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Friday
April 22, 1988

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Presidential Documents

Title 3—

The President

Proclamation 5798 of April 20, 1988

Jewish Heritage Week, 1988

By the President of the United States of America

A Proclamation

The heritage of the Jewish people finds expression in America today just as in the days of our Founders. During Jewish Heritage Week, we recall that throughout our history the American people have drawn inspiration from and analogies to Jewish history. That history—which in this century alone includes the horrors of the Holocaust, the establishment of the modern State of Israel, and the current struggle of Soviet Jewry for freedom—symbolizes humanity's long and continuing quest for liberty.

Happily, the United States, the land of the free, has become home to a thriving Jewish community whose members have made inestimable contributions to our national life. Jews have distinguished themselves in virtually every field, to the benefit of us all. Jewish Heritage Week, which this year includes April 21, the 40th anniversary of the founding of Israel, is a fitting occasion for us to study once again the lessons of Jewish history and to rededicate ourselves to the ideals of freedom for all peoples.

The Congress, by House Joint Resolution 527, has designated the period of April 17 through April 24, 1988, as "Jewish Heritage Week" and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the period of April 17 through April 24, 1988, as Jewish Heritage Week. I call upon the people of the United States, interested organizations, and Federal, State, and local government officials to observe this week with appropriate ceremonies and activities.

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

Ronald Reagan

[FR Doc. 88-9032
Filed 4-20-88; 4:39 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5799 of April 20, 1988

Law Day, U.S.A., 1988

By the President of the United States of America

A Proclamation

For more than three decades our country has observed May 1 as Law Day, U.S.A., in grateful recognition that our free Republic is a government of laws, not men. On Law Day, U.S.A., we join in proud commemoration of America's legacy of liberty, justice, and self-government, and we pause to salute those past and present who have served and sacrificed to win and protect our freedom and to preserve law and tranquility in our communities—including the men and women of law enforcement whose daily courage and dedication make our laws and liberties a living reality.

Because ours is a government by consent of the people, we are our own lawgivers; hence, the virtuousness of our laws depends on our individual and civic virtues. That is truly something to remember on any Law Day, U.S.A., but especially in a national election year, when we recall how important it is that each of us be familiar with our rights and liberties and with the legal and political guarantees of our freedoms. Only through knowledge, awareness, and love of country can we take full part in the self-government that is ours as Americans to perpetuate.

This is why all Americans of legal voting age should make up their minds, this year and each year, to vote in every election for which they are eligible and to observe all election laws faithfully. By voting, we have our say in who our representatives are and thereby in the shaping of laws that affect us, our communities, our States, and our Nation. We should always remember that those who vote not only demonstrate their voice in public affairs but also exercise one of the precious rights for which brave people around the globe today fight and die just as did our ancestors. Let us understand that our voting is a way to keep faith with them, with our fellow citizens, with the brave Americans who defend us at home and abroad, and with all who cherish our American heritage of liberty, justice, and equality before the law.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, in accordance with Public Law 87–20 of April 7, 1961, do hereby proclaim Sunday, May 1, 1988, as Law Day, U.S.A. I urge the people of the United States to use this occasion to reflect on our birthright of freedom, to express gratitude to those who protect our country and our communities, to familiarize themselves with the need to vote, and to encourage and assist others to vote. I ask the legal profession, schools, public bodies, libraries, courts, the communications media, businesses, the clergy, civic, service, and fraternal organizations, and all interested individuals and organizations to join in efforts to focus attention on voting. I also call upon all public officials to display the flag of the United States on all government buildings on Law Day, U.S.A.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of April, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 88-9033
Filed 4-20-88; 4:40 pm]
Billing code 3195-01-M

Editorial note: For the President's remarks of April 20 on signing Proclamation 5799, see the *Weekly Compilation of Presidential Documents* (vol. 24, no. 16).

Presidential Documents

Executive Order 12636 of April 20, 1988

Establishing an Emergency Board To Investigate a Dispute Between the Chicago and North Western Transportation Company and Certain of Its Employees Represented by the United Transportation Union

A dispute exists between the Chicago and North Western Transportation Company and certain of its employees represented by the United Transportation Union.

The dispute has not heretofore been adjusted under the provisions of the Railway Labor Act, as amended ("the Act").

This dispute, in the judgment of the National Mediation Board, threatens substantially to interrupt interstate commerce to a degree such as to deprive a section of the country of essential transportation service.

NOW, THEREFORE, by the authority vested in me by Section 10 of the Act, as amended (45 U.S.C. 160), it is hereby ordered as follows:

Section 1. *Establishment of Board.* There is established, effective April 22, 1988, a board of three members to be appointed by the President to investigate this dispute. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* The board shall report its finding to the President with respect to the dispute within 30 days from the date of its creation.

Sec. 3. *Maintaining Conditions.* As provided by Section 10 of the Act, as amended, from the date of the creation of the board and for 30 days after the board has made its report to the President, no change, except by agreement of the parties, shall be made by the Carrier or the employees in the conditions out of which the dispute arose.

Sec. 4. *Expiration.* The board shall terminate upon the submission of the report provided for in Section 2 of this Order.

Ronald Reagan

THE WHITE HOUSE,
April 20, 1988.

[FR Doc. 88-9034
Filed 4-20-88; 4:41 pm]
Billing code 3195-01-M

Editorial note: For the text of a White House announcement, dated April 20, on the labor dispute, see the *Weekly Compilation of Presidential Documents* (vol. 24, no. 16).

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 88-050]

Citrus Canker; All of Louisiana Designated Commercial Citrus-Producing Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We have designated the entire State of Louisiana as a commercial citrus-producing area. Before the effective date of this interim rule, only part of Louisiana was designated as a commercial citrus-producing area. Our action was necessary because Louisiana no longer meets the criteria for having less than an entire state designated as a commercial citrus-producing area. As a result of this interim rule, regulated fruit produced in certain areas quarantined because of citrus canker may be moved interstate into Louisiana for other than experimental or scientific purposes, only if accompanied by a certificate.

DATES: Interim rule effective April 18, 1988. Consideration will be given only to written comments postmarked or received on or before June 21, 1988.

ADDRESSES: Send an original and three copies of your comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC 20090-6464. Please state that your comments refer to Docket No. 88-050. Comments we receive may be inspected at Room 1141 of the South Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Eddie W. Elder, Chief Operations Officer, Domestic and Emergency Operations Staff, PPQ, APHIS, USDA, Room 610, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301-436-6365.

SUPPLEMENTARY INFORMATION: Citrus canker is a plant disease caused by strains of the bacterium *Xanthomonas campestris* pv. *citri* (Hasse) Dye. The disease is known to affect plants and plant parts, including fruit, of citrus and citrus relatives (Family Rutaceae). It can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It may also make the fruit of diseased plants unmarketable by causing lesions on the fruit. Infected fruit may also drop from trees before reaching maturity. Some strains of *Xanthomonas campestris* pv. *citri* (Hasse) Dye are aggressive and can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas.

To help prevent the spread of citrus canker, we regulate the interstate movement of certain plants, plant parts, and other articles from areas of the United States quarantined because of citrus canker. These regulations are contained in 7 CFR 301.75 and are referred to below as the regulations.

In accordance with the regulations, regulated fruit produced in certain quarantined areas may be moved interstate from the quarantined areas as follows: (1) With a Departmental permit for scientific or experimental purposes; (2) with a limited permit to areas of the United States that are not commercial citrus-producing areas; or (3) with a certificate to any area of the United States, including commercial citrus-producing areas.

Florida is the only area of the United States quarantined because of citrus canker. Before the effective date of this interim rule, areas designated as commercial citrus-producing areas were American Samoa, Arizona, California, Florida, Guam, Hawaii, Northern Mariana Islands, Puerto Rico, Texas, Virgin Islands of the United States, and that portion of Louisiana south of a line formed by the following interstate highways: Beginning on Interstate 10 at the western boundary of the state, extending to the junction of Interstate 10 and Interstate 12 in East Baton Rouge Parish, extending on Interstate 12 to the junction of Interstate 10 and Interstate 12 in St. Tammany Parish, and extending on Interstate 10 to the Mississippi state line.

Less than the entire State of Louisiana was designated as a commercial citrus-producing area in accordance with § 301.75-4(b) of the regulations. This paragraph contains three conditions that must be met before less than entire state may be designated as a commercial citrus-producing area.

(1) The Administrator must determine that there are no commercial citrus plantings in the area of the state not designated as commercial citrus-producing area;

(2) The state must not allow the interstate movement into its commercial citrus-producing area of regulated fruit that has come into other areas of the state from a quarantined area with a limited permit;

(3) The designation of less than the entire state as a commercial citrus-producing area must otherwise be adequate to prevent the interstate spread of citrus canker.

We have been notified by the Commissioner of Agriculture for the State of Louisiana that Louisiana no longer meets the above criteria. Specifically, the Commissioner notified us that:

(1) The part of Louisiana not previously designated as a commercial citrus-producing area contains commercial citrus plantings; and

(2) Louisiana does not have the means to prevent the intrastate movement into its commercial citrus-producing area of regulated fruit that has come into other areas of the state from Florida with a limited permit.

Under these circumstances, we have also determined that designation of less than the entire State of Louisiana as a commercial citrus-producing area is not adequate to prevent the interstate spread of citrus canker. Therefore, we have designated the entire State of Louisiana as a commercial citrus-producing area.

Miscellaneous

We have changed the reference to "citrus producing" on the regulations to "citrus-producing" for clarity.

Emergency Action

The Acting Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Information supplied by the Commissioner of Agriculture for the State of Louisiana indicates that designation of less than the entire State of Louisiana as a commercial citrus-producing area is not adequate to prevent the interstate spread of citrus canker. Immediate action is necessary to stop regulated fruit produced in Florida from moving interstate into Louisiana for other than experimental or scientific purposes, without a certificate.

Since prior notice and other public procedures with respect to this interim rule are unnecessary, impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553 for making this interim rule effective upon signature. We will consider comments postmarked or received within 60 days of publication of this interim rule in the **Federal Register**. Any amendments we make to this interim rule as a result of these comments will be published in the **Federal Register** as soon as possible following the close of the comment period.

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 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 the review process required by Executive order 12291.

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 603 and 604) impracticable. This rule may have a significant economic impact on a substantial number of small entities. If we determine this is so, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Impact Analysis.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

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 7 CFR Part 301

Agricultural commodities, Citrus canker, Plant disease, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, we have amended Part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for Part 301 is revised to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 301.75–4 is revised to read as follows:

§ 301.75–4 Commercial citrus-producing areas.

(a) The following are designated as commercial citrus-producing areas:

American Samoa	Northern Mariana Islands
Arizona	Puerto Rico
California	Texas
Florida	Virgin Islands of the United States
Guam	
Hawaii	
Louisiana	

* * * * *

Subpart 301.75 [Amended]

3. In Subpart 301.75, in every place "citrus producing" appears it is revised to read "citrus-producing.

Done in Washington, DC, this 18th day of April 1988.

James W. Glosser,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–8859 Filed 4–21–88; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 610]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 610 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 360,000 cartons during the period April 24 through April 30, 1988. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 610 (§ 910.910) is effective for the period April 24 through April 30, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond C. Martin, Section Head, Volume Control Programs, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5697.

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

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

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

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative

Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1987–88. The committee met publicly on April 19, 1988, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended, by a unanimous vote, a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that the market for lemons is good.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

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

2. Section 910.910 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.910 Lemon Regulation 610.

The quantity of lemons grown in California and Arizona which may be handled during the period April 24, 1988, through April 30, 1988, is established at 360,000 cartons.

Dated: April 20, 1988.

Robert C. Keeney,

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

[FR Doc. 88–8992 Filed 4–21–88; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1944

Section 502 Rural Housing Loan Policies, Procedures and Authorizations; Square Foot Exemption

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its section 502 Rural Housing loan regulations. This action is taken to implement a provision of law. The intended effect is to remove program restrictions on requirements for existing dwellings.

EFFECTIVE DATE: April 22, 1988.

FOR FURTHER INFORMATION CONTACT: Joyce M. Halasz, Loan Specialist, Single Family Housing Processing Division, Farmers Home Administration, U.S. Department of Agriculture, Room 5338–S, 14th and Independence Avenue SW., Washington, DC 20250, Telephone: (202) 382–1474.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291 and has been classified as "nonmajor." This action will result in an annual effect on the economy of less than $100 million and will neither result in a major increase in cost or prices, nor adversely affect competition, employment, or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets. There is no impact on budget levels, and funding allocations will not be affected because of this action.

Discussion

It is the policy of this Department and required by section 534 of the Housing Act of 1949, unless on an emergency basis, to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is published as a final rule effective immediately. Because it is mandated by Congress, this action is published on an emergency basis under the Housing Act. The 1988 Continuing Resolution, H.J. Res. 395, Pub. L. 100–202, is quite specific and clear on what FmHA must do to comply with the law and no public comments could change the statutorily required changes.

Strict adherence to current regulations restricting the square feet of living area permitted for existing houses to be financed by the agency was eliminating many modest, decent, safe and sanitary existing homes from availability to potential FmHA RH 502 borrowers. FmHA District Directors will be authorized to exempt any square foot limitation on a modest existing house.

Section 1944.16(h)(5) of 7 CFR Part 1944 establishes limitations on the number of square feet of living area for a house financed by FmHA. It may contain no more than 1300 square feet for a household of two or more or no more than 1008 square feet for a household of one. Larger homes, necessary to meet special needs, are subject to square foot limitations established, by number of occupants and/or number of bedrooms required, for new construction. For example, the maximum for a six-person household needing 4 bedrooms is 1248; or 1368, 120 square feet more, if 5 bedrooms are needed. Modest homes already financed by FmHA and being transferred or sold from inventory are exempt from these limitations.

Section 632 of the Agricultural Programs Title, H.J. Res. 395, "Making Further Continuing Appropriations for the Fiscal Year Ending September 30, 1988," Pub. L. 100–202, requires the Secretary of Agriculture to permit each FmHA district office to exempt any existing dwelling from any limitation established by the Secretary on the number of square feet of living area that may be contained in a dwelling to be eligible for a loan under section 502 of the Housing Act of 1949, if the dwelling is modest in design, size, and cost for the area in which it is located. FmHA is implementing the change immediately. As long as FmHA has square foot limits for existing housing, FmHA is mandated to allow District Directors to exempt existing dwellings from these limits on a case-by-case basis.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.410. For the reasons set forth in the Final Rule-Related Notice to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, it is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This document has been reviewed in accordance with 7 CFR Part 1940,

Subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

List of Subjects in 7 CFR Part 1944

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

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

PART 1944—HOUSING

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

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

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

2. Section 1944.16 is amended by revising paragraph (h)(5)(ii) and adding paragraph (h)(5)(iii) to read as follows:

§ 1944.16 Dwelling requirements.

* * * * *

(h) * * *

(5) * * *

(ii) the house is being transferred by assumption of a 502 loan, or a credit sale is being made, and the County Supervisor determines, in either case, that the house is typical of modest homes in the area. In all cases, every effort will be made to provide housing which does not exceed the needs of the applicant/borrower; or

(iii) the District Director determines and documents in the case file that the house is modest in size, design and cost for the area in which it is located, and exempts it from the limitations established in this paragraph on the square feet of living area.

* * * * *

Dated: April 1, 1988.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 88–8899 Filed 4–21–88; 8:45 am]

BILLING CODE 3410–07–M

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7 CFR Parts 1944 and 1965

Rural Rental Housing Displacement Prevention

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Farmers Home Administration (FmHA) revises its rural rental housing (RRH) and labor housing (LH) regulations which deal with transfer and prepayment of these loans. The action is being taken to alleviate the problems caused by the displacement of tenants from projects after the FmHA loans are prepaid. All changes are being made as mandated by the provisions of Subtitle C, "Rural Rental Housing Displacement Prevention," portion of the Housing and Community Development Act of 1987.

DATES: The effective date of this regulation is May 23, 1988. Comments must be submitted on or before June 21, 1988.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, Room 6346, South Agriculture Building, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Arlene Halfon, Senior Loan Specialist, Multiple Housing Servicing and Property Management Division, FmHA, Room 5329, South Agriculture Building, Washington, DC 20250, telephone (202) 447–3187.

