy and nuclear weapons, dating back to the Manhattan Engineer District in World War II, the United States has relied upon private entities, whether educational institutions, non-profit organizations, or commercial businesses, to furnish the necessary technological and management expertise to bring the nation's nuclear program to fruition. The Atomic Energy Commission (AEC), whose mission it was to oversee the atomic energy and nuclear program, and its successor agencies, the Energy Research and Development Administration (ERDA), and the Department of Energy (DOE), has established the goals and direction of the necessary research, development, and production activities in the areas of nuclear weapons, nuclear energy, and non-nuclear energy. The vehicles by which the non-Federal entities provided their knowledge and expertise were management and operating contracts (M&O). Under these contracts, the Government provided for use of Federal facilities and gave these contractors significant latitude in achieving the designated goals in the assigned direction. A major contribution to their ability to attain these goals has been the fact that these contractors are not Federal entities and, therefore, are not directly subject to the bulk of the statutes and regulations that govern the conduct of Federal agencies.

The AEC (and subsequently, ERDA and DOE) devoted portions of its procurement regulations to specifying to the requirements of statute, Executive order, Federal regulation, and agency policy and regulation to which such contractors are to be held responsible. Those regulations are currently located in Part 970 of the Department of Energy Acquisition Regulation (DEAR). One major function necessary to the accomplishment of the mission of the management and operating contractor is its purchasing. Some of the applicable provisions concerning purchasing are currently located at Subpart 970.44.

The following proposed rule is intended to replace the existing coverage of subcontracting and purchasing by DOE M&O contractors. This rulemaking has, as one objective, the consolidation of all DEAR coverage on this subject. In addition, it is an attempt to provide a single baseline for the requirements of M&O purchasing systems and for the review of those purchasing systems by the individual management and operating contractors and by cognizant Federal oversight organizations, both within and outside of DOE. Finally, this proposed revision is intended to update the existing coverage and reflect such things as the effect of recent legislation, e.g., the Competition in Contracting Act of 1984 (Pub. L. 98–369), which, while it does not apply directly to purchasing by management and operating contractors, affects DOE policy toward and oversight of M&O purchasing activities.

The General Accounting Office (GAO) has, for more than 40 years, heard protests by disappointed competitors for subcontract awards. Over time an analytical concept was developed by GAO to assess the propriety of such awards by M&O contractors. That concept became known as "the Federal norm." By that standard, M&O prime contractors are judged by whether their subcontracting practices achieved the intent and spirit of the requirements otherwise applicable to the Federal purchasing system, i.e., a fair and competitive purchase at a reasonable price, not whether they met the "letter" of the Federal and DOE procurement regulations. GAO has over the years assumed jurisdiction over fewer and fewer subcontractor protests until now, by its own regulations, its jurisdiction is limited to purchases by Federal prime contractors that are "by or for" the United States. Upon that basis, GAO has assumed jurisdiction over purchases made by DOE M&O contractors. Today's proposal reflects DOE's application of the "Federal norm" concept, as it has evolved, to purchasing by its M&O contractors.

B. Section-By-Section Analysis

Part 970

The following description of the changes proposed to be made to Part 970 demonstrates that much of the existing coverage dealing with M&O purchasing is spread throughout that part. This description is not comprehensive, but is intended as a discussion of any meaningful changes. In all such cases the proposed location of the material is noted, and there is a reference to the current location of the material. When the material in 970.50 is discussed, any meaningful changes to the existing material, as relocated, are discussed. That discussion includes a parenthetical reference to the source of the material.

The subject matter of Subpart 970.03 is treated at subsection 970.5004–1 as it relates to management and operating contractors. The subject matter of section 970.0407 is treated at subsection 970.5004–2.

The subject matter of section 970.0811 is treated at subsection 970.5004–5.

The subject matter of section 970.0870 is treated at subsection 970.5004–6.

The subject matter of section 970.0871 is treated at subsection 970.5004–7.

A new paragraph (b) has been added in order to provide for the more efficient purchasing of general utility items.

The subject matter of section 970.0872 is treated at subsection 970.5004–8.

The subject matter of section 970.0902 is treated at subsection 970.5004–9.

The portion of section 970.0905 relating to purchasing by management and operating contractors is moved to 970.5004–10.

Paragraphs (b) and (c) of subsection 970.1508–1 are treated at subsection 970.5004–11.

The subject matter of paragraphs (a)–(f) of section 970.1901 is treated at subsection 970.5004–12. Paragraph (g) has been altered and is treated principally at 970.5003(b)(3)(v).

The subject matter of section 970.2001 is treated at subsection 970.5004–13.

The subject matter of section 970.2202 is treated at subsection 970.5004–14.

The subject matter of section 970.2203 is treated at subsection 970.5004–15.

The subject matter of section 970.2204 is treated at subsection 970.5004–16.

Paragraph (a) of section 970.2206 is treated at subsection 970.5004–17.

The portion of section 970.2208 relating to purchasing by management and operating contractors is treated at subsection 970.5004–18.

The portion of section 970.2210 relating to purchasing by management and operating contractors is treated at subsection 970.5004–19.

The subject matter of section 970.2213 is treated at subsection 970.5004–20.

The subject matter of section 970.2214 is treated at subsection 970.5004–41.

The subject matter of section 970.2501 is treated at subsection 970.5004–22.

The subject matter of sections 970.2800 through 970.2805 is treated at subsection 970.5004–24.

The portion of section 970.2903 relating to purchasing by management and operating contractors is treated at subsection 970.5004–26.

The portion of section 970.3101–4 relating to purchasing by management and operating contractors is treated at subsection 970.5004–27.

The current references to Subpart 970.44 and section 970.4404 in subsection 970.3102–15 (a) and (b) are changed to conform to the new citations.

The subject matter of sections 970.3600, 970.3601, 970.3602, 970.3604, 970.3607, and 970.3608 is treated in subsection 970.5004–28. The subject matter of sections 970.3603 and 970.3605 is treated in subsection 970.5004–16.

Subpart 970.44 is deleted and its subject matter is treated in the new comprehensive Subpart 970.50.

The subject matter of Subpart 970.46 is treated at subsection 970.5004–29.

The subject matter of paragraph (b) of section 970.4901 is treated at subsection 970.5004–30.

Section 970.5001 contains material currently at 970.4401. The new provision updates and expands the existing provision.

Section 970.5002 contains the material currently at 970.4402. The new provision assigns the overall responsibility for oversight of performance of management and operating contractors, including their purchasing activities, to the cognizant DOE Head of Contracting Activity (HCA). In this regard, 970.5002 makes clear that, except in specified sections, HCA means HCA or duly authorized representative of the HCA. The authorities and duties of the HCA in sections 970.5004–8, 970.5004–9(b), 970.5004–22, and 970.0008 are those of the HCA alone. This section also clarifies, updates, and expands the existing provision.

Section 970.5003 contains the material currently at 970.4403. This material has been rewritten to reflect the balance DOE desires to be achieved in the purchasing practices of its management and operating contractors. On the one hand, a management and operating contractor is expected to establish a purchasing system that reflects its private sector experience, creativity, expertise, and initiative while supporting the purchasing demands of its contractual mission. This private sector-based experience and practice must be tempered to meet the requirements of and to achieve the goals of applicable Federal laws, regulations and agency policies.

In this section the changes begin primarily in paragraph (b). The new provisions recognize the existence of the "Federal norm." That concept is an evolving analytical tool which has been used by the General Accounting Office (GAO) in its resolution of protests against the award of subcontrats under Federal prime contracts, recently limited to DOE M&O contracts. That concept recognizes that the Federal laws and regulations governing the process by which a prime contract is awarded by a Federal agency do not apply *per se* to the awarding of subcontracts under that prime. However, the process used by Federal prime contractors whose purchasing comes within GAO's bid protest jurisdiction must accomplish the intended result of a Federal procurement, i.e., result in award based upon fair and equitable treatment of all bidders/proposers and based upon the most advantageous offer/proposal, price and other factors considered. As stated by the Comptroller General in *Piasecki Aircraft Corporation*, B–190178, July 6, 1978, 78–2 CPD ¶10 at 10:

> It is our view that while Federal statutes and regulations which apply to direct procurement by Federal agencies may not apply *per se* to procurement by prime operating contractors, [case cited], the prime contractor's procurements must be consistent with and achieve the same policy objectives as the Federal statutes and regulations. This we believe, is what is meant by the "Federal norm."

The principles enumerated in subparagraphs (b)(1) through (b)(3) of this section are not attempt to restate the "Federal norm" tenets as espoused by GAO but rather represent a statement of subcontracting principles that, in the opinion of DOE, if properly implemented by management and operating contractors, would allow them to efficiently utilize their private sector purchasing expertise in the award of subcontracts while meeting the tests of the "Federal norm."

Specifically, the detailed purchasing procedure descriptions stated currently in 970.4403(b)(1) and (b)(2) have been deleted in favor of the necessary, systemic requirements of the carrying out of an individual purchase. In recognition of the Competition in Contracting Act of 1984 and its emphasis on competition in Federal procurements, DOE is emphasizing competition and fairness in the new provisions. The principles stated are intended to achieve meaningful competition and fair and equitable treatment of all bidders/proposers. Latitude is provided management and operating contractors in designing their purchasing systems, as overseen by the cognizant HCA, in establishing "small purchase" thresholds for simplified purchasing procedures, and in the documentation standards for justifying noncompetitive awards.

Section 970.5004 is intended as a comprehensive listing of required subject matter to be treated in the ways designated in appropriate subcontracts. The basis for many of these subjects is their current coverage in the DEAR and,

in almost all of those cases, the current DEAR Part 970. This list is intended as a DOE-wide standard against which DOE contracting officers will review the treatment of these subjects in management and operating contractors' purchasing systems and methods.

The coverage of subsection 970.5004–7 (from 970.0871) has been altered by the addition of paragraph (b) to reflect open market pricing or delivery advantages that may be available.

The coverage of subsections 970.5004–8 (from 970.0872) and 970.5004–9 (from 970.0902) has been clarified and expanded.

The coverage of subsection 970.5004–10 (from a portion of 970.0905) has been clarified. Subsection 970.5004–11 (from 970.1508–1) has been updated.

The coverage of subsection 970.5004–12 (from 970.19) has remained the same except for the deletion of the existing paragraph (g) requiring the use of the *Commerce Business Daily* (CBD) for proposed purchases expected to exceed $100,000. This coverage has been deleted and the use of the CBD is discussed instead at 970.5003(b)(3)(v). Paragraph (e) allows set asides for small, disadvantaged business, in accordance with the M&O contractor's purchasing system and methods.

Subsection 970.5004–27 (from a portion of 970.3101–4) has been clarified to assure the DOE contracting officer an opportunity to participate in the resolution of audit questions by the M&O contractor before settlement with the subcontractor.

Subsection 970.5004–28 (from 970.3600, 3601, 3602, 3604, 3607, and 3608) has been clarified and expressly provides for a "Federal norm" standard application of the "Brooks Architect-Engineer (A-E) Act" (40 U.S.C. 541–544) procedures to the A-E purchasing process of M&O contractors.

Subsection 970.5004–30 (from 970.4901(b)) has been expanded to allow discretion in the design of termination provisions in subcontracts awarded by M&O contractors.

The portions of section 970.5004 which follow subsection 970.5004–32 are additions in order to assure a comprehensive listing, including treatment of the recently enacted Anti-Kickback Enforcement Act of 1986 (Pub. L. 99–634).

Section 970.5005 (from 970.4404) has been clarified and updated.

Section 970.5006 (from 970.4405) has been significantly altered to allow the design of a procedure responsive to the substantive issues that arise in treatment of mistakes in bid rather than to merely follow a prescribed, detailed procedure.

Section 970.5007 (from 970.4406) has been relocated with no substantive or other change. The review and approval provisions under 970.5008 reflect clarification and systematization of the existing coverage of 970.4407. The responsibilities of the Head of the Contracting Activity are clearly stated and an emphasis is placed upon documentation to provide cognizant DOE operations offices a basis for review and approval of individual subcontracting actions above designated thresholds and for periodic and systematic review of the implementation of the contractors' purchasing systems and methods in transactions below the threshold.

Section 970.5009 (from 970.4408) has been clarified. Section 970.5010 (from 970.4409) calls, in paragraph (a)(3), for the use of "an independent third party" as an "umpire" in resolution of disagreements over the quantity of material.

The clause at 970.5204–22 has been clarified and updated to more closely approximate the system created by the changes discussed above.

II. Procedural Requirements

A. Review Under Executive Order 12291

This proposed rule is exempt from review by the Office of Management and Budget under E.O. 12291 of February 17, 1981, pursuant to an exemption for procurement regulations as discussed in OMB Bulletin No. 85–7, dated December 14, 1984.

B. Review Under Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (the Act), 5 U.S.C. 601–612, requires, in part, that an agency prepare an initial regulatory flexibility analysis for any rule, unless it determines that the rule will not have a "significant economic impact" on a substantial number of small entities. This proposed rule concerns the purchasing policies and procedures used by DOE M&O contractors. While many subcontractors may be small businesses, the proposed rule imposes no significant burdens and will have no significant impact on small entities. Therefore, as required by section 603(b) of the Act, DOE certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities and, accordingly, no regulatory flexibility analysis has been prepared.

C. Review Under Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this proposed rulemaking. Accordingly, no OMB clearance is required by section 350(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

D. Public Hearing

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, the Department does not plan to hold a public hearing on this proposed rule.

III. Public Comments

Interested persons are invited to participate in this rulemaking process by submitting data, views, or arguments with respect to the proposed revisions to the Department of Energy Acquisition Regulation set forth in this notice. All written comments received will be assessed and fully considered prior to publication of the final regulation resulting from this rulemaking process.

List of Subjects in 48 CFR Part 970

Management, Operating contracts.

The following redesignation table shows the location, in the proposed regulation, of material treated in the existing regulation.

REDESIGNATION TABLE

Old section	New section
970.03	970.5004–1
970.0407	970.5004–2
970.0811	970.5004–5
970.0870	970.5004–6
970.0871	970.5004–7
970.0872	970.5004–8
970.0902	970.5004–9
970.0905	970.5004–10
970.1508–1(b)	970.5004–11
970.1901(a)–(f)	970.5004–12
970.1901(g)	970.5003(b)(3)(v)
970.2001	970.5004–13
970.2003	970.5004–15
970.2204	970.5004–16
970.2206(a)	970.5004–17
970.2208	970.5004–18
970.2210	970.5004–19
970.2213	970.5004–20
970.2214	970.5004–41
970.2501	970.5004–22
970.2800 through 970.2805	970.5004–24
970.2903	970.5004–26
970.3101–4	970.5004–27
970.3600, 970.3601, 970.3602, 970.3604, 970.3607 and 970.3608	970.5004–28
970.3603 and 970.3605	970.5004–16
970.3606	970.3601
970.4401	970.5001
970.4402	970.5002
970.4403	970.5003
970.4404	970.5005
970.4405	970.5006
970.4406	970.5007
970.4407	970.5008
970.4408	970.5009
970.4409	970.5010
970.46	970.5004–29
970.4901(b)	970.5004–30

For the reasons set out in this preamble, Part 970 of Title 48 of the Code of Federal Regulations is proposed to be amended, as set forth below.

Issued in Washington, DC July 27, 1987.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

PART 970—[AMENDED]

1. The authority citation for Part 970 is revised to read as follows:

Authority: Sec. 644 of the Department of Energy Organization Act (42 U.S.C. 7254) and Sec. 205(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)).

Subpart 970.03 [Removed and reserved]

2. Subpart 970.03 is removed and reserved.

970.0407 [Amended]

3. Section 970.0407 is amended by putting a period after "management and operating contractors" in the first sentence and removing the remainder of the sentence.

970.0811, 970.0870, 970.0871, 970.0872, and 970.0902 [Removed]

4. Sections 970.0811, 970.0870, 970.0871, 970.0872, and 970.0902 are removed.

970.0905 [Amended]

5. Section 970.0905 is amended by removing the paragraph designation "(a)" from the first paragraph; removing all of the first paragraph after the third complete sentence; and removing paragraph (b).

970.1508–1 [Amended]

6. Section 970.1508–1 is amended by removing the paragraph designation "(a)" from the first paragraph and removing paragraph (b) and (c).

970.1901 [Amended]

7. Section 970.1901 is amended by removing paragraphs (a) through (g) and by removing the paragraph designation "(h)" from the remaining paragraph.

Subpart 970.20 [Removed and reserved]

8. Subpart 970.20 is removed and reserved.

970.2202, 970.2203, and 970.2204 [Removed]

9. Sections 970.2202, 970.2203, and 970.2204 are removed.

970.2206 [Amended]

10. Section 970.2206 is amended by removing paragraph (a) and by removing the paragraph designation "(b)" from the remaining paragraph.

970.2208 [Amended]

11. Section 970.2208 is amended by inserting a period after "management and operating contracts" the first time it appears in the paragraph and by removing the remainder of the paragraph.

970.2210 [Amended]

12. Section 970.2210 is amended by removing the paragraph designation "(a)"; removing all of the first paragraph after the first sentence; and removing all of paragraph (b).

970.2213 and 970.2214 [Removed]

13. Sections 970.2213 and 970.2214 are removed.

Subpart 970.25 [Removed and reserved]

14. Subpart 970.25 is removed and reserved.

970.2800, 970.2801, 970.2803, 970.2804, and 970.2805 [Removed]

15. Sections 970.2800, 970.2801, 970.2803, 970.2804, and 970.2805 are removed.

970.2903 Amended]

16. Section 970.2903 is amended by removing the paragraph designation "(a)" from the first paragraph; by inserting a period after "management and operating contracts" the first time it appears and removing the remainder of the paragraph; and by removing paragraph (b).

970.3101–4 [Amended]

17. Subsection 970.3101–4 is amended by removing the paragraph designation "(a)" from the first paragraph; by removing the remainder of the paragraph after the fourth sentence; and by removing paragraph (b).

970.3102–15 [Amended]

18. Subsection 970.3102–15 is amended by substituting "970.50" in place of "970.44" as it appears twice in paragraph (a) and by substituting "contractor-affiliated sources (See 970.5005)" for "contractor-controlled sources (See 970.4404)" in the title of paragraph (b).

970.3600, 970.3601, 970.3602, 970.3603, 970.3604, and 970.3605 [Removed]

19. Sections 970.3600, 970.3601, 970.3602, 970.3603, 970.3604, and 970.3605 are removed.

970.3606 [Redesignated as 970.3601]

20. Section 970.3606 is redesignated as section 970.3601.

970.3607 and 970.3608 [Removed]

21. Sections 970.3607 and 970.3608 are removed.

Subparts 970.44 and 970.46 [Removed]

22. Subparts 970.44 and 970.46 are removed.

970.4901 [Amended]

23. Section 970.4901 is amended by removing "principles" from the title, by removing the paragraph designation "(a)" from the first paragraph; and by removing paragraph (b).

24. Subpart 970.50 is proposed to be added as follows:

Subpart 970.50—Management and Operating Contractor Purchasing

Sec.

Sec.

Subpart 970.50—Management and Operating Contractor Purchasing

970.5001 General.

(a) The Department of Energy contracts for the management and operation of DOE facilities, the design and production of nuclear weapons, energy research and development, and the performance of other services. These management and operating contractors have been selected for their technical and managerial expertise and are expected to bring to bear these technical and managerial skills to accomplish the significant Federal mission(s) described in their contracts with, and work plans approved by, DOE.

(b) The purchasing activities of management and operating contractors are one area in which the particular skills of the contractor will be brought to bear in order to more readily accomplish the contractors' assigned missions. The contractors' corporate contracting procedures, therefore, for the basis for the development of purchasing systems and methods that will comply with their contract with DOE and this subpart.

(c) Competition is fundamental to M&O purchasing.

(d) The Federal Acquisition Regulation generally is not directly applicable to the purchasing activities of management and operating contractors. There are, however, certain Federal laws, Executive Orders and Federal and DOE regulations which do pertain to and apply to purchases by management and operating contractors and thus should be reflected in the contractor's purchasing system and methods. These requirements are identified in this subpart.

970.5002 DOE responsibility.

(a) In the Department of Energy, overall responsibility for the oversight of the performance of management and operating contractors, including their purchasing activities, rests with the cognizant DOE contracting activity and, in particular, the Head of Contracting Activity (HCA). (For the purposes of this subpart, the term "Head of Contracting Activity" includes his or her duly authorized representative except when the context is one of approval of a specific action, *i.e.*, 970.5004–8, 970.5004–9(b), 970.5004–22 and 970.5008, in which cases the approval authority is limited to the Head of Contracting Activity alone.) Contracting officers are, however, responsible for the day-to-day oversight of purchasing activities by management and operating contractors, including contractors' conformance with this subpart and their contracts, and for determining whether those purchasing activities provide timely and effective support to DOE programs.

(b) In carrying out this responsibility, HCAs shall:

(1) Require management and operating contractors to maintain written descriptions of their individual purchasing systems and methods and further require that not less often than once every three years the entire written description is submitted for review and approval; and

(2) Require that any changes to the management and operating contractor's written descriptions having any substantive impact upon the contractor's subcontracting practices are submitted for review prior to issuance;

(3) Review individual purchasing actions of certain types or above stated dollar levels to assure that management and operating contractors implement DOE policies and requirements, as defined in this subpart, in accordance with the contractor's approved system and methods;

(4) Make periodic appraisals (e.g. Contractor Purchasing System Review (CPSR) and Surveillance Review) of the contractor's management of the purchasing function in accordance with established criteria (See Subpart 944.3);

(c) In performing the reviews required by paragraphs (b)(1) and (b)(2) and appraisals of paragraph (b)(4) of this section HCAs shall assure that the contractor's written systems and methods are consistent with this subpart and the provisions of their contracts.

970.5003 Policies.

The following shall apply to the purchasing practices of management and operating contractors. Within these policies it is expected that purchasing systems and methods will vary according to the types and kinds of purchases to be made, the mission needs of the particular programs and facilities, and the experiences, methods, and practices of the contractor. In the development of their purchasing systems and methods, contractors should use their experience, expertise, and initiative consistent with this subpart.

(a) The purchasing systems and methods used by the management and operating contractor should be well defined, consistently applied, and should follow good business practices appropriate for the requirement and dollar amount of the purchase involved.

(b) The management and operating contractor purchasing systems should produce the proper balance between the Government's decision to use their experience and expertise in managing and operating its programs and facilities and the objectives and the attendant requisites of the Federal acquisition process. In evaluating the proper balance between commercial purchasing practices and the requisites of the Federal acquisition process a concept referred to as the "Federal norm" has evolved. The Federal norm refers to those fundamental principles embodied in law and regulation that should be reflected in contractor purchases even though such purchases are not Federal procurements. The DOE has identified the following specific tenets of Federal purchasing policy that must be addressed in a contractor's purchasing system:

(1) Purchases must be effected in the manner that will be most advantageous in meeting the overall mission with price, quality, and efficient performance of the contract considered.

(2) Although the Competition in Contracting Act of 1984 (Pub. L. 98–369) is not applicable to management and operating contractor procurement, the contractor's policies must ensure competitive subcontracting consistent with the contractor's efficient performance of the contractual mission and the nature of supplies and services purchased. The objective is to provide effective competition through application of the principles set out below.

(3) The contractor's policies and procedures shall ensure that for purchases in excess of those discussed in paragraph (b)(4) below, all

competitors are treated fairly and equitably by:

(i) Describing the requirement as completely as possible and in adequate time to promote competition. Supplies and services should be purchased through the use of specifications, standards or descriptions which clearly and accurately describe the supplies or services to be purchased;

(ii) Preparing solicitation documents setting forth the contract terms and conditions, describing the requirement clearly, accurately, and completely, but avoiding unnecessarily restrictive specifications or requirements;

(iii) Stating in the solicitation the factors that will comprise the basis for award, i.e., lowest evaluated price or a combination of price and technical merit. In the event of the latter the solicitation shall state the importance of technical considerations versus cost considerations and note any criterion(ia) that is of significantly greater or lesser importance than other criteria.

(iv) Proposal evaluation should be conducted and award should be made in accordance with the stated factors and the descriptions of their importance;

(v) Publicizing the solicitation by (A) distribution to a reasonable number of prospective offerors and (B) use of such means as plan rooms, journals, expressions of interest or other notices, and the Commerce Business Daily, as appropriate, particularly where there are not adequate numbers of qualified sources in the local area;

(vi) Providing equal access to solicitation data and information;

(vii) Offering sufficient numbers of qualified entities the opportunity to propose and tailoring the method of carrying out the competition such that there is every expectation that proposals will be received in numbers that will substantiate that the cost or price is in the Government's best interest;

(viii) Allowing sufficient time for preparation and submission of proposals;

(ix) Providing for a uniform time for submission;

(x) Taking precautions to assure that the contents of each proposal are maintained in confidence to prevent technical transfusion and technical leveling;

(xi) Handling responses in a manner to assure fairness and impartiality, and communicating, where necessary to clarify solicitations, with all potential proposers;

(xii) Conducting negotiations, as appropriate, in such a way as to enhance competition and ensure the understanding of substantive aspects of the offeror's proposal. A management and operating contractor's purchasing system and methods may provide for receipt of amended proposals following communication with a select group of offerors deemed most likely to receive the award in accordance with the expressed evaluation criteria; for award without communication; and for clarification as part of negotiation;

(xiii) Awarding only to capable offerors whose offers conform to the solicitation. Awards shall not be made to firms or individuals listed on the GSA Consolidated List of Debarred, Suspended, and Ineligible Contractors or the DOE List of Debarred, Suspended, Ineligible or Voluntarily Excluded Awardees without prior approval of the DOE contracting officer; and

(xiv) Ensuring that access authorizations to classified information will not be a limiting factor in obtaining competition except where time will not permit securing additional authorizations.

(4) Small purchases (those valued at $25,000 or less or other value that may be established by the HCA) should be made by methods designed, considering the award value, to (i) obtain fair and reasonable prices, (ii) reduce administrative costs of making such purchases to the minimum required to establish the propriety of placing the order at the price paid with the supplier concerned, and (iii) improve opportunities for small and small disadvantaged business concerns to obtain a fair proportion of awards.

(5) A fair proportion of supplies and services shall be purchased from small business concerns, small disadvantaged business concerns, labor surplus area concerns, and woman-owned business concerns. The Commerce Business Daily is an appropriate means to promote the participation of such concerns.

(6) Price or cost analyses shall be performed consistent with the principles of FAR Subpart 15.8 and Subpart 915.8 of this regulation.

(7) Allowable costs for cost reimbursable subcontracts are to be determined in accordance with the cost principles of FAR Part 31, appropriate for the type of organization to which the subcontract is to be awarded, as supplemented by Part 931. Allowable costs in the purchase or transfer from contractor-affiliated sources shall be determined in accordance with 970.5005 and 970.3102-15(b).

(8) The contractor's purchasing systems and methods shall establish a dollar value above which the basis for each non-competitive procurement must be clearly documented and a dollar value above which non-competitive procurements must be supported by separate justifications prepared by the requesting organization, and approved at appropriate levels in the contractor's procurement organization.

(9) The selection of the type of contract to be used should be based on consideration of the nature of the supplies and services required and other circumstances surrounding the purchase. The cost-plus-percentage-of-cost system of contracting shall not be used in any event.

970.5004 Conditions of purchasing by management and operating contractors.

The following provisions pertain to purchasing by DOE management and operating contractors. Some of these provisions are implementations of statutory or applicable Government and DOE policies. To the extent these provisions allow for the exercise of discretion by management and operating contractors, HCAs will use as the standard of compliance the exercise of good business judgment by the management and operating contractor in pursuit of carrying out the contractual mission.

970.5004-1 Contingent fees.

The policies and requirements of FAR Subpart 3.4 shall be applied to all purchasing activities of management and operating contractors. See 970.5203-1 for the amendment to the clause at FAR 52.203-5.

970.5004-2 Record retention requirements.

The record retention requirements for cost-reimbursement type subcontractors to management and operating contractors shall be in accordance with 970.0407.

970.5004-3 Acquisition of utility services.

When authorized by DOE (subject to appropriate delegation) to acquire utility services, such acquisition shall be in compliance with 970.0803.

970.5004-4 [Reserved]

970.5004-5 Leasing of motor vehicles.

Management and operating contractors shall abide by the provisions of FAR Subpart 8.11 and Subpart 908.11 in the leasing of motor vehicles.

970.5004-6 Strategic and critical materials.

Management and operating contractors who use strategic and critical materials shall fulfill their requirements in accordance with Subpart 908.70.

970.5004-7 Purchases of special items.

(a) HCAs shall assure that the management and operating contractors' purchasing systems and methods provide for the purchase of the following items in accordance with the provisions of the DEAR and FPMR, as shown.

Item	Citation
(1) Motor vehicles	908.7101
(2) Aircraft	908.7102
(3) Office machines	908.7103
(4) Office furniture and furnishings	908.7104
(5) Filing cabinets	908.7105
(6) Security cabinets	908.7106
(7) Alcohol	908.7107
(8) Helium	908.7108
(9) Fuels and packaged petroleum products	908.7109
(10) Coal	908.7110
(11) Arms and ammunition	908.7111
(12) Replacement materials handling equipment.	908.7112
(13) Calibration services	908.7113
(14) Wiretapping and eavesdropping equipment.	908.7114
(15) Forms	908.7115
(16) Electronic data processing tapes	908.7116
(17) Tabulating machine cards	908.7117
(18) Rental of post office boxes	908.7118
(19) Heavy water	908.7121(a)
(20) Precious metals	908.7121(b)
(21) Lithium	908.7121(c)
(22) Products and services of the blind and other severely handicapped.	FPMR 41 CFR 101-26.701
(23) Products made in Federal penal and correctional institutions.	FPMR 41 CFR 101-26.702

(b) The management and operating contractor's purchasing system and methods may provide for the acquisition of items (3), (4), and (5) above from non-Federal Supply Schedule sources in those circumstances in which items of the same or greater quality may be purchased at a lesser price, or there is otherwise an inability to meet a critical program schedule.

970.5004-8 Purchase or lease determinations.

Using FPMR 41 CFR 101-25.5 as a guide, management and operating contractors shall provide in their purchasing systems and methods for a system to determine whether required equipment should be purchased or leased. The system based upon these guidelines shall establish appropriate thresholds for application (as approved by the HCA) of lease-versus-purchase determinations and shall be used in making such determinations (a) at time of original acquisition, (b) when lease renewals are being considered, or (c) at other times as circumstances warrant.

970.5004-9 Qualifications requirements.

(a) Management and operating contractors are authorized to use Qualified Bidders Lists (QBL), Qualified Material Lists (QML) and Qualified Products Lists (QPL), developed by executive agencies pursuant to FAR Subpart 9.2, for the purchase of goods or services for which such list(s) was developed.