SUPPLEMENTARY INFORMATION:

Classification: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determnined to be "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions or significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

Intergovernmental Review: This program/activity is listed in the Catalog of Federal Domestic Assistance under Nos. 10.427, Rural Rental Assistance Payments (Rental Assistance); 10.415, Rural Rental Housing Loans; 10.405, Farm Labor Housing Loans and Grants. For the reasons set forth in the Final Rule related Notice(s) to 7 CFR Part 3015, Subpart V, this program/activity is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act: In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), Mr. Vance Clark, Administrator of FmHA, has determined that this action will not have a significant economic impact on a substantial number of small entities because only a few hundred borrowers will likely attempt to prepay annually.

General Information

Background and Statutory Authority

The Housing and Community Development Amendments to the Housing Act of 1949, signed into law in 1979, and the Housing and Community Development Act of 1980, implemented in § 1965.90 of Subpart B of Part 1965 of this chapter, provides that FmHA section 514 and section 515 Multi-family Housing borrowers, who received loans prior to December 21, 1979, and who have not subsequently become subject to restrictions due to specified servicing actions, may prepay their loans and remove their housing from the low- and moderate-income market without restrictions. Those who received loans on or after December 21, 1979, are only eligible to prepay after their restrictive-use requirements expire in either 15 or 20 years from the date of the loan.

Under these provisions, 51 percent of FmHA projects and 44 percent of FmHA units nationwide are eligible to prepay. To keep the problems of tenants displaced from these prepaid projects from growing severe, Congress issued several moratoriums in 1986 and 1987 preventing prepayments, except under specified regulations. FmHA, in June 1987, issued revised regulations to ease the burden of displacement on tenants. The latest legislative action on this issue was the passage of the Housing and Community Development Act of 1987. This law included provisions dealing with "Rural Rental Housing Displacement Prevention." As part of the law, Congress mandated that FmHA

issue regulations to carry out the legislation within 60 days of enactment.

The Housing and Community Development Act of 1987 also mandates that FmHA not charge a transfer fee when multifamily housing is being transferred. Since the regulations dealing with prepayment affect transfers of loans, both as part of an incentive package not to prepay, and with transfers to non-profit organizations as an alternative to prepayment, it is determined appropriate to include this mandated change with this emergency package. Eliminating the transfer fee should be seen as one way to achieve the goal of encouraging both these types of transfers.

This regulation is being issued to implement the requirements of the law imposing restrictions on the prepayment of sections 514 and 515 loans approved prior to December 21, 1979, and to mitigate the problems which prepayment creates for displaced tenants. In response to Congress' mandate for immediate implementation, it is being issued, on an emergency basis, as an interim rule. This is in compliance with 5 U.S.C. 553, "The Administrative Procedures Act," which allows an exception to proposed rulemaking and comment period, for good cause, if comment is shown to be unnecessary, impractical or contrary to the public good. It would be impractical to go through a public comment period since Congress has mandated issuance of regulations within 60 days.

Due to this rule's impact on the public, however, comments are invited. If comments are received which are consistent with the new legislation, and serve its purposes in a more appropriate manner than these regulations, changes will be considered.

By means of this Notice, FmHA is soliciting expressions of interest by local, regional, and national non-profit organizations interested in purchasing multifamily housing projects, in accordance with the procedures contained in Paragraph VI of Exhibit E of this Interim Rule. Local and Statewide organizations which meet the requirements contained in Paragraph VI C of Exhibit E should submit their names, addresses and contact persons to the FmHA State Office(s) in the States in which they are eligible. Eligible regional and nationwide organizations should submit their names, addresses, contact persons and area(s) of interest to the Multiple Housing Servicing and Property Management Division, FmHA, Room 5321, South Agriculture Building, Washington, DC 20250. Information submitted will be compiled and forwarded to the States periodically as a Procedure Notice. State Offices will be responsible for compiling and forwarding the information to appropriate District Offices.

The major changes and additions in this rule are as follows:

1. Exhibit E has been added to FmHA Instruction 1965–B to provide step-by-step guidance on procedures to be followed when a request is received to prepay a pre-December 21, 1979, loan, and to provide restrictive-use provisions to be used for the various options to be chosen.

2. Changes have been made in § 1965.90 of FmHA Instruction 1965–B to identify the appropriate provisions of Exhibit E, and to incorporate other minor changes in the new law.

3. All mention of transfer fees are being deleted from Section 1965.65 of FmHA Instruction 1965–B.

4. A change is made to Section 1944.237 of FmHA Instruction 1944–E to provide for subsequent loans to be made under prescribed conditions to avert prepayment.

List of Subjects

7 CFR Part 1944

Administrative practice and procedure, Aged, Handicapped, Loan Programs—Housing and community development, Low- and moderate-income housing, Mobile homes, Mortgages, Nonprofit organizations, Rent subsidies, Rural housing.

7 CFR Part 1965

Administrative practice and procedure, Low- and moderate-income housing—Rental, Mortgages.

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

PART 1944—HOUSING

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

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

Subpart E—Rural Rental Housing Loan Policies, Procedures and Authorizations

§ 1944.237 [Amended]

2. In § 1944.237, paragraph (a) is amended by adding the following phrase at the end of the paragraph: "or for equity and other purposes when authorized by Exhibit E to Subpart B of FmHA Instruction 1965 to avert prepayment."

3. In § 1944.237, paragraph (b) is amended by adding the following phrase at the end of the paragraph: " or for equity and other purposes when necessary to avert prepayment."

4. In § 1944.237, paragraph (e) is amended by adding the following phrase at the end of the first sentence: "except when the loan is made for equity and other purposes to avert prepayment. In the latter case, the provisions of Exhibits E–3 and E–4 of Subpart B of FmHA Instruction 1965 will be used, as appropriate."

PART 1965—REAL PROPERTY

5. The authority citation for Part 1965 continues to read as follows:

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

Subpart B—Security Servicing for Multiple Housing Loans

§ 1965.65 [Amended]

6. In § 1965.65, paragraph (a)(8) is removed and paragraph (a)(9) is redesignated as (a)(8).

7. Section 1965.90 is revised to read as follows:

§ 1965.90 Payment in full.

(a) *General requirements.* Payment in full of an FmHA loan requires certain actions be taken by FmHA to evidence satisfaction of the account and to ease the transition of the tenants that may be affected by the conversion of a federally-financed project to a conventionally-financed one. The borrower's cooperation in these actions will assist in the orderly close-out of the account.

(1) *Final installments.* Borrowers must advise the District Office servicing the account of any final installment payment to facilitate the prompt preparation of any required releases and closeout actions.

(2) *Prepayment.* Borrowers seeking to prepay a multiple family housing loan must:

(i) At least 180 days in advance of the anticipated prepayment date (unless an exception is granted in accordance with paragraph (d)(5) of this section), submit a written request to prepay, and provide the District Office with complete and well-documented information necessary to complete the prepayment report as outlined in Exhibit C of this subpart.

(ii) Certify that they will continue to administer housing in accordance with Fair Housing policies.

(iii) Comply with all other applicable requirements for prepaying borrowers contained in Exhibit E and paragraphs (b)(2) and (d)(2) of this section.

(3) *Denial of prepayment request.* Borrowers subject to restrictive-use provisions will be denied a request to

prepay if conditions stated in this subpart as required for prepayment cannot be met, or if the information submitted with the prepayment request cannot be verified. If the borrower is denied a request to prepay, the District Director will provide a letter stating the reasons for the denial and the right to appeal the decision in accordance with Subpart B of Part 1900 of this Chapter. Upon the scheduling of a prepayment appeal hearing, the District Office will notify tenants that they may submit comments concerning the proposed prepayment.

(b) *Special requirements*—(1) *Applicability of prepayment restrictive-use clause to loans approved prior to December 21, 1979.* Prepayment requests for loans approved prior to December 21, 1979, will be handled in accordance with the provisions of Exhibit E to this subpart. If such loan was made subject to restrictive-use clauses due to a servicing action (reamortization or a transfer and assumption on same or new terms to an eligible borrower), such loan will be subject to the remaining provisions of this paragraph.

(2) *Applicability of prepayment restrictive-use clause to loans approved on or after December 21, 1979, or subsequently made subject to these restrictions.* For any multiple family housing loan approved on or after December 21, 1979, or which has been subsequently made subject to prepayment restrictive-use provisions, prepayments may be accepted only if the title to the real property is made subject to the applicable restrictive-use clause set out at paragraphs (b)(2)(i) or (b)(2)(ii) of this section, or upon granting an exception in accordance with paragraph (b)(3) of this section. The restrictive-use period is: Fifteen or twenty years from the date on which the last loan was closed or the loan was subsequently made subject to such provisions as a result of a servicing action as specified in this subpart (fifteen years if the loan has not received interest credit, rental assistance, or Section 8 assistance under a Housing Assistance Payment contract; twenty years if the loan has received any of these forms of assistance).

(i) Project loans subject to this section as a result of a servicing action as set forth in paragraph (b)(1) of this section, with outstanding FmHA debt, will have the following prepayment restrictive-use clause inserted in the deed, conveyance instrument, loan agreement/resolution, assumption agreement, or reamortization agreement, as appropriate.

> The borrower and any successors in interest agree to use the housing for the purpose of housing people eligible for occupancy as provided in section 514 or section 515 of Title V of the Housing Act of 1949 and FmHA regulations then extant during this _____ (15 Years for unsubdized or 20 years for subsidized loans) period beginning _____. (The date the last loan on the project is closed or date the project was last made subject to the prepayment restrictive-use provisions as a result of servicing actions authorized under this subpart or other subparts). No person occupying the housing shall be required to vacate prior to the close of such _____ (15 or 20 year) period because of early prepayment. The borrower will be released during such period from these obligations only when the Government determines that there is no longer a need for such housing or that such other financial assistance provided to the residents of such housing will no longer be provided due to no fault, action or lack of action on the part of the borrower. A tenant may seek enforcement of this provision as well as the Government.

(ii) Project loans subject to this section, which are being prepaid, for which an exception to the restrictive-use clause cannot be granted, will have the following restrictive-use clause inserted in the deed, conveyance instrument, deed of release or satisfaction, as appropriate:

> The owner and any successors in interest agree that the housing located on this property will be used only as authorized under section 514 or 515 of Title V of the Housing Act of 1949, as amended, and FmHA regulations then extant until __ (insert date, 15 years for unsubsidized or 20 years for subsidized loans, from the date the last loan on the project was closed or the project was last made subject to the prepayment restrictive-use provisions as a result of servicing actions authorized under this subpart or other subparts). A tenant may seek enforcement of this provision as well as the Government. No person occupying the housing shall be required to vacate during such period because of early prepayment. The owner also agrees to keep a notice posted at the project, for the remainder of the restrictive-use period, in a place available for tenant inspection, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates will be consistent with those necessary to maintain the project for low- and moderate-income tenants for the remainder of the restrictive-use period.

Exhibit A of this Subpart sets forth the format for this notice.

(3) *Exception to prepayment restrictive-use clause.* An exception may be made to the restrictive-use clause for projects when the State Director determines that:

(i) There is no longer a need for such housing and related facilities to be so utilized, or

(ii) Federal or other financial assistance provided to the residents of such housing will no longer be provided due to no fault, action or lack of action on the part of the borrower.

(4) *Determination to release restrictive-use clause.* The determination to be made in paragraph (b)(3)(i) of this section, that there is no longer a need for such housing and related facilities to be so utilized, may be made when:

(i) There will be no change in the use of the housing and related facilities, and no likely increase in rental or other charges as a result of prepayment, which will cause the low- and moderate-income and elderly or handicapped tenants occupying the assisted housing at the time of the offer or request to reasonably expect to be unable to remain in occupancy for such period (15 or 20 years).

(ii) Affordable, decent, safe, sanitary and nonassisted alternative housing, or vacant assisted units for which there is no waiting list, is available to the tenants who are likely to be displaced as a result of the change or increase, and

(iii) In the case of housing or related facilities containing more than 10 dwelling units, that the changes likely to occur as a result of the prepayment will not have a substantial adverse effect on the supply of affordable, decent, safe, and sanitary housing available to low- and moderate-income and elderly or handicapped persons in the area in which the housing and related facilities are located.

(c) *Final payments and release of security.* The FmHA office charged with servicing the account must ensure payments in full and release of security are processed in the manner set out at Part 1866 of this chapter (FmHA Instruction 451.4), Subparts A and B of Part 1951, and Subpart A of Part 1962 of this chapter, as applicable, and appropriate program requirements and regulations. FmHA's interest in the property insurance will be released in accordance with § 1806.4 (a)(3) of Subpart A of Part 1806 of this chapter (paragraph IV A 3 of FmHA Instruction 426.1). Interest in other insurance and security will be released as appropriate. In all cases, references to County Supervisor shall be construed to mean District Director when applied to multiple family housing borrowers.

(d) *Special FmHA processing requirement.* In order to alleviate tenant displacement problems the District Director will take the following actions upon receiving notification of intent to prepay any RRH, RCH or LH loans:

(1) Follow instructions in Exhibit E for loans approved prior to December 21, 1979.

(2) *Notification to tenants.* Immediately notify *each* tenant of the property by Certified Mail, Return Receipt Requested, and prepare notices for the borrower to post in the project. The District Director will not wait to determine if submitted information is accurate or if prepayment will be accepted or denied before sending the notification to tenants. The letter and notices will contain all the following information necessary to allow tenants to make informed choices (Exhibit B of this subpart is provided as a guide for this purpose):

(i) That the borrower plans to repay the FmHA loan on a specified date, and remove the housing from the FmHA program if all requirements imposed by FmHA are met.

(ii) The level at which rents at the project are expected to be placed subsequent to prepayment.

(iii) That each tenant will be affected by this change in rents at final lease expiration which will not occur prior to the prepayment.

(iv) That all displaced tenants and those experiencing rent overburen as defined in paragraph XIV A 4 of Exhibit B to Subpart C of Part 1930 of this chapter will be eligible for Letters of Entitlement that will place them at the top of all waiting lists for any FmHA project in any location for which they qualify.

(v) Instructions on how to apply for a Letter of Entitlement; that they have up to the termination of their final lease to apply for these letters; that they will have up to 60 days after receipt of the letters to use them to be placed on FmHA waiting lists; and that the letters will serve to maintain their names on these waiting lists until they are reached, or purged in accordance with paragraph VI C 7 of Exhibit B to Subpart C of Part 1930 of this chapter.

(vi) The names, location, number of apartments, and unit sizes of other FmHA projects in the market area and whether they serve senior citizens or families.

(vii) The names and locations of other subsidized housing and Agencies which administer housing subsidies or aid in relocation anywhere in the market area.

(viii) That those tenants on rental assistance (RA), who move to another FmHA project at which they are eligible for RA as soon as their name is reached on a waiting list entered with a letter of priority entitlement, will receive RA in the new project if the project is eligible to receive and administer RA. This RA will remain at the receiving project if the tenant then moves to another FmHA project.

(ix) That those tenants choosing to stay in their units after prepayment and pay the higher rents, with or without subsidy, are entitled to do so, unless evicted for a cause unrelated to prepayment.

(x) That in accordance with Title V of the Housing Act of 1949, as amended, which states that certain FmHA loans may be subject to restrictive-use covenants if the loan is prepaid, a tenant, as well as the government, may seek enforcement of the provisions.

(xi) That all letters of priority will be issued in accordance with Title VI of the Civil Rights Act of 1964, as codified in Subpart E of Part 1901 of this chapter.

(xii) That a 30-day comment period is available to tenants to present evidence on a proposed excepton when one is requested for release of restrictive-use provisions, accepting prepayment with or without restrictive-use provisions for loans which to not already contain these provisions, or the 180-day notification period.

(xiii) That it is possible that the housing may remain in the program after the above date under certain circumstances, and tenants will be notified if this is the case (if applicable).

(xiv) Any other information pertinent to the particular case.

(3) *Notification to other Agencies.* At the time tenants are notified, the FmHA State and District Offices, as appropriate, will send a letter of notification to interested non-profit organizations and other local, State and Federal agencies which provide housing assistance to low- and moderate-income people, or which may be interested in purchasing a project for such purposes. The letter will apprise the organizations of the offer to prepay, the extent of any anticipated displacement, and (if applicable) the possibility of transfer with incentives or sale to a non-profit organization. Generally, the FmHA State Office will notify State and Federal agencies and the District Office will notify local agencies.