(b) Heads of Contracting Activities may authorize management and operating contractors to develop QBLs, OMLs, or QPLs for critical applications; however, management and operating contractors shall not unnecessarily restrict potential suppliers from qualification testing and inclusion among qualified vendors.

970.5004-10 Organizational conflicts of interest.

(a) Management and operating contractors shall abide by Subpart 909.5 in their acquisition of supplies and services as if their subcontractors at any tier and consultants were performing the work as prime contractors to DOE.

(b) The cognizant HCA is the individual authorized to determine whether there exists, with regard to a proposed subcontract, little or no likelihood of an organizational conflict of interest.

(c) In obtaining disclosure of relevant interests in appropriate potential subcontracts, management and operating contractors may allow proposers to submit their responses directly to the cognizant HCA.

970.5004-11 Cost or pricing data.

(a) Management and operating contractors are required to:

(1) Obtain certified cost or pricing data prior to the:

(i) Award of a negotiated subcontract at any tier when the subcontract price is expected to exceed $100,000; or

(ii) Modification of any subcontract when the price adjustment is expected to exceed $100,000, unless unrelated and separately priced changes, for which certified cost or pricing data would not otherwise be required, are included.

(2) Incorporate appropriate contract provisions that provide for the reduction of a negotiated subcontract price by any significant amount when the subcontract price was increased because of submission of subcontractor defective cost or pricing data, at any tier.

(b) The exemptions to certified cost or pricing data identified by FAR 15.804-3 shall also apply in implementing the above cost or pricing data requirements.

(c) The clause at 970.5204-24 shall be included in management and operating contracts requiring the flowdown of the provision contained therein to subcontractors at all tiers as described therein.

970.5004-12 Small business and small disadvantaged business concerns.

(a) The policies and procedures in the following FAR sections shall be applied to the acquisition activities of management and operating contractors in their unilateral initiation of small business set-asides:

(1) 19.301
(2) 19.302
(3) 19.502-2
(4) 19.502-3
(5) 19.508(b)
(6) 19.508(c)
(7) 19.508(d)

(b) Protests received by management and operating contractors regarding small business status or questions concerning small disadvantaged business shall be referred to the Small Business Administration through the cognizant DOE contracting officer.

(c) Purchases of $25,000 or less awarded through small purchase procedures shall be reserved exclusively for small businesses where there is a reasonable expectation that bids will be obtained from two or more responsible small business concerns that are competitive with market prices, quality and delivery.

(d) Acquisition by a management and operating contractor of construction estimated to cost $3 million or less, including new construction, and repair and alteration of structures, shall be required to be set aside on a class basis for small business concerns. When, in the judgment of the contractor, a particular acquisition falling within these dollar limits is determined to be unsuitable for a small business set-aside, notification shall be made to the DOE contracting officer. Upon obtaining the approval of the DOE contracting officer, the contractor may proceed to process the acquisition on an unrestricted basis. For acquisition of construction in excess of $3 million, small business set-aside preferences should be considered on a case-by-case basis.

(e) Management and operating contractors may provide in their purchasing systems and methods for the setting aside of requirements for small disadvantaged business, provided there are sufficient such qualified entities available to assure effective competition, and provided that the cost or price of the successful offer is found by the M&O to be fair and reasonable.

(f) In pursuit of the objective of M&O purchasing of a fair proportion of supplies and services from the concerns described at 970.5003(b)(5), the HCA may authorize the use of innovative means after approval by the Procurement Executive and the DOE Office of Small and Disadvantaged Business Utilization.

(g) Management and operating contractors shall prepare quarterly reports on utilization of small business,

small disadvantaged business, and women-owned small business in accordance with the directions of the DOE contracting officer.

970.5004–13 Labor surplus area concerns.

(a) Management and operating contractors are authorized to unilaterally initiate labor surplus area (LSA) set-asides where there is a reasonable expectation that bids or proposals will be obtained from a sufficient number of responsible LSA concerns so as to ensure that awards will be made at fair and reasonable prices. The priorities set forth in FAR 19.504 are to be utilized in determining the type of set-aside to be employed.

(b) Protests received or questions raised by contractors regarding LSA status shall be handled in consultation with the Department of Labor through the DOE contracting officer.

(c) LSA set-aside acquisitions awarded by management and operating contractors shall be reported quarterly in a form satisfactory to the DOE contracting officer.

970.5004–14 Convict labor.

The provisions of FAR Subpart 22.2 shall apply to purchases by management and operating contractors.

970.5004–15 Contract Work Hours and Safety Standards Act (other than construction contracts).

The requirements of FAR Subpart 22.3 shall apply to purchases by management and operating contractors to the same extent and under the same conditions such requirements apply to direct DOE procurements.

970.5004–16 Labor standards for contracts involving construction.

The requirements of FPR Temp. Reg. 70 (48 FR 31028, July 6, 1983), as amended by Pub. L. 99–145, or successor FAR coverage, apply to subcontracts involving construction awarded by DOE management and operating contractors to the same extent that they would if the subcontract had been directly awarded by DOE. Subpart 922.4 provides guidance, including examples of work situations, to assist in determining the applicability of these standards. The Davis-Bacon Act is deemed to apply to purchases by management and operating contractors in accordance with 970.2273.

970.5004–17 Walsh-Healey Public Contracts Act.

The requirements of FAR Subpart 22.6 and this section shall apply to purchases by management and operating contractors to the same extent and under the same conditions such requirements apply to direct DOE procurements.

970.5004–18 Equal employment opportunity.

The equal employment opportunity provisions of FAR Subpart 22.8 and Subpart 922.8, of this chapter, including E.O. 11246 and 41 CFR Part 60, are applicable to subcontracts awarded by DOE management and operating contractors.

970.5004–19 Service Contract Act.

(a) Subcontracts awarded by management and operating contractors are subject to the Service Contract Act to the same extent and under the same conditions as contracts awarded directly by DOE.

(b) Subcontracts awarded by management and operating contractors shall include the applicable clause in FPR Temporary Regulation No. 76, 49 FR 6726, February 23, 1984, or successor FAR coverage with such modifications as would otherwise be appropriate had this clause been included in the prime contract.

970.5004–20 Special disabled and Vietnam Era veterans.

The provisions of FAR Subpart 22.13 shall apply to purchases by management and operating contractors.

970.5004–21 Application of environmental and occupational safety and health programs.

HCAs shall assure that management and operating contractors treat environmental and occupational safety and health concerns in covered purchases in accordance with 970.2303. Management and operating contractors shall include the clauses at 970.5204–2, 970.5204–26, 952.223–72, and 952.223–75 in appropriate subcontracts and provide for flowdown to appropriate lower tier subcontracts.

970.5004–22 Buy American.

(a) Management and operating contractors are required, through the contract clauses prescribed at 970.5203–3 and 970.5203–5, to comply with the provisions of the Buy American Act. The list at FAR 25.108(d) contains excepted articles, materials, and supplies which have been determined to be unavailable in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(b) Determination of nonavailability under FAR 25.102 may be made by the DOE contracting officer responsible for the administration of the contract.

(c) When the management and operating contractor's purchasing systems and methods have been approved after a review in accordance with 970.5002(b), the Head of the Contracting Activity may authorize the contractor to make determinations of nonavailability for individual items under individual procurement actions. Each authorization shall be in writing and shall specify a dollar value limit for the aggregate of domestically unavailable items in individual procurement actions. Each authorization shall also specify the effective date, the activity, the division or facility authorized to make the applicability, and any special conditions or requirements. Authorizations for dollar value limits in excess of $25,000 require the prior concurrence of the Procurement Executive.

970.5004–23 Patents, data, and copyrights.

HCAs shall assure that management and operating contractors' purchasing systems and methods provide for distribution of patent and data rights and copyrights in their purchases in accordance with Subpart 970.27.

970.5004–24 Bonds and insurance.

The HCA shall assure that management and operating contractors provide in their purchasing systems and methods for obtaining bonds (i.e. bid, performance and payment bonds) from subcontractors in such a manner to assure adequacy and legal sufficiency of all types of bonds and the acceptability of sureties in accordance with this subsection to protect the interests of the United States. The contractor's purchasing systems and methods shall treat the obtaining of insurance in accordance with FAR Subpart 28.3 and DEAR Subpart 928.3

(a) *Performance bonds.*—(1) *Construction subcontracts.* A performance bond on Standard Form 25 (modified to name the contractor as well as the United States of America as obligees) shall be required for all fixed price and unit-price construction subcontracts in excess of $25,000 and subcontracts under cost-reimbursement type subcontracts. The penal amounts are set forth in FAR 28.102.

(2) *Other than construction subcontracts.* Situations which may warrant the requiring of a performance bond are listed in FAR 28.103–2(a).

(i) Where doubt exists as to the financial or technical ability of all possible suppliers.

(ii) Where the subcontractor's talent is overly concentrated in a few key personnel whose illness or departure could seriously impair the

subcontractor's ability to perform the proposed work.

(iii) Where other commitments of the subcontractor might delay performance.

(iv) Where a delay in performance of the proposed work might disrupt other operations of the management and operating contractor and impair its overall efficiency; or

(v) Where the item being manufactured is a component for another article and is required by a particular date in order to avoid delay in delivery of the end product.

(b) *Payment bonds.*—(1) *Construction subcontracts.* A management and operating contractor shall be required to obtain from the subcontractor a payment bond on Standard Form 25A, modified to name the management and operating contractor, as well as the United States of America, as obligees for all fixed price and unit-price construction subcontracts in excess of $25,000. The management and operating contractor shall be required to include such a requirement in its cost reimbursement construction subcontracts in excess of $25,000. The penal amounts shall be as set forth in FAR 28.102–2.

(2) *Other than construction subcontracts.* The management and operating contractor may make a determination that it is necessary on an individual subcontract to require payment bonds in connection with other than construction work. Whenever the management and operating contractor has reason to believe that work under a proposed action might be delayed because of concern over the credit standing of a prospective subcontractor, it should consider the advisability of requiring a payment bond.

(c) *Corporate co-sureties.* More than one corporate surety may be accepted as surety upon recognizance, stipulation, bond, or undertaking in connection with either construction or other contracts, provided that in no case will the liability of any such co-surety exceed the maximum penal sum in which the corporate surety is qualified to any one obligation. On bonds covering contracts other than construction contracts, where the amount of the bond is greater than the limitation of the corporate surety, the latter may reinsure with a corporation on the acceptable list of corporate sureties having the required underwriting capacity. Reinsurance agreements are not acceptable in connection with construction contracts. Corporate co-sureties need not obligate themselves for the full amount of the bond. Each corporate surety may, by setting forth the limit of its liability in the bond as a definite and specified sum, limit such liability on the condition that each co-surety bind itself "jointly and severally" for purpose of allowing a joint action or actions against any or all of them.

970.5004–25 Indemnification.

HCAs shall assure that management and operating contractors provide in their purchasing systems and methods for the treatment of nuclear hazards indemnification in subcontracts in accordance with 970.2870. No subcontractor may be otherwise indemnified except with the prior approval of the Procurement Executive, Headquarters.

970.5004–26 Taxes.

(a) HCAs should assure that tax matters are appropriately treated in their review and approval of management and operating contractors' purchasing systems and methods and in their review and approval of individual subcontracts by the contractor.

(b) The purchasing system and methods of a management and operating contractor shall require:

(1) The inclusion of a clause similar to that at 970.5204–23 in cost-type subcontracts where the higher-tier subcontracts are cost-type which will require the contractor to take certain actions with regard to nonpayment, payment, protest, or other treatment of specific taxes.

(2) The inclusion of an appropriate tax clause in all fixed-price purchase orders and subcontracts and should contain provisions covering all tax matters which may require special consideration.

970.5004–27 Audit of subcontractors.

(a) HCAs shall assure that management and operating contractors provide in their purchasing systems and methods for (1) periodic postaward audit of cost-reimbursement subcontractors at all tiers and (2) audits, where necessary, to provide a valid basis for pre-award cost or price analysis.

Responsibility for determining the costs allowable under each cost reimbursement subcontract remains with the management and operating contractor or next higher-tier subcontractor, subject to the appropriate and timely involvement of the management and operating contractor (if lower than first-tier subcontractor) and the DOE contracting officer or his or her representative.

(b) Where the amount of cost-type work to be performed in a particular subcontractor's facility is less than that being performed at the same facility for other Federal agencies, arrangements may be made to have the cognizant Federal agency perform the audit of the subcontract. These arrangements shall be made administratively between DOE and the other agency involved and shall provide for the cognizant agency to audit in a manner appropriate in light of the magnitude and nature of the costs of the subcontract. The contracting officer shall assure that the audit results properly reflect the application of the applicable cost principles of the subcontract (See 970.5003(b)(7)). In no case, however, shall these arrangements preclude determination by the DOE contracting officer of the allowability or unallowability of subcontractor costs claimed for reimbursement by the management and operating contractor.

970.5004–28 Construction and A–E contracts.

(a) *Scope.* The HCA shall assume that management and operating contractors provide in their procurement systems and methods for acquisition of A–E services and construction and in conformance with this subsection. FAR Part 36 and DEAR Part 936 shall be used as guides.

(b) *Independent estimates.* An independent estimate of costs shall be prepared for all construction work to be subcontracted under management and operating contracts. The services of an architect-engineer, another management and operating contractor, or construction contractor may be used, as appropriate, in the independent preparation of the estimate.

(c) *Specifications.* Management and operating contractors are required to comply with the DOE publication entitled "General Design Criteria Manual" (DOE Order 6430.1, dated December 12, 1983, or successor version) in preparing specifications for construction work.

(d) *Agreement for rental of construction equipment.* Management and operating contractors shall provide in their purchasing systems and methods for the rental of construction equipment from a third party in accordance with the agreement outlined at 936.7302.

(e) *Guidelines for the award of architect-engineer subcontracts.* The Brooks Act, Pub. L. 92–582, establishes the policy and procedures necessary to assure that selection of A–E contractors by the Federal government shall be based solely upon the qualifications of competing A–E firms. That Act does not directly govern the award of A–E subcontracts by DOE management and operating contractors. HCAs shall assure that the purchasing systems and

methods of management and operating contractors reflect the essence of the Federal policy; however, this does not preclude the consideration of other factors, including cost or price, in the selection of A–E subcontractors.

(f) *Prevention of conflict of interest*—(1) *Limitations on architect-engineer/construction services.* Combinations of subcontracts for architect-engineer and construction services, which may result in self-inspection of construction work, tend to prevent a subcontractor from rendering unbiased decisions, or create difficulties in segregating costs between subcontracts, and should be avoided. However, it is recognized that sometimes it is advantageous under carefully circumscribed conditions for a management and operating contractor to subcontract with a single firm for both architect-engineer and construction management services which may include performance of a segment of the construction work with the subcontractor's own forces. Unless otherwise authorized by the HCA the following combinations of subcontracts shall not be awarded by a management and operating contractor to the same firm or to affiliated companies:

(i) Both a cost-reimbursement subcontract and fixed-price subcontract if any portion of the work under either subcontract will be performed concurrently in the same general location. This restriction applies to subcontractors for construction services, architect-engineer services, or construction and architect-engineer services.

(ii) A fixed-price subcontract or subcontracts for both architect-engineer and construction services on the same construction project, or a cost-type subcontract for architect-engineer services and a fixed-price subcontract for construction services on the same constuction project. If a firm is to be responsible under such contractual arrangements for both design and construction services, Title III inspection services shall be performed by another organization selected by DOE.

(iii) A cost-type subcontract for both architect-engineer and construction services on the same construction project (engineer-constructor contract). If this contractual arrangement is used upon appropriate approvals, the subcontract shall provide for performance of the Title III inspection services by subcontractor's engineering personnel who are not responsible to the subcontractor's construction personnel, or the Title III services shall be performed by another organization selected by DOE.

(iv) Neither paragraph (f)(I)(ii) or (iii) of this section shall preclude the award of a single contract for the delivery of a discrete facility, e.g., "turnkey contract," so long as the contractor assumes all liability for defects in design and construction and consequential damages. Such contracts should provide for periodic inspection of the construction of the facility by the management and operating contractor or DOE or both.

(2) *Limitations on inspection.* (i) Inspection services may be performed be the architect-engineer responsible for the design. Inspection service may not be procured from a fixed-price construction subcontractor with respect to its own work. Under cost-reimbursement type subcontracts where the construction subcontractor and architect-engineer subcontractor are the same, some degree of self-inspection may be permitted, but shall not constitute final inspection and acceptance by the Government.

(ii) When one subcontractor is to inspect the work of another, the inspecting subcontractor will be given written instructions defining its responsibilities and stating that it is not authorized to modify the terms and conditions of the subcontract, direct any additional work, waive any requirements of the subcontract, or settle any claims or disputes. Copies of the instructions will be given to the subcontractor who is to be inspected, with a request to acknowledge receipt on one copy and return it to the contracting officer. In this manner, both subcontractors are on notice as to the authority and limitations on the authority of the inspecting subcontractor.

970.5004–29 Quality assurance.

HCAs shall assure that management and operating contractors provide in their purchasing systems and methods for inspection and acceptance and the use of an appropriate clause. Such provisions shall provide no less protection for the Government than are provided by the contract articles in prime contracts.

970.5004–30 Termination.

(a)(1) The termination clause included in management and operating contracts gives the Government the right to terminate the contract for convenience or default and provides that after receipt of a termination notice the contractor shall, to the extent requested by the contracting officer, cancel existing orders, subcontracts and commitments. Also, management and operating contractors may find it necessary to terminate subcontracts either for default or convenience in the course of exercising responsibilities for program or project performance under the contract rather than as a result of termination of the prime contract. Therefore, HCAs shall assure that the purchasing systems and methods of management and operating contractors provide for the inclusion of an appropriate termination clause or clauses in their subcontracts. The termination clauses set forth at FAR 52.249–1 through 52.249–14 may be used as guides in the development of subcontract termination clauses.

(2) In developing subcontract clauses the contractor should ensure that the relationship between the contractor and subcontractor is clearly stated, that references to the Government and the contracting officer are changed, as appropriate, to refer to the contractor, and that any inapplicable provisions of the cited FAR clauses be deleted.

(b) When a management and operating contract is fully or partially terminated by the Government, the policies and principles set forth in FAR Part 49 will be followed by the Government in settling the terminated contract or terminated portion of the contract. Therefore, when subcontracts are terminated as a result of the termination of all or a portion of the prime contract, contractors shall settle with subcontractors in conformity with the policies and principles relating to settlement of prime contracts in FAR Subparts 49.1, 49.2, and 49.3. When subcontracts are terminated for reasons other than termination of the prime contract, the contractor may settle such subcontract terminations in general conformity with the policies and principles in FAR Subparts 49.1, 49.2, and 49.3, and 49.4. In any event, each such termination settlement shall be documented. Those which require approval by the Government pursuant to prime contract requirements or approved procedures must be supported by accounting data and other information as may be directed by the DOE contracting officer. Also, the settlement must be consistent with provisions of the management and operating contract, such as Allowable Costs and Property, and in conformity with the provisions of the subcontract.

970.5004–31 Authorization for subcontractors' use of Government supply sources.

With the approval of the DOE contracting officer, management and operating contractors may authorize cost-reimbursement type subcontractors,

where all higher tier subcontractors are cost-reimbursement types, to acquire materials and services directly from such Government sources of supply in accordance with the requirements of Subpart 970.51 or the consent of agencies involved.

970.5004-32 Safeguarding classified information.

HCAs shall assure that management and operating contractors include clauses in appropriate subcontracts consistent with 970.0404.

970.5004-33 Cost Accounting Standards.

The provisions of FAR Part 30 shall apply to purchases by management and operating contractors.

970.5004-34 Clean air and water.

The provisions of FAR Subpart 23.1 shall apply to purchases by management and operating contractors.

970.5004-35 Air transportation by U.S.-flag carriers.

The provisions of FAR Subpart 47.4 shall apply to purchases by management and operating contractors.

970.5004-36 Acquisition of real property.

Management and operating contractors shall contract for the lease or purchase of real property pursuant to their contract in accordance with 917.74.

970.5004-37 Management, acquisition, and use of information resources.

HCAs shall assure that management and operating contractors provide in their purchasing systems and methods, with regard to the purchase of automatic data processing resources and telecommunication facilities, services, and equipment, for review and approval of requirements in ways that conform to the procedures contained in applicable DOE orders (1360 series and 5300 series, respectively).

970.5004-38 Privacy Act.

Management and operating contractors shall award subcontracts in accordance with FAR Subpart 24.1

970.5004-39 Officials not to benefit.

Management and operating contractors shall abide by the provisions of FAR Subpart 3.1 in the award of subcontracts.

970.5004-40 Subcontractor reporting systems.

HCAs shall assure that management and operating contractors provide in their purchasing systems and methods for the flowdown of the cost and schedule control system requirements as provided at 970.5204-50. In addition for subcontracts of lesser value, those purchasing systems and methods shall provide for the receipt from subcontractors of status, manpower, and financial information necessary to comply with DOE requirements for financial and performance data for subcontracts at all tiers.

970.5004-41 Employment of the handicapped.

The provisions of FAR Subpart 22.14 shall apply to purchases by management and operating contractors.

970.5004-42 Unclassified controlled nuclear information.

HCAs shall assure that management and operating contractors provide in their purchasing systems and methods for treatment of unclassified controlled nuclear information in accordance with 10 CFR Part 1017.

970.5004-43 Government property.

HCAs shall assure that management and operating contractors provide in their purchasing systems and methods for the identification, inspection, maintenance, protection, and disposition of Government property consistent with FAR Part 45.

970.5004-44 Foreign travel.

HCAs shall assure that management and operating contractors provide in their purchasing systems and methods for DOE approval consistent with the clause at 952.247-70 of foreign travel under subcontracts.

970.5004-45 Anti-Kickback Enforcement Act of 1986.

HCAs shall assure that management and operating contractor purchasing systems and methods provide for conformance in subcontracting with the FAR implementation of Pub. L. 99-634. See 48 CFR Parts 3, 9 and 52 (FAC 84-24, as published at 52 FR 6120, Feb. 27, 1987).

970.5004-46 Additional flowdown and extension provisions.

In addition to the clauses and provisions required to be included in appropriate subcontracts awarded by management and operating contractors, there are certain clauses the provisions of which require flowdown or extension to subcontractors. These are:

(a) Examination of Records by the Comptroller General—970.5203-2.

(b) Priorities, Allocations, and Allotments—970.5204-33.

(c) Printing—970.5204-19.

970.5005 Acquisition from contractor-affiliated sources.

(a) A management and operating contractor may acquire from sources affiliated with the contractor (any division, subsidiary, or affiliate of the contractor or its parent company) in the same manner as from other sources, provided:

(1) The management and operating contractor's purchasing function is independent of the proposed contractor-affiliated source;

(2) The same terms and conditions would apply if the purchase were from a third party;

(3) Award is made in accordance with policies and procedures particularly designed to permit effective competition which have been approved by the HCA (see 970.5002(b)(1)). (This requirement for competition shall not preclude acquisition of technical services from contractor-affiliated entities where those entities have a special expertise, and the basis therefor is documented.); and

(4) Award is legally enforceable where the entities are separately incorporated.

(b) Subcontracts for performance of contract work itself (as distinguished from the purchase of supplies and services needed in connection with the performance of work) require DOE authorization and may involve an adjustment of the contractor's fee, if any. If the management and operating contractor seeks authorization to have some part of the contract work performed by a contractor-affiliated source, and that contractor's performance of that work was a factor in the negotiated fee, DOE approval would normally require (1) that the contractor-affiliated source perform such work on a basis without profit, or (2) an equitable downward adjustment to the management and operating contractor's fee, if any.

(c) Determination on cost of money allowance as prescribed at FAR 31.205-10 shall be treated as follows:

(1) When a purchase from a contractor-affiliated source results from competition and is in accord with provisions and conditions of paragraphs (a)(1) through (a)(4) of this section, the contractor-affiliated source may include cost of money as an allowable element of the costs of its goods or services supplied to the contractor; provided (i) the purchase is based on cost as set forth in 970.3102-15 and (ii) the cost of money amount is computed in accordance with FAR 31.205-10 and related procedures (see Subpart 970.30).

(2) When a purchase from a contractor-affiliated source is made non-competitively, cost of money shall not be considered an allowable element of the cost of the contractor-affiliated source purchase.

970.5006 Procedures for handling mistakes relating to management and operating contractor purchases.

(a) HCAs shall assure that management and operating contractors include in their purchasing system and methods provision for correction of mistakes in bids and withdrawal of offers.

(b) Such a system shall make provision for correction of mistakes before award only upon the offering by the bidder of clear and convincing evidence of the mistake and the bid intended. It shall distinguish between situations in which another bidder's lower bid may be displaced if the correction were to be allowed.

(c) The system shall deal with mistakes after award and shall result in rescission or reformation of the contract only upon a clear and convincing showing of mutual mistake.

(d) The system shall allow withdrawal of a bid if there is sufficient evidence to establish a mistake but otherwise does not meet the necessary tests for correction, stated in paragraphs (b) and (c) above.

(e) In all cases before any remedial action is allowed, it shall be determined that the mistake was in good faith and that the interests of the United States are not prejudiced.

(f) Corrections of mistakes or other remedial actions taken pursuant to this section shall be documented by a written statement setting forth the circumstances and basis for such action and shall be made a part of the subcontract file.

970.5007 Protest of management and operating contractor procurements.

(a) The General Accounting Office (GAO) policies on protests state that GAO will consider subcontract-level protests when the subcontracts are "by" or "for" the Government. The term "for" has generally been defined by the GAO as including acquisitions by management and operating (M&O) contractors.

(b) The Department of Energy will also consider protests of acquisitions of M&O contractors.

(c) Upon receipt or notice of a protest filed with the GAO, or with the Department against an M&O contractor acquisition, the cognizant DOE contracting activity shall assure that the M&O contractor is aware of such protest and prepare or coordinate the preparation by the contractor of a report for submittal to the GAO or the Department official deciding the protest. Such a report shall be prepared in accordance with the applicable procedures in FAR Part 33 and Part 933 of the DEAR.

(d) Assistance shall be obtained from the local DOE Counsel in the preparation of the reports setting forth the position of the contracting activity relative to a protest.

(e) Upon receiving notice of a protest to the Department involving an M&O procurement action prior to award, the contracting activity shall direct that award not be made prior to resolution of such protest unless an HCA request to make award, concurred in by counsel, using the criteria of 933.103(a), endorsed by the program secretarial officer, is approved by the Procurement Executive. If notice of a protest is filed with the contracting officer within 10 days after award, the contracting activity shall contact the Business Clearance Division, Headquarters, for guidance as to continuation of performance or issuance of a stop work order.

(f) Since the bid protest provisions of the Competition in Contracting Act of 1984 (Pub. L. 98–369) (CICA) only apply to acquisitions by Federal executive agencies, the CICA "stay" provisions (sections 3553(c) and (d) of Pub. L. 98–369 and cost recovery provisions (section 3554(c), Pub. L. 98–369) do not apply to protests lodged with the GAO that involve M&O contractor acquisitions. Nevertheless, upon receiving notice of a protest to the GAO involving an M&O acquisition whether prior to or after award, the contracting activity shall immediately contact the Business Clearance Division, Headquarters, for guidance on suspending award or suspending performance.

(g) The General Services Board of Contract Appeals hears subcontract level protests involving the purchase of Automatic Data Processing Equipment (ADPE), as defined at 40 U.S.C. 759 (a)(2)(A), only in cases in which the prime contractor is acting as a purchasing agent for the Government. Management and operating contractors rarely, if ever, act as purchasing agents of the Department of Energy in the purchase of ADPE. Should a protest be lodged against a purchase of ADPE by an M&O, upon receiving notice of the protest, the cognizant DOE contracting officer shall promptly notify local counsel and the Office of The Assistant General Counsel for Procurement and Finance, Headquarters (AGCPF). The Department's position on such subcontract level protests shall be coordinated with the AGCPF. The contracting officer promptly after receipt of a protest and the decision(s) of the GSBCA shall also furnish a copy thereof with related pertinent correspondence to the Business Clearance Division, Headquarters.

970.5008 Review and approval.

(a) Heads of Contracting Activities shall establish thresholds by subcontract type and dollar level for the review and approval of proposed subcontracting actions by each management and operating contractor under their cognizance. Such thresholds may not exceed the approval authority for subcontracting delegated to the Head of the Contracting Activity by the Procurement Executive. In establishing these review and approval thresholds, the Heads of Contracting Activities should consider such factors as the following:

(1) The nature of work to be performed under the management and operating contract;

(2) The size, experience, ability, reliability, and organization of the management and operating contractor's purchasing function;

(3) The internal controls, procedures, and organizational stature of the management and operating contractor's purchasing function; and

(4) Policies with respect to such reviews and approvals established by the Procurement Executive.

(b) Prior approval shall be required for the subcontracting of any work a contractor is obligated to perform under a contract entered into under section 41, entitled Production of Special Nuclear Material, of the Atomic Energy Act of 1954, as amended.

(c) Heads of Contracting Activities shall take such action as may be required to insure compliance with the procedure for purchasing from contractor-affiliated sources or the purchase of specific items, or classes of items, which by the terms of the contract may require DOE approval.

(d) The Head of the Contracting Activity may raise or lower the review and approval thresholds established pursuant to paragraph (a) at any time. Such action may be considered upon the periodic review of the contractor's purchasing system. The thresholds may not exceed the approval authority delegated to the Head of the Contracting Activity by the Procurement Executive.

(e) Department of Energy approvals of specific proposed purchases pursuant to this section shall communicate that such approval does not relieve the management and operating contractor of any obligation under its prime contract with DOE; is given without prejudice to any rights or claims of the Government thereunder; creates no obligation on the part of the Government to the

subcontractor, and is not a predetermination of the allowability of costs to be incurred under the subcontract.

(f) Contracting officers shall assure that the contractors establish and maintain subcontract files which contain those documents essential to present an accurate and adequate record of all procurement transactions.

(g) Management and operating contractors shall be required to document purchases in writing, setting forth the information and data used in determining that the purchases are in the best interest of the Government. The scope and detail of this documentation shall be consistent with the nature, dollar value, and complexity of the procurement.

(h) Heads of Contracting Activities will assure that the contracting activity establishes and maintains files of the documents associated with the review and approval of subcontract actions subject to DOE review and approval. Those files shall include, among other necessary documentation, an appraisal of the proposed action by the contracting activity and a copy of the approving or disapproving document forwarded to the management and operating contractor, containing a listing of any deficiencies, a listing of any required corrective actions, any suggestions, or other relevant comments.