(4) *Acknowledgment letter.* Send an acknowledgment letter to the borrower upon receipt of a complete prepayment request. The letter must specify the date on which a complete request was received, and inform the borrower that prepayment commitments should not be finalized until the Agency issues a letter of consent. The letter should state the length of time it is likely to take before any decision is made.

(5) *Prepayment in less than 180 days.* Receipt of a prepayment request less than 180 days in advance of the projected prepayment date may not be processed unless:

(i) The tenants have been given a 30-day comment period,

(ii) FmHA verifies that *no* tenant displacement nor other adverse effects on tenants will occur during the 6-month period, and

(iii) The District Office determines that there is time to prepare an accurate prepayment report in a shorter period of time.

(6) *Letters of Priority Entitlement.* Notification on how and where to apply for a letter of entitlement will be posted in the project by the borrower at the time of notification of intent to prepay. The notices will remain posted until 60 days prior to the expiration of any leases still in effect. Upon receipt of a request for a letter of priority entitlement, the District Director will prepare the letter which will include a statement that the affected tenant has 60 days to apply in writing with other FmHA RRH projects in any location. The letter of priority entitlement will enable those tenants to be placed at the top of the waiting list in the projects which have units for which they qualify. A list of FmHA RRH projects in the market area, with addresses and telephone numbers, will be included as part of the letter of priority entitlement. Eligible tenants in LH projects will also be advised of other available LH projects in the area.

(7) *Prepayment report.* Send a report, completed in the format of Exhibit C of this subpart, on each prepayment case to the State Director for indefinite retention. Any information for the report supplied by the borrower must be researched and verified by the District Office. The State Office will forward a copy of this report to the National Office in accordance with § 1951.264 of Subpart F of Part 1951 of this chapter.

(8) *Processing of a potential violation of the prepayment restrictive-use clause.* Should the District Office staff receive a written complaint or become otherwise aware of a violation of the prepayment restrictive-use clause or other agreement set out in paragraphs (b)(2)(i) or (ii) of this section or in Exhibit E, by the owner of a previously FmHA-financed project, the following actions will be taken:

(i) The complainants will be informed that they may pursue enforcement through the courts.

(ii) The complaint will be subject to a preliminary evaluation by FmHA. The evaluation may warrant gathering added information. Should this preliminary evaluation indicate the complaint is not valid, the complainant will be so

informed. Should the preliminary evaluation indicate the complaint is or may be valid, the complaint, facts gathered, evaluation report and staff recommendation will be forwarded to the State Office for processing.

(iii) Should the State Office staff determine a violation of the restrictive-use provisions has likely occurred, the Administrator will be contacted. The OGC will be asked to provide advice in such cases. The complaint may then be referred to the Department of Justice or other appropriate Agency for enforcement. A copy of any complaint submitted to the Department of Justice or other appropriate Agency with a request to seek enforcement of the restrictive-use provisions should be forwarded to the Administrator.

(9) *Relationship with acceleration of accounts.* Any prepayment of an FmHA loan subject to restrictive-use provisions, prepaid in response to an acceleration of the account, will have the appropriate restrictive-use language inserted, with the advice of OGC, in the deed of release or satisfaction, as appropriate. If a project is sold at foreclosure, the restrictive-use provisions will be added to the deed.

(10) *Relationship with bankruptcy.* A bankruptcy proceeding will have no effect on this contractual requirement for restrictive-use.

8. Exhibit A of Subpart B is revised to read as follows:

Exhibit A—Exhibit for Borrower to Use as a Guide to Notify Tenants of Compliance with Title V of the Housing Act of 1949, As Amended

Notice To Tenants

This apartment complex was previously financed through the U.S. Department of Agriculture, Farmers Home Administration (FmHA). As a condition of paying the FmHA indebtedness, the owners agreed to operate the complex in accordance with section 514 or section 515 of the Housing Act of 1949, and FmHA regulations until _____ (insert expiration date of 15-year period for unsubsidized or 20-year period for subsidized loans). This requires that apartments be rented to tenants qualified by income, and that management policies and rental rates at the project are consistent with such use.

If you have any reason to believe that the requirements of the Housing Act of 1949 or the regulations of the FmHA are being violated in the operation of this complex, you are advised to contact the FmHA office listed below or any other FmHA office listed in the telephone directory under U.S. Government.

_____

_____

_____

9. Exhibit B of Subpart B is revised to read as follows:

Exhibit B—Guide Letter To Notify Tenant of Pending Prepayment

Notice of Owners Intent To Prepay

TO: Tenants of (Name of Project).

The owners of (Name of Project) have requested to pay their FmHA loan in full, and remove the housing from the FmHA program. If FmHA can accept the payment, rental rates may no longer be subsidized by FmHA, and it is anticipated that rents may change to approximately _____ for a _____ unit and _____ for a _____ unit. You would not be affected by these increases until the date your final lease expires or the date of prepayment, whichever occurs last. Under no circumstances will prepayment be accepted before _____.

(If applicable): It is possible that the housing may remain in the FmHA program after the above date. You will be notified if this is the case, or if the time until the prepayment is extended significantly.

You may apply for a letter of priority entitlement to be placed on the waiting list of any FmHA-financed project in the country for which you qualify. You will have up to the date your final lease expires, the above date, or the date of prepayment, whichever occurs last, to apply for this letter and it will be valid for 60 days after issue. If you are currently receiving rental assistance (RA), you are eligible to receive RA at the project to which you are moving, and the project to which you are moving is eligible to administer RA, and RA will continue when you move to the new project. If you choose to remain in your present apartment and pay the higher rent, with or without outside subsidy, you may not be evicted without good cause.

Other FmHA projects in this area, their addresses, telephone numbers and the size of their units are:

Other agencies which may be able to offer you housing or help to find you other housing and their telephone numbers are:

(If applicable): This prepayment will be accepted before (_____) because the determination was made that:

(If applicable): All tenants currently in residence at this project have 30 days to present evidence contrary to the basis for this determination.

In accordance with Title V of the Housing Act of 1949, as amended, tenants as well as the government may seek enforcement of the provisions under which an FmHA Multi-family housing loan may be prepaid.

All equal opportunity provisions apply to the issuance of the letters of priority.

If you have any questions or wish to apply for a letter of priority, please write or call:

_____

_____

_____

_____

District Director

10. Exhibit C of Subpart B is revised to read as follows:

Exhibit C—Report on Prepayment

1. Name of borrower.
2. Name of project.
3. Case and project number.
4. Date of all loan approvals, transfers and reamortizations.
5. Type of borrower entity and plan of operation.
6. The number of units in the project.
7. The number of eligible tenants presently occupying units.
8. The estimated replacement cost per unit.
9. The estimate of the number of households that will be displaced as a result of prepayment.
10. The estimated relocation cost of the households being displaced.
11. An indication of the displaced households' ability to pay relocation costs.
12. The income range of the tenants presently in the project.
13. The number of elderly tenants in the project.
14. The present rents and rents projected after prepayment.
15. The number and type of Section 8 or RA units, and whether Section 8 will continue after prepayment.
a. The earliest date borrower can "opt-out" of Section 8.
16. Any cause of displacement other than rent.
17. The availability of other vacant units in the area and their rental structure.
18. The District Office's recommendation on the final action.
19. Date of prepayment.
20. Whether restrictive-use provisions are operable and date they expire.
21. Whether restrictive-use provisions will remain in release of security documents and, if an exception was granted, the basis for this exception.
22. Whether (and which) incentives were offered to remain in the program and reason for non-acceptance (if known).
23. Whether housing was offered for sale to a non-profit or public agency and the result.

11. Exhibit E of Subpart B is added to read as follows:

Exhibit E—Prepayment of Loans Not Subject To Restrictive-Use Provisions

I. *Purpose:*

A. This Exhibit provides step-by-step guidance for use when requests to prepay multiple family housing loans are received for projects which are not subject to restrictive-use provisions. Generally, this would be any project for which the last loan was obligated prior to December 21, 1979, and which has not subsequently become subject to restrictive-use provisions due to servicing actions. All provisions of this Exhibit are subject to the availability of funds, and any special appropriations required by the Housing and Community Development Act of 1987 (Pub. L. 100-42).

B. Requests to pay FmHA multiple family housing loans in full require that certain actions be taken to ensure the affordability of the housing for specified tenants for a guaranteed period of time. When prepayment cannot be accepted without displacement of tenants or impact on the supply of affordable

housing for tenants served by the Section 514 or Section 515 programs, FmHA is required to take certain actions: provide incentives to borrowers to remain in the program themselves or to sell the project to a new borrower who will; or require that borrowers sell their projects to non-profit borrowers who, with FmHA assistance, will continue to operate the project for the benefit of very-low- and low-income tenants. FmHA assistance to non-profits through the latter provision are limited by legislation each year.

C. Notwithstanding any provisions set out in other Agency regulations, the provisions of this Exhibit will prevail where a conflict exists.

D. This Exhibit refers FmHA field staff to Section 1965.90 of this Subpart at various points in the process for further direction on the acceptance of prepayment. This is done for further guidance on the handling of specific requirements, and when it is determined that prepayment may be accepted. All references to Section 1965.90 are, therefore, abbreviated to "1965.90" with no further reference. For purposes of this Exhibit, refinancing, sales of property, and payment in full by the borrower from other assets will be covered by the term "prepayment."

II. *Loans Not Covered By This Exhibit:* For loans approved on or after December 21, 1979, or made subject to restrictive-use provisions due to covered servicing actions or transfers, prepayment will continue to be processed in accordance with the procedures outlined in § 1965.90.

III. *Prepayment of Loans Covered By This Exhibit:* For loans approved prior to December 21, 1979, and not subsequently made subject to restrictive-use provisions the following steps will be followed, in addition to the procedures outlined in § 1965.90(d), when a borrower wishes to prepay.

A. *Request to Prepay.* In accordance with § 1965.90 (a)(2), borrowers seeking to prepay multiple family housing loans (RRH and LH) must submit a complete prepayment request to the District Office. A prepayment request will not be considered complete until all the following documents have been submitted:

1. A written request to prepay;

2. Complete and well-documented information necessary to prepare the prepayment report as outlined in Exhibit C of this Subpart; and

3. Certification that they will continue to administer housing in accordance with Fair Housing policies.

B. *Receipt of Incomplete Requests.* If an incomplete request is submitted, the District Office will return it to the borrower specifying what additional information is needed.

C. *Notification to Tenants and Agencies.* When a complete repayment request is received, FmHA will immediately notify tenants and all housing agencies and nonprofit organizations which are known to be interested in housing, of the possible pending prepayment. These notifications will be sent in accordance with § 1965.90 (d)(2) and (3), Exhibit B to this subpart, and paragraph VI of this Exhibit.

D. *Acknowledgment of Request.* The District Office will send an acknowledgment letter to the borrower in accordance with § 1965.90(d)(4). It will state that a complete request to prepay was received and specify the date of receipt.

E. *Notification to National Office.* The District Office will notify the FmHA State Office, which in turn will notify the Assistant Administrator, Housing in the National Office, by Electronic Mail, using the format of FmHA Form 1965–B–1, within 10 working days of the receipt of a complete request. The National Office will maintain a waiting list, and the incentives and transfers which are ready for processing will be authorized in the order in which the original complete prepayment requests were received. Authorizations for the transfers to non-profits will be given until the nationwide annual maximum is reached. The status of the waiting list will be provided to the States periodically. Prepayment requests received prior to the effective date of this regulation will not serve to place borrowers on the waiting list for priority for incentives and transfers to non-profits. Priority will be established for all requests received on the effective date by means of a lottery. Thereafter, they will be prioritized in order of receipt.

IV. *Determination of Need and Acceptance of Prepayment:*

A. *Determination of Need.* The District Office will review local market conditions, information submitted for the prepayment report, and responses to a 30–day tenant comment period. They will determine whether the housing is needed. Section 1965.90 (b)(4) may be used in helping to make this determination. The District Office may accept prepayment if:

1. The borrower enters into an agreement that obligates the utilization of the assisted housing and related facilities for the purposes specified in section 514 or 515 for a 20–year period calculated from the date on which the last loan on the project was made and agrees that upon termination of the 20–year period to offer to sell the assisted housing and related facilities to a qualified non-profit organization or public agency in accordance with Paragraph VI of this Exhibit. The provisions in Exhibit E–1 should be used for this purpose. This agreement will be inserted in the deed or deed of release or satisfaction, as appropriate. If such an agreement is signed in a project with section 8 subsidy, the local Department of Housing and Urban Development (HUD) office must be notified; or

2. It is determined by FmHA that housing opportunities for minorities will not be materially affected as a result of the prepayment, and the borrower enters into an agreement that obligates the borrower and any successors in interest to ensure that current tenants will not be displaced due to: (a) a change in the use of the housing, or (b) an increase in rental or other charges, as a result of the prepayment. The restrictive-use provisions contained in Exhibit E–2 will be inserted in the deed, deed of release, or satisfaction, as appropriate; or

3. It is determined by FmHA that housing opportunities for minorities will not be materially affected as a result of the prepayment, there is an adequate supply of safe, decent, and affordable rental housing within the market area of the housing and related facilities, and sufficient actions have been taken to ensure that the rental housing will be made available to each tenant upon displacement. The requirements of § 1965.90(d) (2) and (3) and Exhibit B of this Subpart will be followed.

B. *Acceptance of Prepayment.* If prepayment can be accepted, the provisions of § 1965.90(d) will be followed, and the National Office will be notified by the State Office to remove the name from the waiting list for incentives and transfer funding. FmHA Form 1965–B–1 will be used for this purpose. Tenants will be given a 30–day notice prior to the prepayment, by the District Office. Tenants will be further advised that if they feel a prepayment has been accepted without compliance with the conditions outlined in this Exhibit, a review by the State Director may be requested.

V. *District Office Actions when Prepayment is Not Accepted:*

A. *Notification to New Tenants.* If prepayment cannot be accepted under the conditions specified in paragraph IV of this Exhibit, leases of tenants who move to the project will state that a prepayment of the loan is pending, and that they have been given a copy of the letter sent to tenants in accordance with paragraph III C of this Exhibit.

B. *Appeal Rights.* The borrower will be notified by letter that:

1. Prepayment was denied in accordance with § 1965.90(a)(3). Accordingly, appeal rights will be given.

2. Within 7 days of the date of the letter, the borrower may notify the District Office that he/she will reserve the right to appeal, to allow for the opportunity to review any incentives not to prepay which FmHA may offer. If this notice is not given, the appeal must be received within 30 days in accordance with FmHA Instruction 1900–B.

3. If the borrower does not respond within 30 days, the State Office will advise the National Office by means of FmHA Form 1965–B–1 to remove the name from the waiting list. Tenants and any agencies notified in accordance with paragraph III C will be notified by the District Office that prepayment will not take place.

C. *Offer of Incentives to Extend Low-Income Use.* If the borrower loses the appeal or requests an incentive offer, the borrower will show evidence of the nature of the prepayment to be made, whether through refinancing or sale of the project. If the possibility of an actual prepayment cannot be demonstrated by the borrower, no incentives will be offered. If they can be shown, the District Office will send a letter stating that:

1. A package of one-time incentives is being offered to extend the low-income use of the housing. (These will be enumerated in accordance with paragraph V D 2 of this Exhibit.)

2. Appropriation limitations may restrict available incentives each year. The actual receipt of these incentives may not be forthcoming in the near future, although the acceptance of the offer will be maintained on the waiting list.

3. The waiting list will be maintained by the National Office based on the date of the original complete prepayment request, in accordance with paragraph III A of this Exhibit.

4. Any agreement entered into to accept these one-time incentives will require the borrower to sign a restrictive-use provision obligating the housing to the low- and moderate-income program for 20 years from the date the agreement is executed.

5. That within 30 days, the borrower must either accept or reject the incentive package or appeal this action. If the borrower does not respond within 30 days, the prepayment request will be voided.

D. *Determination of Incentives to Be Offered.*

1. *Criteria for selection of incentives.* The incentives offered in accordance with paragraph V C will be selected based on the following criteria:

a. Those deemed necessary by local market conditions and alternative uses for the housing;

b. Those determined to be the least costly alternative for the Federal Government;

c. Those that provide a fair return to the borrower;

d. Those that would allow the project to maintain financial feasibility, with the amount of RA which can reasonably be expected to be available.

e. The District Office's evaluation of:

(i) The borrower's capability and willingness to continue to meet the purposes of the program;

(ii) The source of funds for prepaying the loan.

2. *Incentives to be offered.* The incentives will be selected from the following options:

a. Increase the maximum rate of return on the initial investment to 10 percent, whether for the current borrower or to a transferee, when the transfer is being undertaken in accordance with this paragraph.

b. Convert full profit to limited profit loans, either as Plan II or Plan I Section 8, should it become available, or reduce the interest rates for loans with Section 8 subsidy to make contract rents more feasible.

c. Subject to availability, a market determination of need, and tenant need, offer RA and priority for it for units not currently receiving RA in the project. (Any RA above this amount would be allocated in accordance with RA allocation procedures used for all projects.)

d. Subject to availability of funds, make a subsequent loan for equity on the project up to the difference between the present loan and 90 percent of the project's appraised fair market value as determined by an FmHA appraisal in accordance with FmHA Instruction 1922–B (available in any FmHA office). This loan may be made to the present borrower or to a borrower to whom the project is transferred in accordance with § 1965.65 of this Subpart. At the time of the equity loan, the existing loan may be reamortized in accordance with § 1965.70 of this Subpart.

E. *Borrower Response.*

1. *Borrower does not respond or loses the appeal.* If the borrower does not respond or loses the appeal, the State Office will advise the National Office by means of Form FmHA 1965–B–1 to remove the name from the waiting list. Tenants and any agencies notified in accordance with paragraph III C will be notified by the District Office that prepayment will not take place.

2. *Borrower accepts or rejects incentive package.* If the borrower makes a decision concerning acceptance or rejection of the incentive package, Form FmHA 1965–B–1 will be used by the State Office to notify the National Office of the decision.

F. *When The Borrower Accepts the Incentive Package.*

1. *Authorization to proceed.* When the borrower accepts the incentive package, the State Office will wait for authorization from the National Office to proceed with the processing of the incentives. National Office will issue these authorizations for those ready to implement the incentives, in the order in which a complete prepayment request was received, in accordance with paragraph III A of this Exhibit.

2. *Processing the incentives.* When authorization to proceed is received, the District Office will process the incentives, with or without a transfer of borrower, and make the following amendments to the loan and RA agreements, as appropriate:

a. If the rate of return on investment is changed, an addendum will be added to the loan agreement modifying the relevant paragraph.

b. If a conversion of profit type is made, the procedures of paragraph IV A 2 e of Exhibit B of Subpart C of Part 1930 of this Chapter will be followed. If the interest subsidy is increased, the "Interest Credit and Rental Assistance Agreement" (Form FmHA 1944–7), will be amended accordingly.

c. Any change in the amount of RA will require executing a RA agreement or a change in the existing RA agreement, in accordance with Section V C of Exhibit E of Subpart C of Part 1930 of this Chapter.

d. Loans for equity will be made in accordance with the appropriate Sections of Subpart E of Part 1944 of this Chapter. In accordance with Section 1951.517(b)(1) of Subpart K of Part 1951 of this Chapter, the equity loan will be a PASS loan and all existing loans in the project will be converted to PASS.

3. *Restrictive-use provisions.* The restrictive-use provisions contained in Exhibit E–3 will be inserted in the deed, loan agreement/resolution, assumption agreement, or reamortization agreement, as appropriate.

4. *Rent Increases.* Any rent increases resulting from acceptance of an incentive offer will be subject to the tenant notification requirements contained in paragraph IV C of Exhibit C to Subpart C of Part 1930 of this Chapter. Tenants will be advised that a review by the State Director may be requested if it is felt that the provisions of this paragraph were not correctly followed.

VI. *When the Borrower Rejects the Incentive Package:* Sale to non-profit organization or public agency:

If no incentive agreement is reached between FmHA and the borrower, the borrower will be required to offer to sell the project to a non-profit organization or public agency. The following steps will be taken in this process.

A. *Determination of Fair Market Value.* The housing's fair market value will be determined by two independent appraisers qualified to perform multi-family housing appraisals, one of whom shall be selected by the State Office and paid by FmHA, and the other selected and paid by the borrower. The appraisals will be conducted in accordance with FmHA Instruction 1922–B (available in any FmHA Office). If the two appraisers fail to agree on the fair market value, the District Office and borrower will jointly select and pay a third appraiser, whose appraisal shall be binding on the FmHA and the borrower.

B. *Borrower Advertises the Project.* The State Office will periodically compile the list of interested non-profit organizations and public agencies and forward the list to appropriate District Offices. The District Office will provide the borrower with the list of all the organizations which have expressed an interest in purchasing a project in the subject area. Unless the borrower already has a bona fide purchase offer from a local non-profit organization, the borrower will be expected to contact each organization on the list individually with an offer to sell, and with enough information about the project to allow the prospective purchaser to make an informed decision. In addition, the borrower will advertise the housing for sale to a local qualified non-profit organization or public agency. If no qualified local agency is found to purchase the housing within 60 days, the District Office will authorize the borrower to seek an existing qualified national or regional non-profit organization to purchase the housing. Advertising to the latter may begin after 60 days but prior to 120 days after advertising to local organizations begin. Purchase offers from regional or national organizations on the master list may not be accepted before this time. Advertisements will be placed, as appropriate, in local newspapers, national housing publications, and other media determined appropriate by the State Office.

C. *Qualifications of Non-Profit Borrower to Purchase.* Notwithstanding the requirements of § 1944.211(a)(10) of Subpart E of Part 1944 of this Chapter, non-profit organizations for the purpose of this paragraph need not be broadly-based nor organized solely to provide housing under section 514 or 515. Non-profit organizations qualified to buy the housing through this procedure must:

1. Be capable of managing the housing and related facilities for its remaining useful life, either by themselves or through a management agent.

2. Agree that "no subsequent transfer of the housing and related facilities will be permitted during the remaining useful life of the housing and related facilities unless the Secretary determines that the transfer will further the provision of housing and related facilities for low-income families or persons, or there is no longer a need for such housing and related facilities." Generally, transfers from regional or nationwide organizations to qualified local non-profit organizations will be acceptable. However, under no condition will a transfer be approved to an entity in which the non-profit borrower holds an interest.

3. Agree to obligate itself and successors in interest to maintain the housing for very-low- and low-income families or persons for its remaining useful life. The provision in Exhibit E-4 will be used and inserted in the deed, loan agreement/resolution and/or assumption agreement, as appropriate.

4. Show feasibility of the project, with anticipated funding which will be authorized in accordance with paragraph E-3 of this subsection, and any RA or debt forgiveness allocations which can reasonably be anticipated to be available for the project at the time of the transfer.

D. *Authorization for Transfer.* The National Office will authorize transfer-funding for projects which have completed the steps outlined in this subsection, and for which the transfer and assumption are ready to be processed. Subject to the nationwide maximum funding allowed, the authorizations for those ready to be processed will be issued in the order of the date a complete prepayment request was received by the District Office in accordance with paragraph III A of this Exhibit.

E. *District Office Actions when Transfer is Authorized.* When notified by the National Office that the transfer may be processed, the District Office will:

1. Notify tenants that prepayment of the loan will not be taking place.

2. Approve the assumption in accordance with § 1965.65 of this subpart.

3. Process the loan to the non-profit organization or public agency in accordance with Subpart E of Part 1944 of this Chapter for the following purposes, when necessary, the total of which may exceed 102 percent of the fair market value:

a. Direct costs incurred in purchasing and assuming responsibility for the housing and related facilities. These costs may include legal fees for purchasing but not for organizing the entity, architectural fees, appraisal fees, packaging fees and/or other expenses as authorized by the State Director. Funds for these direct costs may be provided in the form of an advance (instructions for doing so to be provided administratively) and be added to the amount of the loan at closing;

b. First year operating expenses not to exceed 2 percent of the project's appraised fair market value, when necessary;

c. Loan to pay for the equity in the project as determined by the independent appraisal;

4. Transfer the RA to the non-profit borrower in accordance with paragraph XV B 1 of Exhibit E of Subpart C of Part 1930 of this chapter;

5. Follow tenant notification requirements contained in the rent increase procedures in paragraph IV C of Exhibit C to Subpart C of Part 1930 of this chapter. Tenants will also be advised that a review by the State Director may be requested if it is felt that the procedures contained in this Exhibit for transfers to non-profit organizations have not been properly followed.

F. *Rental Subsidies.* Any RA transferred with the project will continue to benefit the tenant to whom it was assigned. An attempt will be made, however, to provide every tenant with a rental subsidy. Subject to appropriations, of which the field will be advised by the National Office, this will be done by allocating more units of RA and/or using forgiveness of debt for the project as specified below. While a project may have a combination of RA and forgiveness of debt, any one tenant will only have rents subsidized by one or the other.

1. Forgiveness of debt, with or without RA, will be handled in the following way:

a. A determination will be made of the number of units not receiving RA.

b. The total monthly FmHA-subsidized debt payment will be divided by the number of units determined in (a) above. This figure, or the basic rent for each unit, whichever is less, will be the maximum debt forgiveness which may be given to each non-RA unit.

c. A calculation will be made of the extent of overburden which will be experienced by each tenant not receiving RA.

d. For any tenant whose overburden would exceed that allowed to be forgiven, as calculated in (b) above, an attempt will be made to assign RA to the project.

e. If sufficient RA can be assigned to accommodate all tenants identified in (d), skip to (f) below. If some servicing RA is assigned, but a sufficient amount is not available, the RA should be assigned to those tenants experiencing the greatest overburden and steps (a) and (b) should be repeated.

f. The tenant contribution will be calculated for each remaining tenant not receiving RA using the same methods used to calculate RA. The reduction in rent for any one tenant, however, may not exceed the amount of debt forgiveness available for each tenant; that is, the amount calculated in steps (a) and (b) above. Appropriate changes will be made in lease agreements, with the words "rental forgiveness" being substituted for "rental assistance."

g. As servicing RA becomes available in future years, it will be assigned to those tenants who continue to experience rent overburden under this procedure, and the calculation made in steps (a) and (b) will be updated.

2. The borrower's debt payment to FmHA will be reduced by the amount of reduction in rent paid by tenants in non-RA units in accordance with paragraph VI F 1 above. This reduction in rent will be forgiven. The procedure to be used by the District Office to report the forgiveness to the Finance Office will be issued to the field administratively.

VII. *Accepting Prepayment When Non-Profit Organizations Do Not Apply or Funds Are Not Available:* The District Office will accept prepayment in accordance with the procedures set forth in § 1965.90 (d)(2), (d)(5) and (d)(6) upon the following conditions: (Note: If prepayment is accepted, the State Office will use FmHA Form 1965-B-1 to notify the National Office to remove the project from the list for transfer-funding.)

A. *No Offer to Purchase.* No qualified non-profit organization has made a bona fide offer to purchase the housing for its fair market value and shown feasibility for such a purchase, and

1. Funds are available for the purpose;

2. At least a 180-day period has expired since the offer to sell to a local non-profit or public agency was made;

3. For at least a period of 60 days of the 180 days the offer had also been made to regional and national organizations;

4. There is proof that all organizations whose name was provided by the District or State Office were contacted in accordance with paragraph VI B of this Exhibit and offered the housing for purchase; or

B. *Funds Are Not Available.* No funds have been available for transfer-funding for any project in the country for a period of 15 months. (Note: This determination is not made based on the length of time the particular project has been on the waiting list. National Office will periodically advise State Offices of the status of the waiting list.)

Exhibit E-1—Restrictive-Use Provisions for Those Who Prepay in Accordance With Paragraph IV A 1

The owner and any successors in interest agree to use the housing for the purpose of housing low- and moderate-income people eligible for occupancy as provided in FmHA regulations then extant during this 20 year period beginning (date of the last loan). A tenant may seek enforcement of this provision as well as the Government. No eligible person occupying or wishing to occupy the housing shall be required to vacate or denied occupancy prior to the close of such 20 year period because of early prepayment. The owner also agrees to keep a notice posted at the project, for the remainder of this 20 year period, in a place available for tenant inspection, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates will be consistent with those necessary to maintain the project for low- and moderate-income tenants for the remainder of the restrictive-use period. (Exhibit A of this subpart sets forth the format for this notice.) At the expiration of this period ending (*date*), the housing and related facilities will be offered for sale to a qualified nonprofit organization or public agency, as determined by FmHA.

Exhibit E-2—Restrictive-Use Provisions for Those Who Prepay in Accordance With Paragraph IV A 2

The owner and any successors in interest agree to use the housing for the purpose of housing low- and moderate-income people eligible for occupancy as provided in FmHA regulations then extant. A tenant may seek enforcement of this provision as well as the Government. No eligible person occupying the housing shall be required to vacate because of early prepayment. The owner also agrees to keep a notice posted at the project, in a place available for tenant inspection, stating that the project is to be used in accordance with the Housing Act, and that management practices and rental rates will be consistent with those necessary to maintain the project for low- and moderate-income tenants. (Exhibit A of this Subpart sets forth the format for this notice.)

Exhibit E-3—Restrictive-Use Provisions for Those Accepting Incentives Not to Prepay

The borrower and any successors in interest agree to use the housing for the purpose of housing low- and moderate-income people eligible for occupancy as provided in FmHA regulations then extant during this 20 year period beginning (date the

current agreement or action takes place). A tenant may seek enforcement of this provision as well as the Government. No person occupying or wishing to occupy the housing shall be required to vacate or be denied occupancy prior to the close of such 20 year period because of early prepayment.

Exhibit E–4—Restrictive-Use Provisions for Non-Profit Organizations to Whom Loan Was Transferred in Accordance With Paragraph VI

The borrower and any successors in interest agree to use the housing for the purpose of housing very-low- and low-income people eligible for occupancy as provided in FmHA regulations then extant during the remaining useful life of the project beginning (date of this transfer). A tenant may seek enforcement of this provision as well as the Government. No person occupying or wishing to occupy the housing shall be required to vacate or denied occupancy prior to the end of the remaining useful life of the project because of early prepayment. The borrower agrees further that the housing or related facilities cannot be transferred during the remaining useful life of the housing and related facilities, unless the Government determines that the transfer will further the provision of the housing and related facilities for low-income families or persons, or there is no longer a need for such housing and related facilities by low-income families or persons.

Date: March 29, 1988.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 88–8900 Filed 4–21–88; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Part 309

[Docket No. 50690–7236]

General Requirements for Financial Assistance; Flood Hazard and Environmental Requirements

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Final rule.

SUMMARY: This rule adopts as final, without change, the Economic Development Administration's (EDA) interim regulations at 13 CFR Part 309, § 309.15—"Flood Hazard," and § 309.18—"Environmental Requirements." Section 309.15 on Flood Hazard was amended to include the most recent applicable Executive Order, to substitute the Federal Emergency Management Agency (FEMA) for the Department of Housing and Urban Development (HUD) and to refer to the National Flood Insurance Act of 1986, as amended. Section 309.18 on Environmental Requirements was amended to cite pertinent legal authority.

EFFECTIVE DATE: June 25, 1986.

FOR FURTHER INFORMATION CONTACT: James F. Marten, Deputy Chief Counsel, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street, between Pennsylvania and Constitution Avenues, NW., Room 7001, Washington, DC 20230, (202) 377–5441.

SUPPLEMENTARY INFORMATION: EDA published an interim rule concerning these changes on June 25, 1986 [51 FR 23042], and allowed interested persons 60 days to comment. No comments were received. EDA is adopting as a final rule, without change, 13 CFR Part 309, "General Requirements for Financial Assistance," § 309.15, "Flood Hazard," and § 309.18, "Environmental Requirements."

Under Executive Order 12291, the Department must judge whether a regulation is "major" within the meaning of Section 1 of the Order and, therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not major because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Accordingly, neither a preliminary nor final Regulatory Impact Analysis has to be or will be prepared.

This final rule is exempt from all requirements of 5 U.S.C. 553 including notice and opportunity to comment and delayed effective date because it relates to agency grants, benefits and contracts.

No other law requires that notice and opportunity for comment be given for the rule.