970.5009 Advance notification.

(a) Pursuant to section 304(b) of the Federal Property and Administrative Services Act of 1949, as amended, contracting officers shall assure that the written description of the management and operating contractor's purchasing system and methods provides for advance notice of the award of the following specified types of subcontracts, except as stated in paragraph (b):

(1) Cost reimbursement-type subcontracts of any award value; and

(2) Fixed price-type subcontracts which exceed $25,000; and

(3) Purchases from contractor-affiliated sources over a value established by the HCA.

(b) Pursuant to section 602(d)13 of the Act referred to in paragraph (a), the advance notification requirement for the types of purchases listed in paragraphs (a)(1) and (a)(2) shall not apply to subcontracts relating to functions derived from the Atomic Energy Commission.

(c) The advance notice shall contain, as a minimum, a description of work, estimated cost, type of contract or reimbursement provisions, and extent of anticipated competition, or justification for a noncompetitive procurement. The contracting officer may at any time request additional information that must be furnished promptly and prior to award of the subcontract.

970.5010 Nuclear material transfers.

(a) Management and operating contractors, in preparing contracts or other agreements in which monetary payments or credits depend on the quantity and quality of nuclear material, shall be required to assure that each such contract or agreement contains a:

(1) Description of the material to be transferred;

(2) Provision specifying the method by which the quantities are to be measured and reported;

(3) Provision specifying the procedures to be used in resolving any differences arising as a result of such measurements;

(4) Provision for the use of an independent third party as an umpire to settle unresolved differences in the analytical samples; and

(5) Provision specifying in detail which party shall bear the costs of resolving a difference and what constitutes such costs.

(b) The provisions providing for resolution of measurement differences must be such that resolution is always accomplished, while at the same time minimizing any advantage one party may have over the other.

25. Section 970.5204–22, is revised to read as follows:

970.5204–22 Contractor purchasing system.

Contractor Purchasing System (July 1987)

(a) (*Name of contractor*) shall develop and implement formal policies, practices, and procedures used or to be used in the award of subcontracts, which purchasing systems and methods shall be fully documented, acceptable to the contracting officer, in accordance with the policies set forth in DEAR 970.50. DOE reserves the right at any time to require that the contractor submit for approval any or all purchases under this contract. The contractor shall not purchase any item or service the purchase of which is expressly prohibited by the written direction of DOE and shall use such special and directed sources as may be expressly required by the DOE contracting officer.

(b) The obligations of (*name of contractor*) under paragraph (a) above, including the development of the purchasing system and methods and purchases made pursuant thereto, shall not relieve the contractor of any obligation under this contract (including, among other things, the obligation to properly supervise, administer, and coordinate the work of subcontractors). Subcontracts shall be in the name of the contractor, and shall not bind or purport to bind the Government.

(c) In addition to, and without derogation of any rights under paragraph (a) of this clause and any other provision in this contract, (*name of contractor*) shall require all subcontractors to furnish cost or pricing data under those conditions and in accordance with the requirements set forth in FAR 15.804, and shall include in such subcontracts the appropriate clause set forth in 970.5204–24 except as otherwise directed or approved by DOE.

(d) Procurement or transfer of equipment, materials, supplies, or services from a contractor-affiliated source shall be treated in accordance with DEAR 970.5005.

(e) Proposed awards to firms or individuals on either the GSA Consolidated List of Debarred, Suspended, and Ineligible Contractors or the DOE Consolidated List of Debarred, Suspended, Ineligible, and Voluntarily Excluded Awardees shall be forwarded to DOE for approval notwithstanding any prior procurement system approval.

(f) (*Name of Contractor*) shall provide advance notice of proposed subcontract awards in accordance with DEAR 970.5009 and shall comply with the review and approval requirements of DEAR 970.5008.

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Federal Register

Tuesday
August 18, 1987

Part III

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Removal of Juveniles From Adult Jails and Lockups; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Removal of Juveniles From Adult Jails and Lockups

AGENCY: Office of Juvenile Justice and Delinquency Prevention, DOJ.

ACTION: Notice of a solicitation of applicants for a competitive grant program to provide support to selected State agencies to enhance statewide strategies to achieve compliance with the Juvenile Justice and Delinquency Prevention (JJDP) Act provision, Section 223(a)(14), Removal of Juveniles from Adult Jails and Lockups.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) pursuant to section 224(b)(6) of the Juvenile Justice and Delinquency Prevention Act, as amended, announces a program entitled: Removal of Juveniles from Adult Jails and Lockups: Assistance for Selected States Currently Not in Full Compliance with section 223(a)(14) of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended.

Up to $1 million is available in Fiscal Year 1987 for awards to qualified State agencies. Up to $50,000 will be awarded to each of approximately 20 states for the implementation of a statewide jail removal strategy. The funds are to be used to support jail removal strategies through limited staffing and implementation activities pertaining to training, technical assistance and information dissemination.

ELIGIBILITY: State agencies designated under section 223(a)(1) of the JJDP Act in states where full compliance with section 223(a)(14) was not demonstrated in the State 1986 Monitoring Report, submitted pursuant to section 223(a)(15) of the Act. Excluded from eligibility are those States which did not achieve substantial compliance, but were notified by OJJDP, that they are expected to achieve full compliance with *de minimis* exceptions in early FY 1988. Eligible states are identified in Appendix 1.

DATES: Applications meeting all requirements will be funded in the order that they are received, but all applications must be received by September 15, 1987, when no further applications will be accepted.

FOR FURTHER INFORMATION CONTACT: Frank M. Porpotage, II, Special Emphasis Division (202/724–5891) or Cindy Stein of the State Relations and Assistance Division (202/724–5921), OJJDP, 633 Indiana Ave., NW. Washington, DC 20531.

I. Introduction and Background

To insure that juveniles taken into custody would not suffer undue physical and psychological harm with adults while in confinement, Congress amended the JJDP Act in 1980. The amendment provided that juveniles not be confined in jails or lockups with adults, and that states participating in the formula grant program would take steps to ensure the removal of juveniles from such facilities.

This initiative is designed to assist a selected number of states which have failed to achieve full compliance with the jail removal provision, section 223(a)(14) of the JJDP Act as amended, and as a result are not currently eligible for FY 1988 JJDP Act formula grant funds or may not be eligible for FY 1991 JJDP Act formula grant funds. The jail removal provision of the Act requires the removal of all juveniles from adult jails and lockups by December 8, 1988. This requirement excepts only those juveniles formally waived or transferred to criminal court and against whom criminal felony charges have been filed or juveniles over whom a criminal court has original or concurrent jurisdiction and such court's jurisdiction has been invoked through the filing of criminal felony charges.

Since passage of the Amendment, the OJJDP has conducted several programs to assist with the development of effective alternatives for states and communities to use in establishing jail removal strategies. From these efforts it has been to use in establishing jail removal strategies. From these efforts it has been determined that states and communities successful with jail removal share a common pattern of success. It was also determined that some combination of the following nine elements are essential to achieving jail removal:

1. Nonsecure Alternatives

Secure juvenile detention is not the only appropriate placement option for youths who are being held in jails, and for many youths it is totally inappropriate. Communities that recognize this and develop a network of alternatives to secure detention are better equipped to meet their jail removal goals. In addition, sites with nonsecure alternatives are able to make better use of available resources, and consequently can rely less on secure detention, which is generally two to three times more expensive than nonsecure alternatives.

2. Access to Secure Juvenile Detention

Even when nonsecure options are available, a community must provide for serious offenders who pose a threat to public safety and thus require some sort of secure placement. If the only secure settings available are adult jails and lockups, then jailings will most likely continue. Communities that cannot afford to build a secure facility can usually avoid having to jail serious offenders by arranging purchase-of-care agreements with other counties. For many rural areas, purchase-of-care agreements are the most important components of their systems. It is possible to reduce reliance on secure detention, but it is not possible to eliminate it.

3. Objective Detention Criteria

There must be, at the heart of a community's removal plan, a set of detention criteria that local officials have approved and adopted. These criteria must be designed to provide specific and objective guidelines for each placement referral. The more these guidelines emphasize verifiable information such as offense and court history, the more likely are the chances that each case will be handled equitably and that only those youths who require secure custody would be placed in secure detention.

4. Twenty-four Hour Intake

To insure that intake guidelines will be applied consistently, formal, centralized intake services must be available on a 24-hour basis, and must be staffed by trained personnel. For most communities, 24-hour services can be provided fairly economically through "on call" staffing arrangements.

Police can bring a youth to the unit where intake staff make all placement decisions according to objective detention criteria. Whenever intake staff fail to control all placement decisions, chances are much greater that there will be a large number of unscreened jailings.

5. Commitment from the Community

Local officials need to make an active commitment to the goals of jail removal if a jail removal program is to succeed. Whenever youths are taken into custody, usually a variety of agencies and individuals have contact with them, including law enforcement officials, juvenile judges, probation officers, detention center directors, and intake personnel. If any one of these individuals or agencies fails to endorse the jail removal program, then jailings will most likely continue.

6. Written Policies and Procedures

Carefully written policies and procedures do not in themselves prevent juvenile jailings, since formal guidelines can of course be ignored. Written guidelines indicate a commitment to efficiency and consistency in a program. They also represent effective administration of a program. Written guidelines convey a commitment to a general philosophy as well, and perhaps even more important, they articulate clearly the reasons for doing things in certain ways. Communities that take the time to develop written policies and procedures often avoid problems which less successful ones can not overcome, simply because their personnel have specific guidelines to follow for most situations.

7. An Effective Monitoring System

It is not enough to simply implement removal plans and then wait for the results. Removal strategies must be modified periodically as problems occur, circumstances change, and obstacles appear. Communities that actively monitor their programs from the start are generally able to identify problem areas more quickly and adjust their policies on an as-needed basis, while sites without effective monitoring programs often realize the magnitude of their problems only after it is too late to solve them.

8. State and Local Sponsorship and Funding

State and local funds and personnel to administer jail removal programs help increase confidence in the program, and insure that those most directly affected by the program will understand and support it. The more state and local officials take an interest in jail removal, the more actively they will support a jail removal program, and consequently the more successful the program will be. The same holds true for the amount of state and local funding pledged to a project. It increases the incentive for making the project succeed and helps win support for jail removal.

9. Legislation

The adoption of enforceable legislation mandating jail removal is one of the best means of assuring that juveniles will not be admitted to jails in any jurisdiction in the state. The development, passage, and enforcement of such legislation may involve all eight of the previously described points. Jail removal legislation may include standards for the detention of children that require intake criteria, twenty-four hour intake screening, the use of the least restrictive alternative, and the prohibition against jailing children. Essential to such legislation is the vesting of authority for enforcement and specification of sanctions for violations.

States participating in this initiative will utilize these nine point criteria as an assessment and strategy development tool to guide them in implementing their jail removal strategy.

II. Program Goals And Objectives

The goal of the program is to enhance the capacity of states to achieve full compliance, by December 8, 1988, with the Jail Removal Provision, section 223(a)(14) of the JJDP Act, as amended. The objective of the program is to provide funds to selected States to develop and implement a statewide jail removal strategy. In some states this will mean strengthening a strategy already developed, while in others it will mean developing a new strategy. Funds are only available at this time to fund approximately 20 of the eligible States.

III. Program Strategy

Implementation of this initiative by the participating states will be accomplished in two successive steps: (1) Identification of current barrirs to compliance and strategy development; and, (2) strategy implementation. The strategy must incorporate a discussion about how some combination of the nine point criteria, set forth in Section I above, will be accomplished in order to achieve full compliance. Each step of the incremental process is designed to result in removing juveniles from adult jails and lockups.

Within 90 days of grant award, each grantee must complete a detailed jail removal strategy in relation to the barriers to jail removal and workplan. The strategy must be designed to bring the state into full compliance by December 8, 1988. Technical assistance and training in development and implementation of the strategy will be available from Community Research Associates. The technical assistance and training provided will transfer knowledge about effective strategies used by States that have already achieved full compliance with the jail removal requirement.

In addition, each grantee will be required to utilize its State Advisory Group (SAG), pursuant to section 223(a)(3) of the Act, or a Board, committee, or SAG subcommittee appointed or approved by the SAG, to participate in the analysis and development of all aspects of the Jail Removal Strategy.

IV. Eligibility Criteria

Eligible applicants include only those State agencies which have sole responsibility for administration of the Formula Grant Program under section 224(a)(1) of the JJDPAct, *and* where full compliance with section 223(a)(14), the Jail Removal Provision, has not or will not be demonstrated in their 1986 Monitoring Report which was due to OJJDP on December 31, 1986. Excluded from eligible states are those who did not achieve substantial compliance but were notified by OJJDP that they are expected to achieve full compliance with *de minimis* exceptions early in 1988. Eligible States are identified in Appendix 1. A public or private-not-for-profit organization designated and approved by the State agency administering the Formula Grant Program will also be an eligible applicant for this program. Documentation of the designation or approval must be submitted with the application.

V. Dollar Amount and Duration

Up to $50,000 has been allocated for each state award. One grant will be awarded per state and the budget period will be for 15 months. No additional funding will be available to successful applicants.

VI. Application Requirements

Eligible State agencies are required to submit:

1. A completed federal application, form 424, including assurances.

2. In Part IV, Program Narrative, of the Standard 424, the applicant will be judged on the description of prior efforts since 1980 to achieve jail removal, inclusive of allocation of formula funds to support Jail Removal, attempts to pass legislation, development of detention criteria, etc. The applicant will be evaluated on the brief description of the barriers that exist within the state to achieving full compliance with jail removal. The analysis of these barriers should utilize the nine criteria set forth in Section I above. In addition, the applicant will be judged on the proposed strategy outlined for overcoming these barriers, identifying a combination of the nine criteria listed in Section I above which will be used in order to overcome the barriers or problems preventing jail removal in the applicant's state, and identify the resources beyond this grant which will be used. All nine criteria may not apply and applicants are expected to determine what combination will impact the barriers in their State.

The applicant will be evaluated on the following:

(a) A schedule of proposed activities and an estimated timetable to complete each activity of the project; and,

(b) A summary budget which indicates to what extent funds under the grant will be utilized for planning versus implementation of the proposed strategy.

The narrative should not be more than 10 pages in length.

Within 90 days of the award the recipient agency will submit a detailed program implementation plan which does the following:

(1) Details a strategy for overcoming the barriers to achieving full compliance with jail removal;

(2) Outlines clearly and concisely how the major activities will be accomplished in implementing the jail removal effort;

(3) Displays an annotated organizational chart depicting the roles and responsibilities of staff;

(4) Outlines a detailed time task plan for the 15 month project period; and,

(5) Outlines a detailed budget which fully justifies all costs.

VII. Procedures and Criteria for Selection

Applications will be logged by time and date of arrival, and subsequently screened to determine if: (1) The applicant is eligible; and, (2) qualified for funding by virtue of having submitted a full application, inclusive of all elements identified in Section VI of this solicitation. Those applications which meet these requirements will be evaluated by a peer review panel according to the OJJDP Competition and Peer Review Policy, 28 CFR Part 34, Subpart B, published August 2, 1985 at 50 FR 31366–31367. Applications will be selected for funding based upon the order of receipt, if they are determined by the Peer Review Panel to have satisfactorily met the evaluation criteria listed below:

1. Nature of barriers to be overcome have been identified and are clearly described.

2. The efforts to achieve jail removal since 1980 have been substantial.

3. The proposed strategy includes a combination of the nine criteria, and has merit with respect to overcoming the stated barriers.

4. The summary program implementation plan is clear and appropriate to the tasks identified.

VIII. Submission Requirements

All applicants responding to this solicitation should be aware of the following requirements for submission:

1. Applicants must submit the original signed application and three copies to OJJDP. The necessary forms for application (Standard Form 424) and a copy of the Program Announcement will be mailed to the eligible State agencies by OJJDP. Applications will be funded in the order that they are received, but all applications must be received by September 15, 1987, when no further applications will be accepted. Those applications sent by mail should be addressed to Frank Porpotage, SED/OJJDP, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531. Hand delivered applications must be taken to the OJJDP, Room 758, 633 Indiana Avenue, NW., Washington, DC 20531, between the hours of 8:00 a.m. and 5:00 p.m. except Saturdays, Sundays or Federal holidays.

2. The OJJDP will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their submission will be recommended for funding. It is anticipated that the grants may be awarded as early as September 30, 1987.

IX. Civil Rights Compliance

A. All recipients of OJJDP assistance must comply with the non-discrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974 as amended; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations (28 CFR Part 42 Subparts C, D, E, and G).

B. In the event a Federal or State court, or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (OCRC), of the Office of Justice Programs.

C. Applicants shall maintain such records and submit to the OJJDP upon request timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in, benefits of, or denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s), such other recipient, person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under any grant award.

Verne L. Speirs,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

Appendix 1—List of Eligible States

Alabama
Alaska
Arkansas
California
Colorado
District of Columbia
Florida
Georgia
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Mexico
North Carolina
Ohio
Oklahoma
Rhode Island
South Carolina
Tennessee
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Trust Territories
Northern Mariana Islands

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federal register

Tuesday
August 18, 1987

Part IV

Department of Energy

10 CFR Part 600
Financial Assistance: Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 600

Financial Assistance

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) today proposes a comprehensive revision of Subpart C of the DOE Financial Assistance Rules, 10 CFR Part 600, and conforming and technical amendments to Subparts A and B. The proposed amendments update and clarify the policy and procedural requirements that apply to cooperative agreements.

The proposed rule would be a generic rule, providing a uniform baseline for DOE cooperative agreement use and administration, and would substantially revise DOE's policies and procedures for cooperative agreements. While the existing rule provides application, funding, and administrative requirements which are derived from both assistance and acquisition policies and procedures, the proposed rule is primarily based upon Government-wide assistance policies and procedures. As a result, the proposed application, funding, and administrative requirements for cooperative agreements (Subpart C) are essentially the same as those for grants (Subpart B).

DATE: Written comments on the proposed rule must be received by close of business October 19, 1987.

ADDRESS: All written comments should be addressed to Department of Energy, Procurement and Assistance Management Directorate, Office of Policy (MA–42), 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Cherlyn Seckinger, Procurement and Assistance Management Directorate (MA–422), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9737

Paul Sherry, Office of the Assistant General Counsel for Procurement and Finance (GC–34), Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–1526

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

On July 8, 1980, the Department of Energy (DOE) published a final rule establishing specific procedures and requirements for the award and administration of cooperative agreements (45 FR 46044). These rules were codified at 10 CFR Part 600, Subpart C. Subparts A and B of those rules, covering general financial assistance policies and procedures and specific policies and procedures for grants, had been published on March 8, 1979 (44 FR 12920).

On October 5, 1982, DOE published a final rule which revised and superseded Subparts A and B and amended Subpart C to conform with the revised Subparts A and B (47 FR 44076). Subsequently, on August 7, 1984, DOE made additional conforming amendments to Subpart C (49 FR 31390). Today's proposed revision of Subpart C will supersede the existing Subpart C, as amended, in its entirety.

II. Proposed Rule

A. Introduction

Proposed Subpart C sets forth the instrument selection, application, funding, administrative, and other requirements for cooperative agreements.

DOE may award cooperative agreements if there is a specific statutory authority which authorizes DOE to accomplish a public purpose of support or stimulation in carrying out a program or mission or on the basis of the generic authority in the DOE Organization Act. The decision to use the cooperative agreement instrument will require a written determination that substantial involvement is anticipated between DOE and the participant during performance of the contemplated activity.

The comprehensive revision of Subpart B of 10 CFR Part 600, published on October 5, 1982 (47 FR 44076), generally extended coverage of Office of Management and Budget (OMB) Circular A–110 to all grant recipients other than those covered by OMB Circular A–102, regardless of type. This action was taken primarily in the interest of achieving uniformity of administrative requirements to the extent possible. The effect of extending coverage of OMB Circular A–110 provisions to all grant recipients (including commercial organizations) other than those covered by OMB Circular A–102 was to assure that administrative requirements placed on grant recipients other than State and local governments not vary simply on the basis of recipient type. DOE believes the same to be true in regard to cooperative agreement recipients and therefore believes that similar extension of the coverage of OMB Circular A–110 to all cooperative agreement participants other than those covered by A–102 is appropriate.

B. Conforming and Technical Amendments to Subparts A and B

Sections 600.4, 600.6, 600.9, 600.10, 600.14, 600.19, 600.25, 600.26, 600.107 and 600.118 are amended, in part, to conform to the changes proposed in Subpart C, to clarify policy and procedural requirements pertaining to Program Opportunity Notices (PON), preapplications and cost sharing, and to implement the Government-wide patent provisions of Pub. L. 98–620 and 37 CFR Part 401.

Section 600.6(a)(3) specifies that the procedures set forth in 48 CFR 917.72 as supplemented by the solicitation and application provisions of §§ 600.9 and 600.10 shall be used when the PON is selected as the solicitation method for financial assistance. This revision establishes a uniform preaward process for a PON intended to result in a financial assistance award(s), regardless of whether the award will be a grant or a cooperative agreement.

Section 600.10 requires a preapplication for all construction, land acquisition, and land development projects or programs when Federal funding exceeds $100,000 unless a written program determination is made waiving the preapplication requirement. The preapplication is a much shorter and less detailed document than an application for such projects. Although the preapplication requirement is derived from OMB Circular A–102 for State and local governments, we believe the requirement should also be extended to applicants other than State and local governments because it reduces the paperwork burden for those applicants whose projects are eliminated during the preapplication phase.

Section 600.107 clarifies the existing provisions for cost sharing which require DOE to specify, in the solicitation or in the program rule, if any, and in the award document, the minimum amount or percentage of any required cost sharing. The revision requires DOE to specify the cost sharing requirement in the solicitation or program rule, but does not require DOE

to express the cost sharing requirement in these documents in terms of a minimum amount or percentage of total costs. This change gives DOE flexibility in negotiating the amount of cost sharing for an award when there is no statutory requirement specifying a minimum amount or percentge. DOE will, however, still be required in the award document to specify the cost sharing requirement in terms of a minimum amount for the recipient or a percentage of total costs.

Section 600.118 is amended to make the DOE patent provisions for small business firms or nonprofit organizations consistent with 37 CFR Part 401, the Department of Commerce regulations which have Government-wide applicability.

C. Proposed Requirements for Cooperative Agreements—Subpart C

Proposed § 600.200 sets forth the scope and applicability of Subpart C and indicates that the requirements of this subpart pertaining to the award and administration of cooperative agreements shall apply to any solicitation and resulting award issued on or after the effective date of this subpart, and to any new award resulting from an unsolicitated application, and to any continuation, or renewal award with a beginning date on or after the effective date of this subpart, except as otherwise provided by Federal statute or program rule.

Proposed § 600.201 states that the definitions contained in § 600.101 except for "formula grant" and "subgrant" shall apply to all cooperative agreements. The term "participant" has been added to this section and is defined as the recipient of a cooperative agreement award.

Proposed paragraph 600.202(a) states that a cooperative agreement will be selected as the award instrument when DOE determines in accordance with the Federal Grant and Cooperative Agreement Act (Act), Pub. L. 97-258, that the principal purpose of the relationship is assistance and anticipates that there will be substantial involvement between DOE and the participant during performance of the contemplated activity.

Proposed paragraph 600.202(b) defines substantial involvement and makes a distinction between programmatic and administrative involvement.

DOE believes that an agency of the Federal Government and a participant become substantially involved, within the spirit and intent of the Act, when they share the responsibilities and authorities for conducting or performing the specific activity(ies) for which funds were awarded. DOE does not feel that the addition of administrative requirements which exceed or augment those set forth in OMB Circulars A-102 or A-110, such as requirements added pursuant to Paragraph 10 of OMB Circular A-102 or Paragraph 9 of OMB Circular A-110, as implemented by DOE, automatically necessitate use of a cooperative agreement. DOE views such requirements as heightened Federal monitoring, not as substantial involvement between the parties. DOE believes that substantial involvement between DOE and the participant during performance of the contemplated activity is an assumption by DOE of project responsibilities or authorities which would reside in the recipient only under a grant and that it is the need to share in those responsibilities or authorities with the participant that distinguishes a cooperative agreement relationship from a grant relationship.

Proposed § 600.202(b)(1) states that substantial involvement between DOE and the participant during performance of the activity would exist when DOE shares responsibility for the conduct or performance of the project with the participant, or has the right to intervene in the conduct or performance of the project.

Proposed § 600.202(b)(2) states that technical assistance or guidance of a programmatic nature would not constitute substantial involvement between DOE and the recipient during performance of the contemplated activity if the recipient is not required to follow such guidance or if the technical assistance or guidance is provided at the request of the recipient and is not expected to result in continuing involvement by DOE in the performance of the project.

Proposed § 600.202(b)(3) states that technical assistance or guidance which pertains to the administrative requirements of the award would not constitute substantial involvement.

Proposed § 600.203 permits DOE to obtain budgetary information in addition to that specified in §§ 600.10 and 600.206 for applications submitted in response to solicitations covered by the Source Evaluation Board (SEB) process except for applications submitted by State, local, and Indian tribal governments.

Proposed § 600.204 sets forth the basis for determining whether a grant should be converted to a cooperative agreement or a cooperative agreement to a grant.

Proposed paragraph § 600.(a) provides that DOE would be able to unilaterally decide to convert a grant to a cooperative agreement only when DOE anticipates it will be substantially involved in the performance of the project for a period of at least twelve months after the end of the current budget period. DOE would provide the recipient notice of its intent to convert from a grant to a cooperative agreement at least sixty days prior to the expiration date of the current budget period. If, at the time of negotiation of the continuation award, renewal award, or extension, the recipient does not agree to the conversion, the recipient's refusal to agree would be the basis for not making a continuation, renewal award, or extension and the recipient would not have a right of appeal under § 600.26 (Subpart A). If the recipient does not take exception to the conversion during negotiations, but refuses to accept the cooperative agreement award, DOE would deobligate the funds obligated by the award in accordance with § 600.22 (Subpart A). However, a grant may be converted to a cooperative agreement at any time after award if both parties agree to the conversion.

Proposed paragraph § 600.204(b) provides that a cooperative agreement may be converted to a grant after award if DOE determines that substantial involvement between DOE and the participant is not necessary during performance of the activity as was anticipated in the award document. This action shall be accomplished by a bilateral amendment.

DOE is proposing in § 600.205 to make the application, funding, and administrative requirements for grants as contained in Subpart B of 10 CFR Part 600 applicable to cooperative agreements except for the patents, data, and copyright light provisions. DOE believes that these generic requirements for grants and cooperative agreements should be the same because both instruments represent financial assistance relationships. As stated earlier, a cooperative is different from a grant only because of the substantial Federal involvement in the performance of the project, which is based upon programmatic rather than generic administrative considerations.

Proposed § 600.206 specifies the cost sharing requirements for cooperative agreements. In addition to the requirements of § 600.107, DOE will continue to require cost sharing under cooperative agreements for research, development, and demonstration purposes when it is reasonable to expect that the participant will receive significant present or future benefits beyond the instant award.

Proposed § 600.207 provides patents, data, and copyright clauses applicable

to cooperative agreements. Full text clauses applicable to small business firms are contained in 10 CFR 600.118. Coverage applicable to large business firms has been included in this section for the first time.

III. Review Under Executive Order 12291

In accordance with the requirements of Executive Order 12291 (46 FR 13193, February 27, 1981), this rulemaking has been reviewed by DOE. DOE has concluded that the rule is not a "major rule" because its promulgation will not 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 United States based enterprises to compete in domestic or export markets. Pursuant to the requirements of the Executive order, DOE submitted to OMB the proposed rule for review. The OMB has concluded its review.

IV. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, 94 Stat. 1164, which requires preparation of a regulatory flexibility analysis for any rule that is likely to have a significant economic impact on a substantial number of small entities. The proposed rule does not impose any new administrative requirements on small entities that are small government jurisdictions or small nonprofit organizations. These entities will continue t be convered by the administrative requirements of OMB Circulars A–102 and A–110. Small businesses will be affected by the proposed rule only as eligible recipients of cooperative agreement awards. Since DOE is proposing to lessen the administrative requirements imposed on such recipients, DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities, and no regulatory flexibility analysis has been prepared.

V. Review Under the Paperwork Reduction Act

The information collection and recordkeeping requirements imposed by this rule are subject to the provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 94 Stat. 2812 (44 U.S.C. Chapter 3501 *et seq.*). Except for Subpart D of the Part, Audit Requirements for State and Local Governments, the information and recordkeeping requirements imposed by this rule have been cleared by OMB for DOE use under OMB Clearance number 1910–0400. A control number to be issued by OMB for information collections under OMB Circular A–128 will apply to the information collection and recordkeeping requirements imposed by Subpart D. Comments on information collection and recordkeeping requirements may be submitted to:

Mr. Vartkes Broussalian, Department of Energy, Desk Officer, Office of Management and Budget (OIRA), Room 3001, NEOB, Washington, DC 20503, (202) 586–7313

and to:

Mr. Howard H. Raiken, Director, Management Systems Analysis Division (MA–213), U.S. Department of Energy, Washington, DC 20585, (202) 586–9383

VI. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.* (1976)), the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508), and the DOE guideline (10 CFR Part 1021) and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

VII. Public Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed changes set forth in this notice. Comments should be submitted in writing to the address indicated in the **"ADDRESS"** section of this notice. All comments received will be available for public inspection in the DOE Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by October 19, 1987, will be fully considered prior to publication of a final rule resulting from this proposal.

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule will not have a substantial impact on the nation's economy or a large number of individuals or businesses. Therefore, pursuant to Pub. L. 95–91, the DOE Organization Act, the Department does not plan to hold a public hearing on this proposed rule.

List of Subjects in 10 CFR Part 600

Administrative practice and procedure, Applications, Audit, Cooperative agreements/energy, Copyrights, Educational institutions, Eligibility, Energy financial assistance, For-profit organizations, Grants, Hospitals, Indian tribes, Individuals, Inventions and patents, Local governments, Management standards, Nonprofit organizations, Patents, Reporting requirements, Solicitations, Small businesses, States, Technical data, Uniform administrative requirements.

Issued in Washington, DC, August 11, 1987.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

For the reasons set out in the preamble, Part 600 of Title 10 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 600—[AMENDED]

1. The authority citation for Part 600 continues to read as follows:

Authority: Secs. 644 and 646, Pub. L. 95–91, 91 Stat. 599, (42 U.S.C. 7254 and 7256); Pub. L. 97–258, 96 Stat. 1003–1005 (31 U.S.C. 6301–6308).

2. The table of contents for Subpart C of Part 600 is revised to read as follows:

Subpart C—Cooperative Agreements

Sec.

Subpart A—[Amended]

3. In Part 600, Subpart A, "Head of Procuring Activity" should be changed to read "Head of Contracting Activity."

4. In part 600, Subpart A, "Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224 (41 U.S.C. 501 *et seq.*)" should be changed to read "Federal Grant and Cooperative Agreement Act", Pub. L. 97–258 (31 U.S.C. 6301–6308)."