Accordingly, the Department's General Counsel has determined and so certified to the Office of Management and Budget, that dispensing with notice and opportunity for comment is consistent with the Administrative Procedure Act (APA) and all other relevant laws.

Since notice and an opportunity for comment are not required to be given for this rule under § 553 of the APA (5 U.S.C. 553) or any other law under § 603(a) and § 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a), 604(a)), no initial or final Regulatory Flexibility Analysis has been or will be prepared.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (Pub. L. 96–511).

List of Subjects in 13 CFR Part 309

Community development, Grant programs—community development, Loan programs—community development, Penalties.

Under authority of Sec. 701, Pub. L. 89–136, 79 Stat. 570 (42 U.S.C. 3211); Sec 1–105, Department of Commerce Organization Order 10–4, *as amended* (40 FR 56702), the interim regulation amending 13 CFR Part 309 which was published June 25, 1986 (51 FR 23042) is adopted as final without changes.

Dated: April 12, 1988.

James L. Perry,

Acting Assistant Secretary for Economic Development.

[FR Doc. 88–8865 Filed 4–21–88; 8:45 am]

BILLING CODE 3510–24–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87–NM–164–AD; Amdt. 39–5899]

Airworthiness Directives; CASA Model C–212 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to CASA Model C–212 series airplanes, which requires replacement of the existing fuel shut-off valves with new ones. This amendment is prompted by reports of failures in the operation of electrical motor fuel shut-off valves. This condition, if not corrected, could lead to inability to shut off the fuel supply in the event of a fire.

EFFECTIVE DATE: June 1, 1988.

ADDRESSES: The applicable service information may be obtained from Contrucciones Aeronauticas S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. A. Scholes, Standardization Branch, ANM–113; telephone (206) 431–1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to CASA Model C–212 series airplanes, which requires replacement of the existing fuel shut-off valves with new valves, was published in the **Federal Register** on January 19, 1988 (53 FR 1372).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 8 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Estimated cost for parts per airplane is $3,500. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $29,280.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($3,660). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

CASA: Applies to Model C–212 series airplanes, serial numbers as listed in CASA Service Bulletin 212–28–15, dated April 11, 1983, certificated in any category. Compliance is required within 5 months after the effective date of this AD, unless previously accomplished.

To prevent inability to close fuel shut-off valves in the event of a fire, accomplish the following:

A. Replace the fuel shut-off valves with new modified valves, in accordance with CASA C–212 Service Bulletin 212–28–15, dated April 11, 1983.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Contrucciones Aeronauticas S.A., Getafe, Madrid, Spain. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 1, 1988.

Issued in Seattle, Washington, on April 12, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–8822 Filed 4–21–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Parts 71 and 73

[Airspace Docket No. 87–AWP–36]

Subdivision of Restricted Areas R–3104 and R–3107; Hawaii

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects the titles of restricted areas in Hawaii. Inadvertently, the titles of R–3107, R–3107A and R–3107B were called Kaula, HI, when they should have been called Kaula Rock, HI. This action corrects that mistake.

EFFECTIVE DATE: 0901 UTC, May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9253.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 88–4939 was published on March 8, 1988, that subdivided Restricted Areas R–3104 and R–3107 in Hawaii (53 FR 7352). Inadvertently, the titles of R–3107, R–3107A and R–3107B were called Kaula, HI, when they should have been called Kaula Rock, HI. This action corrects that mistake.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Continental control area, Restricted areas.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, in the **Federal Register** Document 88–4939, on page 7352 of the **Federal Register** on March 8, 1988, the titles of R–3107, R–3107A and R–3107B in the amendment to § 73.31 are corrected to read as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10845; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 73.31 [Amended]

2. Section 73.31 is amended to read as follows:

R–3107 Kaula Rock, HI [Remove]
R–3107A Kaula Rock, HI [New]
R–3107B Kaula Rock, HI [New]

Issued in Washington, DC, on April 14, 1988.

Shelomo Wugalter,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88–8823 Filed 4–21–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 154

[Docket No. RM86–14–000, Orders No. 483, 483–A]

Revisions to the Purchased Gas Adjustments Regulations

Issued April 18, 1988.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; correction notice.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is correcting its final rule, Revisions to the Purchased Gas Adjustment Regulations, 52 FR 43854 (Nov. 17, 1987) and the Order on Rehearing on the Revisions to the Purchased Gas Adjustment Regulations, 53 FR 7495 (Mar. 9, 1988).

EFFECTIVE DATE: April 18, 1988.

FOR FURTHER INFORMATION CONTACT: Andrew S. Katz, Office of the General Counsel, Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, DC 20426, Phone: (202) 357–8020.

SUPPLEMENTARY INFORMATION: On November 10, 1987, and March 2, 1988 respectively, the Commission issued its final rule and order on rehearing for Revisions to the Purchased Gas Adjustment Regulations. In the final rule, § 154.306(c) contains a typographical error that incorrectly reverses the order of the two elements in the formula in this section. The Commission is correcting this error.

Lois D. Cashell

Acting Secretary.

PART 154—RATE SCHEDULES AND TARIFFS

1. The authority citation for Part 154 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7102–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1970).

2. In § 154.306, paragraph (c) is revised to read as follows:

§ 154.306 Assessment of past performance.

* * * * *

(c) *Gas costs requiring specific approval for surcharge recovery.* The amount of gas cost which requires specific approval by the Commission for surcharge recovery is the difference obtained by subtracting Y from X, if greater than zero, where:

X = The actual cost of gas purchased in a test interval determined in paragraph (d) of this section; and

Y = The test amount determined by multiplying the computed projected gas costs, determined in paragraph (e) of this section, by 1.03.

* * * * *

[FR Doc. 88–8835 Filed 4–21–88; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Reg. No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Real Property Which Is Not Counted When It Cannot Be Sold and Transfer of Assets For Less Than Fair Market Value

AGENCY: Social Security Administration, HHS.

ACTION: Interim rule with request for comments.

SUMMARY: We are amending regulations under the Supplemental Security Income (SSI) program to implement sections 9103 and 9104 of Pub. L. 100–203 (the Omnibus Budget Reconciliation Act of 1987) dealing with the disposition and transfer of resources in determining eligibility for SSI benefits. Both provisions are effective April 1, 1988.

EFFECTIVE DATE: These rules are effective on an interim basis on April 22, 1988. We will consider any comments we receive by June 21, 1988.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD. 21235, or delivered to the Office of Regulations, Social Security Administration, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, MD. 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD. 21235, telephone (301) 965–1756.

SUPPLEMENTARY INFORMATION: Under existing provisions of title XVI of the Social Security Act (the Act), the resources that an individual owns, with certain exceptions, are counted in determining an individual's eligibility for SSI. Sections 9103 and 9104 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, make certain changes to the statutory resource provisions.

Section 9103

Section 9103 amends section 1613(b) of the Act to add a new paragraph (2) which provides that notwithstanding the provisions of paragraph (1) (the conditional payment provisions of section 1613(b)) the sale of real property shall not be required for so long as the property cannot be sold because: (1) It is jointly owned and its sale would cause undue hardship due to loss of housing for the other owner(s); (2) its sale is barred by a legal impediment; or (3) as determined by regulations issued by the Secretary, the owner's reasonable efforts to sell it have been unsuccessful. These changes are effective April 1, 1988.

Loss of Housing for Joint Owner

Under existing regulations, if an individual has the legal right to sell property jointly owned with another, we will consider the property to be a countable resource to the individual. There is no provision in the regulations for waiving the requirement to dispose of excess resources in the form of real property on the basis of undue hardship to a co-owner. An individual who owns excess nonliquid resources (real or personal) cannot receive regular SSI benefits but can receive time-limited benefits conditioned on the agreement to dispose of the property; in return, we will not consider the excess property in determining the individual's eligibility for SSI benefits subject to repayment of the benefits received from the proceeds of the disposition.

Under these revised regulations, we will not count excess real property as a

resource for conditional benefits purposes for so long as:

- It is jointly owned; and
- Sale of the property would cause the other owner undue hardship due to loss of housing. We are defining undue hardship as occurring when the property serves as the principal place of residence for one (or more) of the other owners; sale of the property would result in loss of that residence; and no other housing would be readily available for the displaced other owner (e.g., the other owner does not own another house that is legally available for occupancy.)

However, if undue hardship ceases to exist, the value of the eligible individual's interest in the property will be included in his or her countable resources effective with the month following the month the hardship ceased.

Sale Barred by Legal Impediment

Although the Act does not define "resources" for SSI purposes, regulations at 20 CFR 416.1201 have contained the same basic definition since the beginning of the program. Under those regulations, resources are (in addition to cash and liquid assets) any real or personal property that an individual owns and could convert to cash to be used for his or her support and maintenance. If an individual has the right, authority or power to liquidate property, or his or her share of the property, it is considered a resource. Conversely, if an individual does not have the right, authority, or power to liquidate property (e.g., there is a legal impediment to its sale), the property is not considered a resource at all. Accordingly, since this statutory amendment which added section 1613(b)(2)(B) reflects current policy, no regulatory change is required to implement it.

Reasonable Efforts to Sell

Current regulations at 20 CFR 416.1240(c) provide that, if an individual fails to dispose of excess real property within 6 months (or 9 months if there is good cause for an extension), regardless of the efforts made to dispose of it, we will count the property for SSI purposes and the individual will be ineligible for benefits. In counting the resource, we use the original estimate of current market value (i.e., the estimate which resulted in the determination of excess resources and led to the individual's choice of conditional benefits) unless the individual submits evidence establishing a lower value. The value estimate applies retroactively to the beginning of the conditional benefits period. The resultant overpayment calculated under the original estimate of current market value, or the revised estimate if there is one, must be refunded.

We are amending the regulations so that we will not consider excess real property in an individual's countable resources for so long as the owner's reasonable efforts to sell it have been unsuccessful. The basis for our determining whether efforts to sell are reasonable, as well as unsuccessful, will be the conditional benefits period. The conditional benefits period for real property is being revised to 9 months which parallels the current 6-month basic disposal period plus the 3-month extension granted for good cause. We chose 9 months for the conditional payment period for real property since that was the maximum period previously allowed for disposing of real property. We believe it is reasonable to use this maximum disposition period to evaluate the reasonableness of the individual's efforts to sell. We believe this requirement of a conditional payment period is provided for under section 1613(b)(2)(C) of the Act, which authorizes the Secretary to determine by regulation whether the owner has been making reasonable efforts to sell which have been unsuccessful. We believe it is reasonable first to require an individual to enter into a conditional payment agreement and attempt to sell excess real property because section 9103 along with its legislative history (H.R. Rep. No. 495, 100th Cong., 1st Sess. 822–23 (1987)) does not suggest that conditional payments should not first be required in order for real property not to be included in countable resources. Rather, they merely provide that once reasonable efforts have been demonstrated (as defined by the Secretary in regulations), and such efforts have proven unsuccessful, the individual's eligibility for SSI benefits is no longer conditioned upon the disposal of the individual's property; instead, the property will not be counted as a resource and the individual will be eligible for SSI benefits for so long as he or she continues reasonable efforts to sell. Until such time as reasonable efforts to sell are determined to be unsuccessful, we will condition benefits on the disposition of the property pursuant to section 1613(b)(1). If we determine that reasonable efforts to sell have been unsuccessful, further SSI payments will not be subject to repayment if the property is ever sold; only the 9 months' conditional benefits will be subject to recovery.

Under the amended regulations, a conditional benefits period involving excess real property begins as described at 20 CFR 416.1242(a). The conditional benefits period ends at the earliest of the following:

- Sale of the property;
- Lack of continued reasonable efforts to sell;
- The individual's written request for cancellation of the agreement;
- Countable resources, even without the conditional exclusion, fall below the applicable limit (e.g., liquid resources have been depleted); or
- The 9 months of conditional benefits have been paid.

In addition, these regulations specify that reasonable efforts to sell property consist of taking all necessary steps to sell it in the geographic area covered by the media serving the area in which the property is located. (As under current policy, the asking price is to be no higher than the latest estimate of current market value.) More specifically, making a reasonable effort to sell would mean that:

- Except for gaps of no more than 1 week, an individual must attempt to sell the property by listing it with a real estate agent or by undertaking to sell it personally;
- Within 30 days of signing a conditional benefits agreement, and absent good cause for not doing so, the individual must have:

—Listed the property with an agent; or
—Begun to advertise it in at least one of the appropriate local media, placed a "For Sale" sign on the property (if permitted), begun to conduct "open houses" or otherwise show the property to interested parties on a continuous basis, and attempted any other appropriate methods of sale; and

- The individual does not decline any reasonable offer to buy and accepts the burden of demonstrating that when an offer is rejected it is because the offer was not reasonable. We are requiring the individual to submit additional evidence of why an offer of at least two-thirds of the latest current market value was not accepted in order to permit the rejection of frivolous offers and still account for changing market conditions.

We will contact the individual periodically to verify the existence of reasonable efforts to sell. For so long as the individual is making reasonable efforts to sell, the property in question is not counted as a resource. Should the individual cease his reasonable efforts to sell, the property is countable effective with the month following cessation of such efforts.

In addition to revising the conditional benefits period to 9 months for excess real property, we are adopting a definition of good cause to encompass situations where circumstances beyond an individual's control prevent taking the required action to accomplish "reasonable efforts to sell."

In applying this reasonable efforts to sell provision, an individual who has received 9 months of conditional benefits and whose benefits have been suspended as described at 20 CFR 416.1321 for reasons unrelated to the property not counted under the conditional benefits agreement, but whose eligibility has not been terminated as defined at 20 CFR 416.1331 through 416.1335, can continue to have the excess real property not included in countable resources upon reinstatement of SSI payments if reasonable efforts to sell the property resume within 1 week of reinstatement. Such an individual will not have to go through a subsequent conditional benefits period.

If a conditional benefits period is in effect when an individual's benefits are suspended for reasons unrelated to reasonable efforts to sell, the 9-month conditional benefits/evaluation period will not include any months for which benefits were suspended. When the suspension has ended, the remainder of the 9-month period will begin to run. However, an individual whose eligibility has been terminated as defined at 20 CFR 416.1331 through 416.1335 and who subsequently reapplies would be subject to a new conditional benefits period if he or she still owns excess real property. This requirement for a new conditional benefits period is based on the fact that in the termination situation the individual will be proceeding with a new application while in the suspension situation the original application is still in effect. This approach is consistent with the statutory distinction between suspension and termination (section 1631(e) of the Act) as well as with our long-standing administrative distinction between those situations.

Section 9104

Section 9104 of Pub. L. 100–203 amends section 1613(c) of the Act by adding a new paragraph (4). That paragraph requires that the Secretary, by regulation, provide for suspending the application of the transfer of assets provision of section 1613(c)(1) of the Act to the extent in any instance that the Secretary determines that such suspension is necessary to avoid undue hardship. These changes are effective April 1, 1988.

Section 1613(c) (1) through (3) of the Act requires counting as a resource the uncompensated value of an asset which an eligible individual (or eligible spouse) owned and has given away or sold for less than fair market value. If the individual can present convincing evidence that the transfer occurred exclusively for a reason other than establishing eligibility for SSI and/or Medicaid benefits, then the uncompensated value will not be counted. Otherwise, the uncompensated value will be counted as a resource for 24 months from the date of transfer, even if the transfer occurred prior to filing for benefits. Prior to the enactment of Pub. L. 100–203, there was no provision for waiver of the counting requirement in situations where application of the transfer of assets rule resulted in undue hardship.

Prior to these amended regulations, the regulations at 20 CFR 416.1246 closely followed the prior statutory provision. They also provide for situations where the "transferred" resource is returned to the individual and where the individual receives additional compensation for the transferred resource; and define "fair market value".

Under these amended regulations, we will:

- Suspend counting the uncompensated value of the transferred resource for any month in the statutory 24-month period where such counting would cause the individual undue hardship;
- Resume counting the uncompensated value for any month of the 24-month period remaining for which counting would not cause undue hardship; and
- Make no change in the way the 24-month period is determined when counting is suspended for 1 or more months.

In addition, undue hardship will be found to exist when: (1) An individual alleges that failure to receive SSI benefits would deprive him or her of food or shelter; and (2) the applicable Federal benefit rate (plus the federally-administered State supplementary payment level) exceeds the sum of: The individual's monthly countable and excludable income and monthly countable and excludable liquid resources.

Justification for Dispensing With Rulemaking Procedures

We are publishing these amendments to the regulations implementing sections 9103 and 9104 of Pub. L. 100–203 as interim final rules instead of proposed rules.

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and comment procedures when an agency finds there is good cause for dispensing with such procedures. Section 553(b)(3)(B) of the APA exempts application of notice and comment rulemaking procedures "when the agency for good cause finds * * * that notice and public procedures thereon are impracticable, unnecessary, or contrary to the public interest." We are dispensing with notice and comment rulemaking in the case of these rules because such rulemaking is impracticable in view of the short statutory effective date. Public Law 100–203 was enacted on December 22, 1987, and these provisions are effective on April 1, 1988. Moreover, we believe it would be contrary to the public interest to delay publication of necessary regulations in this case. Both sections 9103 and 9104 generally advantage SSI claimants. We believe that the short effective date of these sections shows that Congress intended for claimants to benefit from them quickly. Congress also required us to implement these provisions by regulation. If the agency were required to undertake notice and comment procedures, final regulations implementing these provisions would not be published until sometime after April 1, 1988, thus thwarting congressional intent.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that these are not major rules under Executive Order 12291 since the program and administrative costs of these interim regulations will be insignificant and the threshold criteria for a major rule are not otherwise met. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These interim regulations impose no additional reporting and recordkeeping requirement requiring Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these interim regulations will not have a significant economic impact on a substantial number of small entities because these rules affect only individuals and States. Therefore, a regulatory flexibility

analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplementary Security Income Program).

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: March 29, 1988.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: April 1, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

Subpart L of Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for Subpart L of Part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621 and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

2. Section 416.1242 is amended by revising paragraphs (a) and (b) to read as follows:

§ 416.1242 Time limits for disposing of resources.

(a) In order for payment conditioned on the disposition of nonliquid resources to be made, the individual must agree in writing to dispose of real property within 9 months and personal property within 3 months. The time period will begin on the date the written agreement to dispose of the resources is signed by the individual and submitted to us. However, in case of an individual who is disabled, the time period will begin with the date the individual is determined to be disabled.

(b) The 3-month time period for disposition of personal property will be extended an additional 3 months where it is found that the individual had "good cause" for failing to dispose of the resources within the original time period. The rules on the valuation of real property not disposed of within 9 months are described in § 416.1245(b).

* * * * *

3. Section 416.1245 is added to read as follows:

§ 416.1245 Exceptions to required disposition of real property.

(a) *Loss of housing for joint owner.* Excess real property which would be a resource under § 416 1201 is not a countable resource for conditional benefit purposes when:

(1) It is jointly owned; and

(2) sale of the property by an individual would cause the other owner undue hardship due to loss of housing. Undue hardship would result when the property serves as the principal place of residence for one of the other owners, sale of the property would result in loss of that residence, and no other housing would be readily available for the displaced other owner (e.g., the other owner does not own another house that is legally available for occupancy.) However, if undue hardship ceases to exist, its value will be included in countable resources as described in § 416.1207.

(b) *Reasonable efforts to sell.* (1) Excess real property is not included in countable resources for so long as the individual's reasonable efforts to sell it have been unsuccessful. The basis for determining whether efforts to sell are reasonable, as well as unsuccessful, will be a 9-month conditional benefits period described in § 416.1242. If it is determined that reasonable efforts to sell have been unsuccessful, further SSI payments will not be conditioned on the disposition of the property and only the 9 months of conditional benefits will be subject to recovery. In order to be eligible for payments after the conditional benefits period, the individual must continue to make reasonable efforts to sell.

(2) A conditional benefits period involving excess real property begins as described at § 416.1242(a). The conditional benefits period ends at the earliest of the following times:

(i) Sale of the property;

(ii) Lack of continued reasonable efforts to sell;

(iii) The individual's written request for cancellation of the agreement;

(iv) Countable resources, even without the conditional exclusion, fall below the applicable limit (e.g., liquid resources have been depleted); or

(v) The 9 months of conditional benefits have been paid.

(3) Reasonable efforts to sell property consist of taking all necessary steps to sell it in the geographic area covered by the media serving the area in which the property is located, unless the individual has good cause for not taking these steps. More specifically, making a reasonable effort to sell means that:

(i) Except for gaps of no more than 1 week, an individual must attempt to sell the property by listing it with a real estate agent or by undertaking to sell it himself;

(ii) Within 30 days of signing a conditional benefits agreement, and absent good cause for not doing so, the individual must:

(A) List the property with an agent; or

(B) Begin to advertise it in at least one of the appropriate local media, place a "For Sale" sign on the property (if permitted), begin to conduct "open houses" or otherwise show the property to interested parties on a continuous basis, and attempt any other appropriate methods of sale; and

(iii) The individual accepts any reasonable offer to buy and has the burden of demonstrating that an offer was rejected because it was not reasonable. If the individual receives an offer that is at least two-thirds of the latest estimate of current market value, the individual must present evidence to establish that the offer was unreasonable and was rejected.

(4) An individual will be found to have "good cause" for failing to make reasonable efforts to sell under paragraph (b)(3) of this section if he or she was prevented by circumstances beyond his or her control from taking the steps specified in paragraphs (b)(3)(i) through (ii) of this section.

(5) An individual who has received 9 months of conditional benefits and whose benefits have been suspended as described at § 416.1321 for reasons unrelated to the property excluded under the conditional benefits agreement, but whose eligibility has not been terminated as defined at §§ 416.1331 through 416.1335, can continue to have the excess real property not included in countable resources upon reinstatement of SSI payments if reasonable efforts to sell the property resume within 1 week of reinstatement. Such an individual will not have to go through a subsequent conditional benefits period. However, the individual whose eligibility has been terminated as defined at §§ 416.1331 through 416.1335 and who subsequently reapplies would be subject to a new conditional benefits period if there is still excess real property.

4. Section 416.1246 is amended by revising paragraphs (d) and (f) to read as follows:

§ 416.1246 Disposal of resources at less than fair market value.

* * * * *

(d)(1) *Uncompensated value—General.* The uncompensated value is the fair market value of a resource at the time of transfer minus the amount of compensation received by the individual (or eligible spouse) in exchange for the resource. However, if the transferred resource was partially excluded, we will not count uncompensated value in an

amount greater than the countable value of the resource at the time of transfer.

(2) *Suspension of counting as a resource the uncompensated value where necessary to avoid undue hardship.* We will suspend counting as a resource the uncompensated value of the transferred asset for any month in the 24-month period if such counting will result in undue hardship. We will resume counting the uncompensated value as a resource for any month of the 24-month period in which counting will not result in undue hardship. We will treat as part of the 24-month period any months during which we suspend the counting of uncompensated value.

(3) *When undue hardship exists.* Undue hardship exists when: (i) An individual alleges that failure to receive SSI benefits would deprive the individual of food or shelter; and (ii) the applicable Federal benefit rate (plus the federally-administered State supplementary payment level) exceeds the sum of: The individual's monthly countable and excludable income and monthly countable and excludable liquid resources.

* * * * *

(f) *Applicability.* These rules apply to all individuals who filed for SSI benefits on March 1, 1981, or later and to all redeterminations of claims which were filed on March 1, 1981, or later. *Exception:* The rules regarding the suspension of the uncompensated value penalty for undue hardship described in paragraphs (d)(2) and (d)(3) of this section are effective April 22, 1988.

[FR Doc. 88-8850 Filed 4-21-88; 8:45 am]
BILLING CODE 4190-11-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R; Amdt. 9]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Birthing Centers

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule defines and establishes birthing centers as a category of institutional health care provider, prescribes the criteria for assessing a birthing center application for authorized status and the birthing center reimbursement method.

EFFECTIVE DATE: May 23, 1988.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045-6900.

FOR FURTHER INFORMATION CONTACT: Joseph W. Baker, Office of Program Development, OCHAMPUS, telephone (303) 361-4019.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. DoD Regulation 6010.8-R was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008).

I. Background

On February 20, 1987, a proposed rule was published in the **Federal Register** (52 FR 5313) which offered the opportunity for public comment on the CHAMPUS proposal to establish birthing centers as a category of institutional health care provider.

II. Discussion of Comments

We received 48 items of correspondence in response to the proposed rule. Of these, 19 were from private citizens, 10 were from DoD components and other Federal agencies, 10 were from birthing centers, 6 were from individual health care providers, 2 were from professional associations, and 1 was from a regional perinatal planning program. All but two of the commenters expressed general support for the proposal. The essence of the comments and questions, and our responses to them, follow.

Comment: Two commenters were opposed to the authorization of birthing centers as CHAMPUS providers based upon the commenters' opinion that only hospitals, or birthing centers within hospitals, can provide the full measure of safety required for childbirth.

Response: While it is true that freestanding birthing centers do not have the capacity to respond to unanticipated emergencies in the same way as hospitals, it is equally true that the clientele of freestanding birthing centers are not ill and do not manifest any symptoms or history that current medical practice recognizes as a threat or risk to the course of maternity care and childbirth. To limit all childbirth to the hospital setting presumes that every pregnancy is, to some degree, characterized by pathology and ignores the magnitude of the population of women with normal pregnancies who subsequently experience a normal childbirth. We are confident that the requirements of this rule (which includes risk evaluation and emergency management procedures approved by a board certified or board eligible obstetrician-gynecologist and pediatrician, as appropriate) minimize risk through various levels of oversight, by limiting the clientele to lowest-risk women, and by allowing the individual woman, in consultation with the provider of her maternity care, to make an informed choice.

Comment: Several commenters recommended that the licensure requirement conform to whatever local license, if any, is required. Others felt that the licensure requirement should be limited to birthing center specific license.

Response: We conclude that licensure of a particular type is essential to establish local oversight. We have clarified that the birthing center must be licensed as a birthing center where such license is available and otherwise specifically licensed as an ambulatory health care facility.

Comment: One commenter suggested that if the acute care hospital is not designated as a perinatal receiving center for infants, it have a link for consultation and transfer to a hospital which has such a designation.

Response: We feel that the required pediatrician oversight is sufficient to assure that the appropriate emergency care resources are used.

Comment: Several commenters felt that the requirement for a memorandum of understanding (MOU) with a backup hospital was only appropriate when hospital house staff were to follow a woman in the event of a transfer.

Response: We have modified this standard to include either a MOU with a hospital or a MOU with a physician with admitting privileges at a qualified backup hospital.

Comment: One commenter suggested that the physician oversight memorandum of understanding (MOU) be with a board certified family practitioner who, in turn, has a formal consultative-referral arrangement with an obstetrician-gynecologist and a pediatrician.

Response: We conclude that the oversight function which this MOU establishes is best accomplished when the birthing center has a direct relationship with a qualified obstetrician-gynecologist and pediatrician.

Comment: One birthing center felt that laboratory work should be taken out of the all-inclusive rate as the scope of laboratory work, in their experience, varies with each woman.

Response: The all-inclusive rate includes the laboratory services usually associated with a pregnant woman's comprehensive physical and routine prenatal care. These tests reflect generally accepted national practice and will be specified in administrative instructions. Other medically necessary laboratory services will be covered separately.

Comment: Two commenters felt that a Nonavailability Statement (NAS) should not be required.

Response: Under current DoD policy, a NAS is only required for inpatient care; therefore, a NAS is not currently required for birthing center services.

Comment: Several commenters felt that specific accreditation organizations should be identified in the Rule.

Response: Because the CHAMPUS has no control over the standards or accreditation process of any private sector organization, we conclude that it is more appropriate to establish CHAMPUS standards and designate in administrative instructions those accreditation groups which have compatible standards.

Comment: One commenter felt that it was unacceptable to permit the practice of maternity care by non-physicians without also requiring physician direction and responsibility for that practice.

Response: The CHAMPUS recognition of both physicians and certified nurse-midwives as individual professional providers of health care for CHAMPUS beneficiaries is required by the law which governs the Program.

Comment: One commenter recommended that augmentation of labor be allowed when under the direction of an obstetrician and a fetal monitor is used.

Response: We feel that the prohibition of labor augmentation reinforces the requirement that birthing center clientele be limited to those with a clearly low-risk pregnancy.

Comment: One commenter pointed out that the standards fail to make provision for informed consent.

Response: We have incorporated a requirement that the woman admitted be informed in writing of the nature and scope of the center's program and of the limitations and possible risks associated with maternity care and childbirth in the center.

Comment: One commenter noted that the CHAMPUS birthing center standards include recommendations and guidelines for ambulatory care obstetrics published by the American College of Obstetricians and Gynecologist (ACOG), but that the ACOG standards do not speak to birth services in an ambulatory setting.

Response: The CHAMPUS standard for policy and procedures has been revised to eliminate references to the publications of specific professional organizations.

Comment: One commenter felt that a birthing center should be required to meet either CHAMPUS standards or have national accreditation, but not both.

Response: Accreditation by a national organization with standards accepted by the Director, OCHAMPUS, acts to verify and reinforce the CHAMPUS standards. Relying solely upon the standards of a national body would effectively eliminate CHAMPUS control over the standards established for CHAMPUS-authorized institutional providers.

Comment: One commenter held the view that the requirement to report an emergency transfer to a hospital was not necessary as the fact could be determined by the bills submitted by the facilities involved.

Response: This requirement is retained as it provides the most timely notice to the CHAMPUS for quality assurance oversight.

Comment: CHAMPUS should actively educate users of the benefits of birthing centers and CHAMPUS should compile the data to which it has access from birthing centers to establish a statistical basis for the safe use of birthing centers.

Response: The CHAMPUS routinely disseminates benefit information through news releases, communications with Health Benefit Advisors associated with Uniformed Services Medical Treatment Facilities, and through publication of informational materials. The gathering and analysis of the type of information required to complete evaluative research of acceptable quality is beyond the scope of the CHAMPUS.

III. Summary of Changes

In addition to editorial changes for clarity throughout the Rule, the following substantial changes have been made:

At § 199.2(b), definitions not in the proposed rule have been added for "institutional provider" and "backup hospital."

A technical revision, not a part of the proposed rule, is made to § 199.4(a)(9)(i) to incorporate changes in 10 U.S.C. 1079 previously contained in a "Note" at this location.

Section 199.4(a)(9)(v) now incorporates the Nonavailability Statement information located at § 199.4(e)(16)(iii) in the proposed rule.

Section 199.4(e)(16)(ii) now specifies the cost-share formula to be applied in various situations and incorporate (16)(iv) in the proposed rule. This change is expected to improve beneficiary service by reducing the steps routinely required for claim adjudication.

Section 199.6(a)(9), a new paragraph, is added to describe the general scope of authorized institutional provider status.

Section 199.6(b)(1)(ii) adds a requirement that, except for Residential Treatment Centers, institutional claims subject to a CHAMPUS-determined all-inclusive rate reimbursement method may be submitted only after the beneficiary has been discharged or transferred from the institutional provider's facility or program.

At § 199.6(b)(4)(xi)(A)(*2*), we have clarified that birthing center specific license is required where available and license as a type of ambulatory health care facility is required where birthing center specific license is not available.

At § 199.6(b)(4)(xi)(A)(*5*)(*i*) we have added a requirement that the birthing center participate in CHAMPUS.

Section 199.6(b)(4)(xi)(A)(*5*)(*ii*) has been rewritten to clarify the intent.

Section 199.6(b)(4)(xi)(A)(*5*)(*iii*) has been deleted and the remaining paragraphs renumbered.

At § 199.6(b)(4)(xi)(B)(*2*), we have replaced the references to the American College of Obstetricians and Gynecologists (ACOG) and the American College of Nurse-Midwives (ACNM) publications with categories of required written policy and procedures.

At § 199.6(b)(4)(xi)(B)(*3*), a requirement for informed consent has been added.

At § 199.6(b)(4)(xi)(B)(*7*), the requirement for a memorandum of understanding (MOU) with a backup hospital has been changed to allow, as an alternative, a MOU with a physician with admitting privileges at a qualified backup hospital.

References in the proposed rule to § 199.6(e) are now incorporated in § 199.14(e) as § 199.6(e) material was moved to § 199.14 by a previous amendment.

Section 199.14(f)(4)(iv) has been rewritten to clarify the intent.