5. Section 600.4 (c)(2)(i) and (c)(3) are to revised as follows:

§ 600.4 Deviations.

* * * * *

(c) * * *

(2) * * *

(i) A single-case deviation may be authorized by the responsible Head of Contracting Activity (HCA). Any proposed single-case deviation from the requirements of § 600.118 or § 600.208 concerning patents or technical data shall be referred to the Assistant General Counsel for Patents for review and concurrence prior to submission to the HCA.

* * * * *

(3) Whenever the approval of OMB, other Federal agency, or other DOE office is required to authorize a deviation, the proposed deviation must be submitted to the Director or designee for concurrence prior to submission to the authorizing official. Any proposed class deviation from the requirements of § 600.118 or § 600.208 concerning patents or technical data shall be forwarded through the Assistant General Counsel for Patents.

* * * * *

6. Section 600.6 is amended by revision paragraph (a)(3) and by adding paragraph (a)(4).

§ 600.6 Discretionary awards.

(a) * * *

(3) Applications submitted in response to a Program Opportunity Notice (PON) (see 48 CFR 917.72 for the submission, evaluation, and selection procedures to be used for a PON. When it is anticipated that a PON will result in a financial assistance award(s), the procedures in 48 CFR 917.72 shall be supplemented by the provisions set forth in §§ 600.9 and 600.10 to cover those solicitation and application requirements which are specific to financial assistance and for which there is no alternate coverage in 48 CFR 917.72; e.g., presubmission reviews and clearances, preaward assurances, etc.).

(4) Applications submitted in response to a Program Research and Development Announcement (see 48 CFR 917.73) if, after an application is selected for award, DOE determines that a grant or cooperative agreement is the appropriate award instrument.

* * * * *

7. Section 600.9(c)(19) is revised to read as follows:

§ 600.9 Solicitation.

* * * * *

(c) * * *

(19) A statement that DOE is under no obligation to pay for any costs associated with preparation or submission of applications if an award is not made. If an award is made, such costs may be allowable as provided in the applicable cost principles (see § 600.103);

* * * * *

8. Section 600.10 is revised to read as follows:

§ 600.10 Form and content of applications and preapplications.

(a) *General.* Applications shall be required for all financial assistance projects or programs. Preapplications shall be required for all construction, land acquisition, and land development projects or programs for which the need for Federal funding exceeds $100,000 unless the cognizant program office makes a written program determination to waive the preapplication requirement.

(b) *Forms.* Applications or preapplications shall be on the form or in the format and in the number of copies specified by DOE either in this Part, in a program rule, or in the applicable solicitation, and must include all required information. For State governments, local governments, or Indian tribal governments, applications shall be made on the forms prescribed by OMB Circular A–102, Attachment M. Such applicants shall not be required to submit more than the original and two copies of the application or preapplication.

(c) *Signature.* The application and any preapplication must be signed by the individual who is applying or by an individual who is authorized to act for the applicant organization and to commit the applicant to comply with the terms and conditions of the financial assistance instrument, if awarded.

(d) *Contents of a preapplication.* In general, a financial assistance preapplication shall include:

(1) A facesheet containing basic identifying information. The facesheet shall be the Standard Form (SF)424;

(2) A brief narrative statement describing the project objectives and method of accomplishment; and

(3) A project budget identifying the estimated amounts of Federal funds and non-federal contributions (cash or in-kind) needed to support the project.

(e) *Contents of an application.* In general, a financial assistance application shall include:

(1) A facesheet containing basic identifying information. The facesheet shall be the Standard Form (SF)424;

(2) A detailed narrative description of the proposed project, including the objectives of the project and the applicant's plan for carrying it out;

(3) A budget with supporting justification (see §§ 600.102 and 600.203); and

(4) Any required preaward assurances.

(f) *Incomplete applications.* DOE may return an application which does not include all information and documentation required by statute, program rule, and the solicitation, if in the judgment of the DOE Contracting Officer, the nature of the omission precludes review of the application.

(g) *Supplemental information.* During the review of a complete application, DOE may request the submission of additional information only if the information is essential to evaluate the application.

9. Section 600.14(e)(2) is revised as follows:

§ 600.14 Unsolicited applications.

* * * * *

(e) * * *

(2) Any request for continuation, renewal, or supplemental funding of a project which was originally funded as the result of an unsolicited application shall be evaluated in the same manner as any other request for such funding and shall not be subject to the selection criterion of paragraph (e)(1)(ii) of this section.

* * * * *

10. Section 600.19 is revised as follows:

§ 600.19 Application evaluation and selection.

(a) Applications for discretionary financial assistance, whether solicited or unsolicited, shall be evaluated by reviewers in accordance with this rule, DOE directives, and the terms and conditions of the solicitation, if any.

(b) In deciding which new applications (other than unsolicited applications) or renewal applications for discretionary financial assistance to select for award, DOE shall consider the results of the application evaluation (technical, business and financial) which has been conducted in accordance with this section, plus any intergovernmental review comments (see § 600.11), or other available advice or information as well as published program policy factors, if any. The selection of applications under any given solicitation shall be made by responsible program Assistant Secretary or his or her designee; however, the Secretary may make selections of applications submitted in response to solicitations where, in accordance with applicable DOE directives, such selection is required to be made by the Secretary.

(c) Program policy factors are factors which the selection official may use to select a range of projects that would best serve program objectives. DOE

shall describe in the solicitation any program policy factor that may be used in making selections, the justification for its use and, if appropriate, the relative priority of each such factor. Examples of program policy factors are:

(1) Geographic distribution;
(2) Diverse types and sizes of applicant entities;
(3) A diversity of methods, approaches, or kinds of work; and
(4) Projects which are complementary to other DOE programs or projects.

(d) After the selection of an application, DOE may, if necessary, enter into negotiations with an applicant. Such negotiations are not a commitment that DOE will make an award.

(e) For cooperative agreements, DOE may use the source evaluation board (SEB) process (see DEAR 915.613) for the solicitation and evaluation of applications and selection of awardees.

(f) See § 600.106 for the selection process for continuation applications and § 600.14 for the selection process for unsolicited applications.

11. Section 600.25(d) is revised to read as follows:

§ 600.25 Access to records.

* * * * *

(d) *Duration of access right.* The rght of access may be exercised for as long as the applicable records are retained by the recipient, subrecipient, contractor, or subcontractor. (See § 600.124 for record retention requirements).

12. Section 600.26(d)(1) (iii), (iv) and (v) are revised to read as follows:

§ 600.26 Disputes and appeals.

* * * * *

(d)(1) * * *

(iii) DOE denial of a request for a budget revision or other change in the approved project under §§ 600.103 and 600.114 of this part or under another term or condition of the award;

(iv) Any DOE action authorized under § 600.121(b) (1), (2), (3), or (5) of this part with respect to recipient noncompliance, or such actions authorized by program rule;

(v) Any DOE decision about an action requiring prior DOE approval under § 600.112(g) or § 600.119 of this part or under another term or condition of the award;

* * * * *

13. Section 600.107(a) is revised as follows:

§ 600.107 Cost sharing.

(a) *General.* DOE shall specify in the solicitation or in the program rule, if any, any cost sharing requirement. The award document shall be specific as to whether the cost sharing is based on a minimum amount for the recipient or on a percentage of total costs.

* * * * *

14. Section 600.118(b)(1) is revised as follows:

§ 600.118 Patents, data and copyrights.

* * * * *

(b) * * *

(1) *Patent Rights (Small Business Firm or Nonprofit Organization).* This clause shall apply to grants to small business firms and domestic nonprofit organizations where such grants have as a purpose the conduct of experimental, developmental, demonstration, or research work and where the small business firm or domestic nonprofit organization states in writing that it qualifies as a small business firm or domestic nonprofit organization. In exceptional circumstances, DOE may, as determined by Patent Counsel, use a patent rights clause other than the clause specified in this paragraph (b)(1). Exceptional circumstances have been declared for classified subject matter, high level radioactive waste, and uranium enrichment. In addition, if the particular grant is affected by an international agreement or treaty, special provisions are to be included in the clause specified herein.

Patent Rights—Small Business Firm or Nonprofit Organization

(a) Definitions. (1) "Invention" means a any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code (U.S.C.) or any novel veriety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

(2) "Subject Invention" means any invention of the grantee conceived or first actually reduced to practice in the performance of work under this grant, provided that in the case of a variety of plant the date of determination (as defined in section 44(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of grant performance.

(3) "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

(4) "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) "Small Business Firm" means a small business concern as defined at Section 2 of Pub. L. 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standard for small business concerns involved in Government procurement and subcontracting, at 13 CFR 121.3–8 and 13 CFR 121.3–12, respectively, will be used.

(6) "Nonprofit Organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(7) "Patent Counsel" means the Department of Energy (DOE) Patent Counsel assisting the DOE contracting activity.

(b) Allocation of principal rights. (1) The grantee may retain the entire right, title and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the grantee retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(2) (Reserved.)

(c) Invention disclosure, election of title and filing of patent application by grantee. (1) The grantee will disclose each subject invention to the Patent Counsel within two months after the inventor discloses it in writing to grantee personnel responsible for patent matters. The disclosure to the Patent Counsel shall be in the form of a written report and shall identify the grant under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time to the disclosure of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Patent

Counsel, the grantee will promptly notify the Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the grantee.

(2) The grantee will elect in writing whether or not to retain title to any such invention by notifying the Patent Counsel within two years of disclosure to the Patent Counsel. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by Patent Counsel to a date that is no more than sixty days prior to the end of the statutory period.

(3) The grantee will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The grantee will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to the Patent Counsel, election, and filing, under subparagraphs (1), (2), and (3) may, at the discretion of the Patent Counsel be granted.

(d) Conditions when the Government may obtain title. The grantee will convey to the DOE, upon written request, title to any subject invention:

(1) If the grantee fails to disclose or elect title to the subject invention within the times specified in (c) above, or elects not to retain title; provided that the DOE may only request title within 60 days after learning of the failure of the grantee to disclose or elect within the specified times;

(2) In those countries in which the grantee fails to file patent applications within the times specified in (c) above; provided, however, that if the grantee has filed a patent application in a country after the time specified in (c) above the prior to its receipt of the written request of the Patent Counsel, the grantee shall continue to retain title in that country; or

(3) In any country in which the grantee decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(e) *Minimum rights to grantee and protection of the grantee right to file.* (1) The grantee will retain a nonexclusive, royalty-free license throught the world in each subject invention to which the Government obtains title except if the grantee fails to disclose the subject invention within the times specified in (c) above. The grantee's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the grantee is a part and includes the right to grant sublicenses of the same scope to the extent the grantee was legally obligated to do so at the time the grant was awarded. The license is transferable only with the approval of DOE except when transferred to successor of the part of the grantee's business to which the invention pertains.

(2) The grantee's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and 10 CFR Part 781. This license will not be revoked in that field of use or the geographical areas in which the grantee has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the grantee, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, DOE will furnish the grantee a written notice of its intention to revoke or modify the license, and the grantee will be allowed thirty days (or such other time as may be authorized by DOE for good cause shown by the grantee) after the notice to show cause why the license should not be revoked or modified. The grantee has the right to appeal, in accordance with 37 CFR Part 404 and 10 CFR Part 781, any decision concerning the revocation or modification of its license.

(f) *Grantee action to protect the Government's interest.* (1) The grantee agrees to execute or to have executed and promptly deliver to the Patent Counsel all instruments necessary to:

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions to which the grantee elects to retain title, and

(ii) Convey title to DOE when requested under (d) above and to enable the Government to obtain patent protection throughout the world in the subject invention.

(2) The grantee agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the grantee each subject invention made under this grant in order that the grantee can comply with disclosure provisions of (c) above and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information required by (c)(1) above. The grantee shall instruct such employees through the employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to United States or foreign statutory bars.

(3) The grantee will notify the Patent Counsel of any decision not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty days before expiration of the response period required by the relevant patent office.

(4) The grantee agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement "This invention was made with Government support under (identify the grant) awarded by the Department of Energy. The Government has certain rights in this invention."

(5) The grantee agrees to:

(i) Upon request, provide a report prior to the close-out of the grant listing all subject inventions or stating that there were none;

(ii) Provide, upon request, a copy of the patent application, filing date, serial number and title, patent number and issue date for any subject invention in any country in which the grantee has applied for a patent; and

(iii) Provide upon request, but not more than annually, listings of all subject inventions which were disclosed to DOE during the applicable reporting period.

(g) Contracts and Subgrants under the Grant. (1) The grantee will include this clause, suitably modified to identify the

parties, in all contracts and subgrants under the grant, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or a domestic nonprofit organization. The contractor or subgrantee will retain all rights provided for the grantee in this clause, and the grantee will not, as part of the consideration for awarding the contract or subgrant, obtain rights in the contractor's or subgrantee's subject inventions.

(2) The grantee will include in all other contracts or subgrants under the grant, regardless of tier, for experimental, development, demonstration or research work the patent rights clause of 41 CFR 9–9.107–5(a) or 9–9.107–6 as appropriate, modified to identify the parties.

(3) In the case of a contract or subgrant under the grant at any tier, DOE, the contractor or subgrantee, and the grantee agree that the mutual obligations of the parties created by this clause constitute a contract between the contractor or subgrantee and DOE with respect to those matters covered by this clause.

(h) Reporting on utilization of subject inventions. The grantee agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the grantee or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the grantee, and such other data and information as DOE may reasonably specify. The grantee also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without permission of the grantee.

(i) Preference for United States industry. Notwithstanding any other provision of this clause, the grantee agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the grantee or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in-rights. The grantee agrees that with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of DOE to require the grantee, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are responsible under the circumstances, and if the grantee, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that:

(1) Such action is necessary because the grantee or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the grantee, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the grantee, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a license of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special provisions for grants with nonprofit organizations. If the grantee is a nonprofit organization it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of DOE, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the grantee;

(2) The grantee will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when DOE deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the grantee with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the grantee determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided that the grantee is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the grantee. However, the grantee agrees that the Secretary of Commerce may review the grantee's licensing program and decisions regarding small business applicants, and the grantee will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary of Commerce's review discloses that the grantee could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).

(l) Communications. The DOE central point of contact for communications or matters relating to this clause is the Patent Counsel.

* * * * *

15. Subpart C is proposed to be revised as follows:

Subpart C—Cooperative Agreements

§ 600.200 Scope and applicability.

(a) This subpart establishes requirements for the award and administration of cooperative agreements. For purposes of this subpart, the terms "grant" and "grantee" as used in Subpart B of this part shall be read as "cooperative agreement" and "participant" when incorporated by reference in this subpart. For cooperative agreements and subawards, this subpart implements OMB Circulars A–102, A–110, and the Federal cost principles.

(b) The requirements of this subpart shall apply as indicated in § 600.2 except that this subpart shall not apply to any new award resulting from a solicitation issued before the effective date of this subpart.

(c) The noncompliance procedures of § 600.121 and the suspension and termination procedures of § 600.122 which are specified for cooperative agreement use in § 600.206 shall apply, with the concurrence of the affected parties, to any applicable action initiated before the effective date of this subpart and shall apply to any applicable action initiated after the effective date of this subpart under an active cooperative agreement. The closeout procedures of § 600.123 which are specified in § 600.206 shall apply to any terminated or expired cooperative agreement which has not been closed out prior to the effective date of this subpart.

§ 600.201 Definitions.