Section 199.14(f)(4)(vi) has been added to emphasize that the beneficiary's share of the total reimbursement to a birthing center is limited to the cost-share amount plus the amount billed for noncovered services and supplies.

IV. Regulatory Impacts

The Office of CHAMPUS has determined that this regulation is not a major rule under Executive Order 12291

because it neither increases nor decreases the scope of the Program's existing maternity benefit but only provides the administrative framework to allow Program beneficiaries another source of maternity care services currently covered under the Program. Consequently, the addition of birthing centers as a source of maternity care will (1) allow the Program to avoid an estimated $1 million of annual benefit cost compared to normal maternity care provided by other authorized Program sources, an amount far below the executive order threshold of an annual effect on the economy of $100 million or more; (2) will not change the consumer's share of the cost for normal maternity care for most beneficiaries and is expected to reduce cost for some beneficiaries as the total cost of birthing center care is estimated to be an average 25 percent less than normal maternity care ending in an inpatient delivery; (3) has no general affect upon the health care industry as it concerns only the maternity care segment of that industry; (4) will not cause increased cost to the maternity care segment as it is applicable only to those birthing centers who voluntarily request CHAMPUS-approved status and the requirements for such status established by this rule are not unique or unusual within the health care industry; (5) places no regulatory burden upon Federal, State, or local government agencies, or geographic regions; and (6) does not have any direct or indirect adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets as it does not concern these aspects of the market place directly and will, at the extreme, involve less than five percent of the CHAMPUS users of normal maternity care within the United States.

Further, we certify that this final rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act because (1) this rule only provides the administrative framework to allow Program beneficiaries to avail themselves of maternity care services currently covered under the Program; (2) no birthing center is required by this Rule to become an authorized provider to CHAMPUS beneficiaries; (3) any entity which applies for CHAMPUS-approved status as a birthing center does so voluntarily; (4) this Rule does not guarantee payment or patronage; (5) hospital provider status is not affected by this rule; (6) hospitals are not affected economically by this rule as the portion of hospital normal delivery business which might shift to a birthing center is not expected to annually exceed one half of one percent of annual hospital charges by all payers for normal delivery; and (7) birthing centers cannot be termed a substantial population of small entities impacted by this rule as they constitute less than five percent of the institutional childbirth providers in the United States.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, and Military Personnel.

PART 199—[AMENDED]

Accordingly, 32 CFR Part 199 is amended as follows:

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

Authority: 10 U.S.C 1079, 1036, 5 U.S.C. 301.

2. Section 199.2 is amended by revising the definitions of "admission" and "certified nurse-midwife" and by adding definitions for "backup hospital," "birthing center," "birthing room," "freestanding," "high-risk pregnancy," "institution-affiliated," "institution-based," "institutional provider," "low-risk pregnancy," "most-favored rate," and "natural childbirth" in alphabetical order to read as follows:

§ 199.2 Definitions.

* * * * *

(b) Specific definitions. * * *

Admission. The formal acceptance by a CHAMPUS authorized institutional provider of a CHAMPUS beneficiary for the purpose of diagnosis and treatment of illness, injury, pregnancy, or mental disorder.

* * * * *

Backup hospital. A hospital which is otherwise eligible as a CHAMPUS institutional provider and which is fully capable of providing emergency care to a patient who develops complications beyond the scope of services of a given category of CHAMPUS-authorized freestanding institutional provider and which is accessible from the site of the CHAMPUS-authorized freestanding institutional provider within an average transport time acceptable for the types of medical emergencies usually associated with the type of care provided by the freestanding facility.

* * * * *

Birthing center. A health care provider which meets the applicable requirements established by § 199.6(b) of this Part.

Birthing room. A room and environment designed and equipped to provide care, to accommodate support persons, and within which a woman with a low-risk, normal, full-term pregnancy can labor, deliver and recover with her infant.

* * * * *

Certified nurse-midwife. An individual who meets the applicable requirements established by § 199.6(c) of this Part.

* * * * *

Freestanding. Not "institution-affiliated" or "institution-based."

* * * * *

High-risk pregnancy. A pregnancy is high-risk when the presence of a currently active or previously treated medical, anatomical, physiological illness or condition may create or increase the likelihood of a detrimental effect on the mother, fetus, or newborn and presents a reasonable possibility of the development of complications during labor or delivery.

* * * * *

Institution-affiliated. Related to a CHAMPUS-authorized institutional provider through a shared governing body but operating under a separate and distinct license or accreditation.

Institution-based. Related to a CHAMPUS-authorized institutional provider through a shared governing body and operating under a common license and shared accreditation.

Institutional provider. A health care provider which meets the applicable requirements established by § 199.6(b) of this Part.

* * * * *

Low-risk pregnancy. A pregnancy is low-risk when the basis for the ongoing clinical expectation of a normal uncomplicated birth, as defined by reasonable and generally accepted criteria of maternal and fetal health, is documented throughout a generally accepted course of prenatal care.

* * * * *

Most-favored rate. The lowest usual charge to any individual or third-party payer in effect on the date of the admission of a CHAMPUS beneficiary.

* * * * *

Natural childbirth. Childbirth without the use of chemical induction or augmentation of labor or surgical procedures other than episiotomy or perineal repair.

* * * * *

3. Section 199.4 is amended by revising paragaphs (a)(9)(i), (a)(9)(v) and (b)(1), removing paragraphs (c)(3)(xi) and (c)(3)(xii), redesignating paragraphs

(c)(3)(xiii) and (c)(3)(xiv) as (c)(3)(xi) and (c)(3) (xii) and adding paragraph (e)(16) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(a) * * *

(9) * * *

(i) *Rules applicable to issuance of Nonavailability Statement (NAS) (DD Form 1251).*

(A) The ASD(HA) is responsible for issuing rules and regulations regarding Nonavailability Statements.

(B) A NAS is required for services in connection with nonemergency inpatient hospital care if such services are available at a facility of the Uniformed Services located within a 40-mile radius of the residence of the beneficiary, except that a NAS is not required for services otherwise available at a facility of the Uniformed Services located within a 40-mile radius of the beneficiary's residence when another insurance plan or program provides the beneficiary primary coverage for the services.

* * * * *

(v) *Nonavailability Statement (NAS) and Claims Adjudication.* (A) A NAS is valid for the adjudication of CHAMPUS claims for all related care otherwise authorized by this Part which is received from a civilian source while the beneficiary resided within the Uniformed Service facility catchment area which issued the NAS.

(B) A requirement for a NAS for inpatient hospital maternity care must be met for CHAMPUS cost-share of any related outpatient maternity care.

* * * * *

(b) *Institutional benefits*—(1) *General.* Services and supplies provided by an institutional provider authorized as set forth in § 199.6 of this Part may be cost-shared only when such services or supplies (i) are otherwise authorized by this Part; (ii) are medically necessary; (iii) are ordered, directed, prescribed, or delivered by an OCHAMPUS-authorized individual professional provider as set forth in § 199.6 of this Part or by an employee of the authorized institutional provider who is otherwise eligible to be a CHAMPUS authorized individual professional provider; (iv) are delivered in accordance with generally accepted norms for clinical practice in the United States; (v) meet established quality standards; and (vi) comply with applicable definitions, conditions, limitations, exceptions, or exclusions as otherwise set forth in this Part.

* * * * *

(c) * * *

(3) * * *

(xi) *Well-baby care.* * * *

(xii) *Private duty (special) nursing* * * *

(e) * * *

(16) *Maternity care.* (i) *Benefit.* The CHAMPUS Basic Program may share the cost of medically necessary services and supplies associated with maternity care which are not otherwise excluded by this Part. However, failure by a beneficiary to secure a required Nonavailability Statement (NAS) (DD Form 1251) as set forth in paragraph (a)(9) of this section will waive that beneficiary's right to CHAMPUS cost-share of certain maternity care services and supplies.

(ii) *Cost-share.* Subject to applicable Nonavailability Statement (NAS) requirements, maternity care cost-share shall be determined as follows:

(A) Inpatient cost-share formula applies to maternity care ending in childbirth in, or on the way to, a hospital inpatient childbirth unit, and for maternity care ending in a non-birth outcome not otherwise excluded by this Part.

(B) Ambulatory surgery cost-share formula applies to maternity care ending in childbirth in, or on the way to, a birthing center to which the beneficiary is admitted and from which the beneficiary has received prenatal care, or a hospital-based outpatient birthing room.

(C) Outpatient cost-share formula applies to maternity care which terminates in a planned childbirth at home.

(D) Otherwise covered medical services and supplies directly related to "Complications of pregnancy," as defined in § 199.2 of this Part, will be cost-shared on the same basis as the related maternity care for a period not to exceed 42 days following termination of the pregnancy and thereafter cost-shared on the basis of the inpatient or outpatient status of the beneficiary when medically necessary services and supplies are received.

* * * * *

4. Section 199.6 is amended by adding new paragraphs (a)(9) and (b)(4)(xi) and by revising paragraph (b)(1)(ii), to read as follows:

§ 199.6 Authorized providers.

(a) * * *

(9) *Limitation to authorized institutional provider designation.* Authorized institutional provider status granted to a specific institutional provider applicant does not extend to any institution-affiliated provider, as defined in § 199.2, of that specific applicant.

(b) *Institutional providers.* (1) * * *

(ii) Billing practices.

(A) Each institutional billing, including those institutions subject to the CHAMPUS DRG-based reimbursement method or a CHAMPUS-determined all-inclusive rate reimbursement method, must be itemized fully and sufficiently descriptive for the CHAMPUS to make a determination of benefits.

(B) Institutional claims subject to the CHAMPUS DRG-based reimbursement method or a CHAMPUS-determined all-inclusive rate reimbursement method, may be submitted only after the beneficiary has been discharged or transferred from the institutional provider's facility or program.

(C) Institutional claims for Residential Treatment Centers and all other institutional providers, except those listed in (B) above, should be submitted to the appropriate CHAMPUS fiscal intermediary at least every 30 days.

* * * * *

(4) * * *

(xi) *Birthing centers.* A birthing center is a freestanding or institution-affiliated outpatient maternity care program which principally provides a planned course of outpatient prenatal care and outpatient childbirth service limited to low-risk pregnancies; excludes care for high-risk pregnancies; limits childbirth to the use of natural childbirth procedures; and provides immediate newborn care.

(A) *Certification requirements.* A birthing center which meets the following criteria may be designated as an authorized CHAMPUS institutional provider:

(*1*) The predominant type of service and level of care rendered by the center is otherwise authorized by this Part.

(*2*) The center is licensed to operate as a birthing center where such license is available, or is specifically licensed as a type of ambulatory health care facility where birthing center specific license is not available, and meets all applicable licensing or certification requirements that are extant in the state, county, municipality, or other political jurisdiction in which the center is located.

(*3*) The center is accredited by a nationally recognized accreditation organization whose standards and procedures have been determined to be acceptable by the Director, OCHAMPUS, or a designee.

(*4*) The center complies with the CHAMPUS birthing center standards set forth in this Part.

(*5*) The center has entered into a participation agreement with

OCHAMPUS in which the center agrees, in part, to:

(*i*) Participate in CHAMPUS and accept payment for maternity services based upon the reimbursement methodology for birthing centers;

(*ii*) Collect from the CHAMPUS beneficiary only those amounts that represent the beneficiary's liability under the participation agreement and the reimbursement methodology for birthing centers, and the amounts for services and supplies that are not a benefit of the CHAMPUS;

(*iii*) Permit access by the Director, OCHAMPUS, or a designee, to the clinical record of any CHAMPUS beneficiary, to the financial and organizational records of the center, and to reports of evaluations and inspections conducted by state or private agencies or organizations;

(*iv*) Submit claims first to all health benefit and insurance plans primary to the CHAMPUS to which the beneficiary is entitled and to comply with the double coverage provisions of this Part;

(*v*) Notify CHAMPUS in writing within 7 days of the emergency transport of any CHAMPUS beneficiary from the center to an acute care hospital or of the death of any CHAMPUS beneficiary in the center.

(*6*) A birthing center shall not be a CHAMPUS-authorized institutional provider and CHAMPUS benefits shall not be paid for any service provided by a birthing center before the date the participation agreement is signed by the Director, OCHAMPUS, or a designee.

(B) *CHAMPUS birthing center standards.*—(*1*) *Environment:* The center has a safe and sanitary environment, properly constructed, equipped, and maintained to protect health and safety and meets the applicable provisions of the "Life Safety Code" of the National Fire Protection Association.

(*2*) *Policies and procedures:* The center has written administrative, fiscal, personnel and clinical policies and procedures which collectively promote the provision of high-quality maternity care and childbirth services in an orderly, effective, and safe physical and organizational environment.

(*3*) *Informed consent:* Each CHAMPUS beneficiary admitted to the center will be informed in writing at the time of admission of the nature and scope of the center's program and of the possible risks associated with maternity care and childbirth in the center.

(*4*) *Beneficiary care:* Each woman admitted will be cared for by or under the direct supervision of a specific physician or a specific certified nurse-midwife who is otherwise eligible as a CHAMPUS individual professional provider.

(*5*) *Medical direction:* The center has written memoranda of understanding (MOU) for routine consultation and emergency care with an obstetrician-gynecologist who is certified or is eligible for certification by the American Board of Obstetrics and Gynecology or the American Osteopathic Board of Obstetrics and Gynecology and with a pediatrician who is certified or eligible for certification by the American Board of Pediatrics or by the American Osteopathic Board of Pediatrics, each of whom have admitting privileges to at least one backup hospital. In lieu of a required MOU, the center may employ a physician with the required qualifications. Each MOU must be renewed annually.

(*6*) *Admission and emergency care criteria and procedures.* The center has written clinical criteria and administrative procedures, which are reviewed and approved annually by a physician related to the center as required by paragraph (b)(4)(xi)(B)(*5*) above, for the exclusion of a woman with a high-risk pregnancy from center care and for management of maternal and neonatal emergencies.

(*7*) *Emergency treatment.* The center has a written memorandum of understanding (MOU) with at least one backup hospital which documents that the hospital will accept and treat any woman or newborn transferred from the center who is in need of emergency obstetrical or neonatal medical care. In lieu of this MOU with a hospital, a birthing center may have an MOU with a physician, who otherwise meets the requirements as a CHAMPUS individual professional provider, and who has admitting privileges to a backup hospital capable of providing care for critical maternal and neonatal patients as demonstrated by a letter from that hospital certifying the scope and expected duration of the admitting privileges granted by the hospital to the physician. The MOU must be reviewed annually.

(*8*) *Emergency medical transportation.* The center has a written memorandum of understanding (MOU) with at least one ambulance service which documents that the ambulance service is routinely staffed by qualified personnel who are capable of the management of critical maternal and neonatal patients during transport and which specifies the estimated transport time to each backup hospital with which the center has arranged for emergency treatment as required in paragraph (b)(4)(xi)(B)(*7*) above. Each MOU must be renewed annually.

(*9*) *Professional staff.* The center's professional staff is legally and professionally qualified for the performance of their professional responsibilities.

(*10*) *Medical records.* The center maintains full and complete written documentation of the services rendered to each woman admitted and each newborn delivered. A copy of the informed consent document required by paragraph (b)(4)(xi)(B)(*3*), above, which contains the original signature of the CHAMPUS beneficiary, signed and dated at the time of admission, must be maintained in the medical record of each CHAMPUS beneficiary admitted.

(*11*) *Quality assurance.* The center has an organized program for quality assurance which includes, but is not limited to, written procedures for regularly scheduled evaluation of each type of service provided, of each mother or newborn transferred to a hospital, and of each death within the facility.

(*12*) *Governance and administration.* The center has a govening body legally responsible for overall operation and maintenance of the center and a full-time employee who has authority and responsibility for the day-to-day operation of the center.

* * * * *

5. Section 199.14 is amended by adding a new paragraph (e) and redesignating the existing paragraphs (e) through (g) as (f) through (h).

§ 199.14 Provider reimbursement methods.

* * * * *

(e) *Reimbursement of birthing centers.* (1) Reimbursement for maternity care and childbirth services furnished by an authorized birthing center shall be limited to the lower of the CHAMPUS established all-inclusive rate or the center's most-favored all-inclusive rate.

(2) The all-inclusive rate shall include the following to the extent that they are usually associated with a normal pregnancy and childbirth: laboratory studies, prenatal management, labor management, delivery, post-partum management, newborn care, birth assistant, certified, nurse-midwife professional services, physician professional services, and the use of the facility.