The definitions contained in § 600.101 except for "formula grant" and "subgrant" shall apply to all cooperative agreements. In addition, for purposes of this subpart, "participant" means the organization, individual, or other entity that receives a cooperative agreement award from DOE and is financially accountable for the use of any DOE funds or property provided for the performance of the project, and is legally responsible for carrying out the terms and conditions of the award.

§ 600.202 Selection of cooperative agreement as financial assistance instrument.

(a) *Determinations.* When DOE determines in accordance with the appropriate authorizing statute, the Federal Grant and Cooperative Agreement Act, Pub. L. 97-258, and § 600.5 that the principal purpose of the relationship is assistance and it is anticipated that there will be substantial involvement between DOE and the participant during performance of the contemplated activity, the award instrument shall be a cooperative agreement.

(b) *Substantial involvement.* Anticipated substantial involvement between DOE and the participant during performance of the contemplated activity is the only criterion which distinguishes a grant relationship from a cooperative agreement relationship.

(1) Substantial involvement exists when:

(i) Responsibility for the management, control, or direction of the project is shared by DOE and the participant, or

(ii) Responsibility for the performance of the project is shared by DOE and the participant, or

(iii) DOE has the right to intervene in the conduct or performance of project activities for programmatic reasons. Intervention includes the interruption or modification of the conduct or performance of project activities. (Suspension or termination of the cooperative agreement under § 600.122 does not constitute "intervention in the conduct or performance of project activities.")

(2) Providing technical assistance or guidance of programmatic nature to a recipient does not constitute substantial involvement if the recipient is not required to follow such guidance or if the technical assistance or guidance is provided at the request of the recipient, and such assistance or guidance is not expected to result in continuing DOE involvement in the performance of the project.

(3) Technical assistance or guidance which pertains to the administrative requirements of the award does not constitute substantial involvement.

(c) *Statement of substantial involvement between DOE and the participant.* Every cooperative agreement shall explicitly state the substantial involvement anticipated between DOE and the participant during performance of the project.

(1) The cooperative agreement award document shall affirmatively state, under the heading "Substantial Involvement between DOE and the Participant," all relevant information concerning the substantial involvement anticipated between DOE and the participant during performance of the project. This statement shall describe the following:

(i) The project activities in which substantial involvement between DOE and the participant is anticipated;

(ii) The specific responsibilities and authorities of DOE and the participant in the conduct and/or performance of each of the project activities in which substantial involvement is anticipated;

(iii) Any limitations on DOE/participant responsibilities and authorities in the conduct and/or performance of each of the project activities;

(iv) The duration of DOE/participant responsibilities and authorities in the conduct and/or performance of each of the project activities; and

(v) Any liability DOE assumes by its substantial involvement in the project.

(2) A statement of substantial involvement between DOE and the participant shall be developed so that it:

(i) Represents only the DOE involvement intended and does not unnecessarily increase DOE liability under the cooperative agreement;

(ii) Integrates, as appropriate, DOE's responsibilities and involvement in project activities with administrative requirements such as performance reporting and monitoring, property management, and suspension and termination; and

(iii) Specifies which general administrative requirements applicable to cooperative agreements are deleted or modified because they are inconsistent with the provisions related to substantial involvement.

§ 600.203 Application budgetary information.

For cooperative agreement applications subject to the SEB process, DOE may require that applicants, other than governmental entities, submit budget information in a different format and in greater detail than that specified in §§ 600.10 and 600.206 only when that information is essential to evaluation under the SEB process. State, local, and Indian tribal governments shall continue to provide budget information as specified in §§ 600.10 and 600.206 and shall be excluded from this requirement. (Also see §§ 600.10 and 600.206 for the other requirements pertinent to application contents.)

§ 600.204 Instrument conversion.

(a) *Conversion of a grant to a cooperative agreement.* Subsequent to the award of a grant, it may be necessary for DOE to become substantially involved with the participant in the performance of the project. However, the introduction of substantial involvement does not by itself constitute a conversion from a grant to a cooperative agreement relationship nor does it necessarily require that a change be made in instrument type.

(1) *Determination.* When DOE determines in accordance with § 600.202 that a cooperative agreement would be the appropriate instrument because of the necessity for substantial involvement between the parties, and the substantial involvement is necessary for a period of at least twelve months beyond the expiration date of the current budget period, DOE will initiate action to convert the grant to a cooperative agreement.

(2) *Conversion.* DOE shall notify the grantee of its intention to convert from a grant to a cooperative agreement as soon as the decision is made, but no later than sixty days prior to the expiration date of the current budget period. Conversion of a grant to a cooperative agreement shall be effected at the time of negotiation of the continuation or renewal award or any extension of twelve months or more. A grant may also be converted to a cooperative agreement at any time after

award when it is mutually agreed that DOE should be substantially involved in the performance of the project. The conversion shall be accomplished by an amendment to the award. The amendment documents shall:

(i) Change the instrument-type designation in the award document from "Grant" to "Cooperative Agreement";

(ii) Indicate that thereafter Subpart C of this part shall apply to the agreement in lieu of Subpart B of this part;

(iii) Add a statement of substantial involvement between DOE and the participant in accordance with § 600.202(c); and

(iv) Change any other terms, as appropriate (e.g., special provisions, reporting), to reflect the increased involvement by DOE.

(3) In the event DOE determines substantial involvement between the parties is necessary for at least twelve months after the expiration date of the current budget period and the grantee does not agree to conversion of the instrument at the time of negotiation, the grantee's refusal to agree to the conversion will be the basis for not making a continuation award, renewal award, or extension and the recipient shall have no right of appeal under § 600.26. Any refusal to accept a cooperative agreement award shall be treated in accordance with § 600.22.

(b) *Conversion of a cooperative agreement to a grant.* A cooperative agreement may be converted to a grant if DOE determines after award of a cooperative agreement that the anticipated substantial involvement between the parties will not be necessary. Conversion of a cooperative agreement to a grant shall be accomplished by a bilateral amendment to the award as soon as possible after it is determined that no substantial involvement will be necessary between DOE and the participant during performance of the activity. The amendment shall:

(1) Change the instrument type designation in the award document from "Cooperative Agreement" to "Grant";

(2) Indicate that thereafter Subpart B of this part will apply to the agreement in lieu of Subpart C of this part;

(3) Delete the "Substantial Involvement Between DOE and Participant" section from the agreement; and

(4) As necessary, change any other administrative terms which relate to the substantial involvement between DOE and the participant. If the participant does not agree to the conversion, DOE shall initiate a termination of the agreement in accordance with § 600.122(d).

§ 600.205. Application, funding, and administrative requirements.

Except for § 600.118 and unless otherwise specified in this subpart, §§ 600.102 through 600.124 of Subpart B which set forth the application, funding, and administrative requirements for grants shall also apply to cooperative agreements. Furthermore, the audit requirements set forth in Subpart D of this Part shall apply to cooperative agreements.

§ 600.206 Cost sharing.

In addition to the requirements of § 600.107, the following requirements apply to research, development, and demonstration projects:

(a) When DOE awards cooperative agreements for research, development, and demonstration projects where the primary purpose of the project is the ultimate commercialization and utilization of technology by the private sector and when there are reasonable expectations that the participant will receive significant present or future economic benefits beyond the instant award as a result of the performance of the cooperative agreement, cost sharing shall be required unless waived by the cognizant Program Assistant Secretary or designee.

(b) DOE will decide, on a case-by-case basis, the amount of cost sharing required for a particular project.

(c) Factors in addition to those specified in § 600.107(c) which may be considered when negotiating cost sharing for research, development, and demonstration projects include the potential benefits to a participant resulting from the project and the length of time before a project is likely to be commercially successful.

§ 600.207 Patents, data, and copyrights.

(a) *General.* Cooperative agreements shall be awarded and administered by DOE in compliance with the patent, data, and copyright provisions of this section and 48 CFR Part 927. DOE shall specify in each award, the applicable patent, data, and copyright provisions.

(b) *Required clauses.* DOE shall determine which of the clauses listed in this paragraph or in 48 CFR Part 927 apply, based on DOE review of the application, other information submitted by the applicant, and any negotiations. These clauses may be modified by DOE Patent Counsel, in accordance with the procedures of 48 CFR Part 927, for a particular cooperative agreement or for a class of cooperative agreements. In each patent, data, and copyright clause selected for inclusion in the cooperative agreement, the terms "grant" or "contract" shall be read as "cooperative agreement" or "agreement," the terms "grantee" or "contractor" shall be read as "participant," the term "subgrant" shall be read as "subaward," and "subcontract" or "contract" awarded under a grant shall be read as "contract" under a cooperative agreement.

(1) *Patent Rights (Small Business Firm or Nonprofit Organization).* The clause set forth in § 600.118(b)(1) shall be included in cooperative agreements with small business firms and nonprofit organizations where such cooperative agreements have as a purpose the conduct of experimental, developmental, demonstration, or research work. The policies and procedures of § 600.118(b)(1) require the small business firm or nonprofit organization to state in writing that it qualifies as a small business firm or nonprofit organization. In exceptional circumstances, DOE may, as determined by Patent Counsel, use a patent rights clause other than the clause specified in paragraph (b)(1) of § 600.118 for such participants. Exceptional circumstances have been declared for classified subject matter, high level radioactive waste, and uranium enrichment. In addition, if the cooperative agreement is affected by an international agreement or treaty, special provisions are to be included in the clause specified herein.

(2) *Patent Rights (Long Form).* As specified by 48 CFR 927.300(a), the clause set forth in 41 CFR 9–9.107–5(a) shall be included in all cooperative agreements awarded to participants other than small business firms or nonprofit organizations, where such cooperative agreements have as a purpose the conduct of experimental, developmental, demonstration, or research work. The applicant/participant may request in advance of, or within thirty days after the award is signed, a waiver of all or any part of the rights of the United States with respect to subject inventions. DOE shall notify the applicant of this right by inserting the notice of 48 CFR 952.227–84 in all solicitations which may result in cooperative agreements calling for experimental, research, developmental, and demonstration work. For unsolicited applications, DOE shall provide this notice to the applicant prior to award. If a waiver is granted, the appropriate waiver clause shall be substituted for the Patent Rights (Long Form) clause. DOE also may authorize an advance waiver for a class of awards, when appropriate, and shall specify the applicable patent rights clause in every award covered by such a waiver. The clause set forth in 41 CFR 9–9.107–5(a)

shall be modified in accordance with 41 CFR 9–9.107–5, as appropriate.

(3) *Rights in Technical Data (Long Form).* The clause set forth in 48 CFR 952.227–75 shall be included in all cooperative agreements having as a purpose the conduct of experimental, developmental, demonstration, or research work. This clause shall be modified in accordance with 48 CFR 952.227–75 Alternate I and II, as appropriate.

(4) *Additional technical data requirements.* The clause set forth in 48 CFR 952.227–73 shall be included in all cooperative agreements having as a purpose the conduct of experimental, developmental, demonstration, or research work unless all technical data requirements are known in advance of the agreement and are set forth in the cooperative agreement project description/statement of work.

(5) *Patent indemnity.* As specified in 48 CFR 927.300(a), the clause set forth in 41 CFR 9–9.103–3(b) shall be included in all cooperative agreements for experimental, developmental, demonstration, or research work, when DOE determines that the cooperative agreement will require standard supplies sold or offered for sale to the public on the commercial open market or will use the participant's practices or methods which normally are or have been used in providing goods and services on the commercial open market or will use any parts, components, practices, or methods to the extent to which the participant has secured indemnification from liability. The participant shall include this clause in contracts for the types of activities described in this paragraph.

(6) *Classified inventions.* As specified in 48 CFR 927.300(a), the clause set forth in 41 CFR 9–9.106 shall be included in every cooperative agreement which covers, or is likely to cover, classified subject matter.

(7) *Authorization and consent.* The clause set forth in § 600.118(b)(5) shall be included in all cooperative agreements under which experimental, developmental, demonstration, or research work is to be performed within the United States, its possessions, or Puerto Rico.

(8) *Notice and assistance.* The clause set forth in § 600.118(b)(6) shall be included in all cooperative agreements in excess of $10,000 for construction, experimental, developmental, demonstration, or research work which is to be performed within the United States, its possessions, or Puerto Rico.

(9) *Reporting of royalties.* In order that DOE may be informed regarding royalty payments to be made by a participant in connection with any cooperative agreement where the amount of the royalty payments is included in the proposed budget, the applicant shall provide:

(i) Information concerning the royalty payments expected to be made under the cooperative agreement, if awarded, together with the name of the licensors, and either the patent numbers involved or such other information as will permit identification of the patents and patent applications as well as the basis on which the royalties are to be paid; or

(ii) A certification that the proposed budget includes no amount representing any royalty that would be paid by the participant directly to others in connection with the performance of the award.

(iii) If the information or certification specified in paragraphs (b)(9)(i) and (b)(9)(ii) is not available at the time of award, DOE shall include the clause set forth in § 600.118(c)(2) in any applicable cooperative agreement award.

(10) *Subawards and contracts under cooperative agreements or subawards.* The participant shall include the applicable clauses of this section in any subaward or contract awarded under a cooperative agreement and assure that the applicable clauses are also included by subrecipients in contracts.

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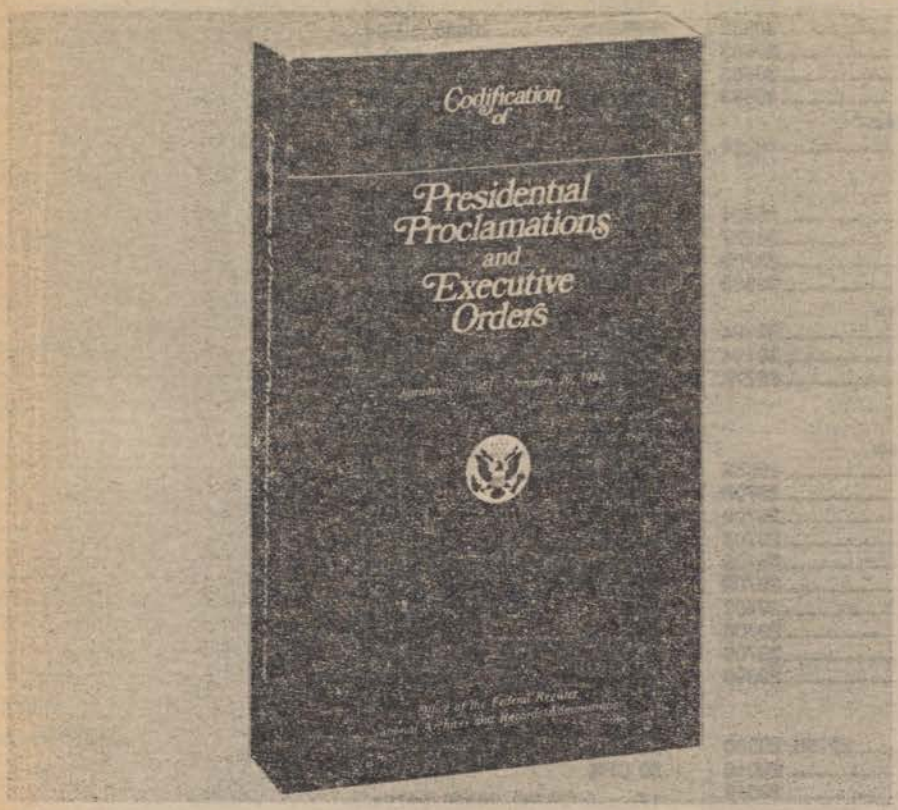

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