(3) The CHAMPUS established all-inclusive rate is equal to the sum of the CHAMPUS area prevailing professional charge for total obstetrical care for a normal pregnancy and delivery and the sum of the average CHAMPUS allowable institutional charges for supplies, laboratory, and delivery room for a hospital inpatient normal delivery.

The CHAMPUS established all-inclusive rate areas will coincide with those established for prevailing professional charges and will be updated concurrently with the CHAMPUS area prevailing professional charge database.

(4) Extraordinary maternity care services, when otherwise authorized, may be reimbursed at the lesser of the billed charge or the CHAMPUS allowable charge.

(5) Reimbursement for an incomplete course of care will be limited to claims for professional services and tests where the beneficiary has been screened but rejected for admission into the birthing center program, or where the woman has been admitted but is discharged from the birthing center program prior to delivery, adjudicated as individual professional services and items.

(6) The beneficiary's share of the total reimbursement to a birthing center is limited to the cost-share amount plus the amount billed for noncovered services and supplies.

(f) *Reimbursement of individual health-care professionals and other noninstitutional health-care providers.* * * *

(g) *Outside the United States.* * * *

(h) *Implementing instructions.* * * *

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 15, 1988.

[FR Doc. 88-8672 Filed 4-21-88; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 211

Appeal of Decisions Concerning the National Forest System

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises Forest Service procedures governing appeals of returned or defaulted timber sales on National Forests. The final rule is essentially the same as the interim rule published January 28, 1988 (53 FR 2490), except that the eligibility requirements have been changed to accept all appeals filed between January 28–February 29, 1988, without regard to whether they meet the criteria of the interim rule. In addition, the final rule will allow anyone else to appeal a decision to reoffer a sale of returned or defaulted timber made prior to January 28, 1988, will allow interested persons to submit comments on any appeal filed, and clarify the filing period for appeals for those persons who receive written notice of a decision. This rule will end the present uncertainties as to whom may appeal decisions to reoffer returned or defaulted timber sales and provide for the orderly processing of those appeals in an expeditious manner.

EFFECTIVE DATE: This rule is effective April 22, 1988.

FOR FURTHER INFORMATION CONTACT: Larry Hill, Staff Assistant for Operations, National Forest System, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 382–9349.

SUPPLEMENTARY INFORMATION:

Background

The Federal Timber Contract Payment Modification Act of 1984 (FTCPMA) (16 U.S.C. 618; Pub. L. 98–478) allowed purchasers of timber sale contracts on National Forests the opportunity to buy out of a certain volume of timber under qualifying timber sale contracts, and directed that timber from returned or defaulted timber sales be given preference for resale in the Forest Service timber sale program.

In processing the resale of the returned or defaulted sales, the Forest Service took the position that a decision to reoffer timber from returned or defaulted timber sales was a reaffirmation of the original decision to offer the timber for sale, and, therefore, the review and subsequent reoffering would not constitute an appealable decision under the Agency's administrative appeal regulations at 36 CFR 211.18.

In October 1986, Congress provided specific direction in section 320 of the Appropriations Act for Fiscal Year 1987 (Pub. L. 99–951) that the reoffered sales would be subject to only one level of administrative appeal and that any such appeal must be resolved within 90 days of receipt.

Following the dismissal of an appeal on the North Roaring Devil reoffer sale of December 5, 1985, Oregon Natural Resources Council and the Breitenbush Community filed suit in the U.S. District Court for the District of Oregon alleging that the dismissal of the appeal was improper and subsequently appealed the lower court's decision to the Ninth Circuit Court of Appeals. On December 21, 1987, the Ninth Circuit ruled that a reoffer by the Forest Service is a decision within the meaning of the Agency's administrative appeal regulations at 36 CFR 211.18, and that section 320 of the Appropriations Act could not apply retroactively to appeals of sales reoffered prior to the passage of the appropriations language.

On January 28, 1988 (53 FR 2490), the Forest Service published an interim rule providing procedures by which individuals or groups could appeal Forest Service decisions to reoffer returned or defaulted timber sales on National Forests. The new rule was promulgated at 36 CFR 211.17, and was effective upon publication. The principal procedures contained in the interim rule are as follows:

1. Decisions to reoffer returned or defaulted timber sales made prior to October 30, 1986, are entitled to a 2-level appeal process, and similar decisions made after October 30, 1986, are entitled to a 1-level appeal process, both to be completed within 90 days.

2. Only persons or organizations who previously submitted a timely Notice of Appeal, pursuant to 36 CFR 211.18, on a decision to reoffer a sale of returned or defaulted timber and whose appeal was subsequently dismissed as untimely because the Forest Service did not consider reoffer of the sale an appealable decision, would have an opportunity to resubmit their appeal. These parties had 30 days from publication of the interim rule to submit their notice of appeal.

3. Notice of decisions to reoffer timber sales appealable under this section made after January 28, 1988 are to be published in a local newspaper of general circulation. Any individual or organization, except the defaulting purchaser of a reoffered timber sale, has 30 days from publication of the notice of decision to reoffer a timber sale to file a notice of appeal.

4. Intervention is not allowed nor are procedural appeals, such as appealing decisions to deny a stay.

5. A responsive statement from the initial Forest Officer who made the decision to reoffer the sale is not required.

6. No extensions of time would be allowed for appellants or the Forest Service.

Although these provisions in the interim rule were made effective immediately, the Forest Service invited public comment which the agency would consider in promulgating a final rule.

Analysis of Public Comment

The interim rule generated three responses: One from a coalition of environmental groups, one from a forest products organization, and one from a recreation-oriented service organization. All responses contained specific suggestions that were considered in developing the final rule.

Responses received are available for review at the Office of the Deputy Chief, National Forest System, Forest Service, USDA, Room 4211, South Agriculture Building, 12th and Independence Avenues SW., Washington, DC 20250, (202) 382–9346.

The discussion which follows summarizes the major comments and suggestions received on the interim rule, and the Department's responses to these comments.

Comment: One organization was extremely concerned about the implementation of a draft rule concurrent with the comment period.

Response: The rule that was published on January 28, 1988, was not a draft or proposed rule. Rather, it was published as an interim rule, effective upon publication, because of the need to facilitate the orderly offering and review of decisions pertaining to reoffered sales and to lessen potential impacts in timber-dependent communities and upon the Agency's timber sale program.

Comment: One organization stated that the current opinion in *Pilchuck Audubon Society v. Forest Service* should have been considered in the preparation of the interim rule.

Response: The referenced court decision has been considered in the development of the final rule. The broadening of who may appeal decisions to reoffer timber sales under this rule specifically reflects consideration of the court's decision.

Comment: Two organizations commented that the rule should allow any citizen the right of administrative appeal, irrespective of prior attempts.

Response: At the end of the 30-day appeal period allowed in the interim rule, February 29, 1988, approximately 225 appeals had been received from individuals and groups wishing to appeal decisions to reoffer a sale of returned or defaulted timber. The majority of these appeals were from individuals and groups who had not previously appealed the reoffering because they had been advised that such sales were not appealable.

The agency believes that the interim rule published at 36 CFR 211.17 responded to the 9th Circuit Court decision. However, the appeals received in response to the interim rule are a forceful expression of public sentiment to participate in reoffer decisions through the appeals process. For this reason, all appeals filed in response to the 30-day appeal period provided in the interim rule (January 28–February 29, 1988) will be accepted and processed, regardless of any intermediate decisions dismissing those appeals because they were not eligible pursuant to section (c)(1). It will not be necessary for any of these appeals to be resubmitted for processing. Further, the process will be opened to anyone else wishing to appeal a decision to reoffer a sale of returned or defaulted timber made prior to January 28, 1988. A 30-day filing period following publication of this final rule will be allowed for submission of appeals.

Comment: One organization requested that the rule provide for procedural appeals, oral presentations, and similar process-type actions that are provided for in other appeal regulations.

Response: The complex procedures provided in other appeal rules would create undue delays. In order to meet the shorter deadlines for processing appeals of decisions to reoffer timber sales returned or defaulted as required by section 320 of the Appropriations Act for FY 1987, it is necessary to streamline the procedures. However, nothing in the final rule prohibits the Reviewing Officer from contacting or meeting with appellants to obtain additional information needed or to resolve issues within the context of this rule.

Comment: One organization requested that intervention should be provided for in the interim rule.

Response: Section (j)(4) of the interim rule states that the Reviewing Officer shall conduct a review on the record which consists of, among other things, any other written comments received. This provision for written comment was intended to take the place of specified procedures for intervenors; however, the intent is somewhat obscured by its location. Therefore, a new section has been added in the final rule at (f) allowing interested persons to submit comments for the record. Additionally, section (n) has been clarified to make explicit who the Reviewing Officer may involve in acquiring information. This section also provides the Reviewing Officer the authority to discuss issues related to the appeal with appellants, the Forest officer making the initial decision to reoffer, or those receiving notice pursuant to paragraph (c) of this section, since these parties represent those that would be most affected by potential agreements or settlements that may be reached through conflict resolution.

Comment: One respondent suggested that the rule be modified to require that notice be given to parties to written instruments issued by the Forest Service who are affected by a reoffer decision, and to other parties who have requested notice of specific decisions, a procedure provided for in 36 CFR 211.18(a)(2).

Response: Section (b) of the interim rule requires that notice of decisions appealable under this section made after the effective date of the regulation shall be published in a local newspaper of general circulation. The final rule modifies this section to incorporate the above suggestion, by giving notice of future reoffer decisions to parties to written instruments issued by the Forest Service who are affected by the decision, as well as to other interested parties who have requested written notification of the specific decision. These notice requirements are moved to a new paragraph (c) for ease of reference and subsequent paragraphs are redesignated.

Comment: To permit ample time to appeal, one commenter suggested that the rule provide that affected parties and those requesting written notice of reoffer decision be given their written notice no later than the date of newspaper publication.

Response: Section (f) of the interim rule provides that appeals be filed within 30 days of the notice of decision for those decisions made after January 28, 1988. The final rule describes filing procedures at section (h), and includes provision in (h)(3) that the 30-day filing period for parties entitled to written notice pursuant to section (b) begins on the date immediately following the date on the written notice. The intent is to ensure that those entitled to written notice have no less time to file an appeal than those who are notified about reoffer decisions through newspaper notice.

Comment: One organization felt that the final rule should include a provision for automatic stays.

Response: A request for stay is not made automatic because it might adversely affect the rights and interests of others, or otherwise not be in the public interest. The final rule provides procedures for a case-by-case analysis of each stay request based upon the merits of each request.

Two comments in one response did not pertain to the rule change and are not responded to in this discussion.

One response was supportive of the procedures prohibiting time extensions, not allowing procedural appeals, limiting the levels and time allowed for processing, and the dismissal provisions. All of these provisions have been retained in the final rule.

There was some confusion about who could appeal future decisions to reoffer sales that were returned or defaulted. It was the intent of the interim rule that future decisions would be appealable by anyone, except the defaulting purchaser of a reoffered timber sale. The ambiguity

between paragraphs (c) and (d) has been corrected.

In issuing this final rule, the Department has taken into account the general public's right to appeal, third party relationships that can be involved in such appeals, and the need to maintain a timber sale program in the affected communities. Because of the necessity to resolve uncertainties surrounding pending timber sale reoffer appeals and the impacts of continued delays such uncertainties create on the timber sale program and timber dependent communities, it is in the public interest to make this final rule effective upon publication.

Regulatory Impact

This action does not constitute a major rule as defined in Executive Order 12291. The rule will have no effect on the Nation's economy, or substantial numbers of individuals or businesses, or on the quality of the human environment. The final rule does not contain an information collection or recordkeeping requirement as defined in the Paperwork Reduction Act of 1980.

List of Subjects in 36 CFR Part 211

Administrative practice and procedure, Intergovernmental relations (Federal/State cooperation), National forest.

Therefore, for the reasons set forth in the preamble, Subpart B of Part 211 of chapter II of Title 36 of the Code of Federal Regulations is hereby amended as follows:

PART 211—[AMENDED]

1. The authority citation for Part 211 continues to read:

Authority: 30 Stat. 35, as amended, sec. 1, 33 Stat. 628 (16 U.S.C. 551, 472).

Subpart B—[Amended]

2. Revise § 211.17 to read as follows:

§ 211.17 Appeal of decisions to reoffer returned or defaulted timber sales on National Forests.

(a) *Purpose.* These rules provide an expedited and streamlined administrative appeal process for decisions to reoffer sales of timber that were returned to the Government under the provisions of the Federal Timber Contract Modification Payment Act of 1984 (16 U.S.C. 618) or that were defaulted by the purchaser.

(b) *Matters subject to appeal.* The procedures established in this section apply only to decisions to reoffer timber sales resulting from returned or defaulted timber sale contracts. Implementing decisions, such as advertising and/or awarding a reoffered sale, made subsequent to the initial decision to reoffer a returned or defaulted sale are not appealable under this section or 36 CFR 211.18.

(c) *Notice requirements.* (1) Notice of decisions appealable under this section and made after April 22, 1988, shall be published in a local newspaper of general circulation and also shall be provided in writing to parties to written instruments issued by the Forest Service who are known to be affected by the decision, as well as to any other interested persons or organizations who have requested notification of the specific decision.

(2) If the sale that is the subject of an appeal has been bid upon or awarded, the Reviewing Officer shall immediately notify the apparent high bidder or sale awardee of the appeal and the opportunity to comment as provided for in paragraph (f) of this section.

(d) *Who may appeal.* The process set forth in this section is available to:

(1) Any individual or organization who, following publication of the interim rule at 36 CFR 211.17 on January 28, 1988, submitted a timely Notice of Appeal on a decision to reoffer a sale of returned or defaulted timber.

(2) Any other individual or organization wishing to appeal a decision made prior to January 28, 1988, to reoffer a sale of returned or defaulted timber.

(3) Except as provided in paragraph (e) of this section, any individual or organization may appeal a decision made after January 28, 1988, to reoffer timber resulting from returned or defaulted timber sales.

(e) *Who may not appeal.* The process set forth in this section is not available to the defaulting purchaser of the original timber sale that is being or has been reoffered.

(f) *Who may comment.* Any person or organization interested in an appeal of a decision under this subpart may submit written comments to the Reviewing Officer for inclusion in the record.

(g) *Levels of appeal.* For decisions to reoffer timber sales made after October 30, 1986, one level of administrative appeal is available. For decisions to reoffer timber sales made prior to October 30, 1986, two levels of administrative appeal are available; the second level being to the next higher administrative level.

(1) Appeals of decisions to reoffer timber sales made by a District Ranger shall be filed with the Forest Supervisor.

(2) Appeals of decisions to reoffer timber sales made by a Forest Supervisor shall be filed with the Regional Forester.

(h) *Filing procedures.* To appeal a decision under this section, an appellant must file a written notice of appeal with the Reviewing Officer. If an appellant wishes to request a stay of implementation of the decision, the request must accompany the notice of appeal and be made in accordance with paragraph (j) of this section. The appellant must simultaneously provide a copy of the notice of appeal and any stay request to the Forest officer making the initial decision to reoffer.

(1) For appeals filed pursuant to paragraph (d)(1) of this section, the notice of appeal must have been submitted by February 29, 1988.

(2) All notices of appeal pursuant to paragraph (d)(2) of this section must be submitted by May 23, 1988.

(3) All notices of appeal pursuant to paragraph (d)(3) of this section must be filed within 30 days of publication of the notice of decision, or from the date of the written decision for those parties pursuant to paragraph (c)(1) of this section entitled to receive written decision.

(i) *Extensions of time.* There shall be no extension of the time periods specified in this section for either an appellant or the Forest Service.

(j) *Content of notice of appeal.* Parties appealing a decision to reoffer a sale must include the following information in the written notice of appeal:

(1) The timber sale being appealed;

(2) Either the decision date or the date notice of the decision was published;

(3) The Forest Officer who made the decision;

(4) How the appellant is affected by the decision;

(5) The relief desired; and

(6) A description of environmentally significant modifications or changed circumstances which are alleged to have occurred between when the initial timber sale was offered and sold and the date of the appeal on the decision to reoffer the sale.

(k) *Second level appeals.* For appeals to the second level filed pursuant to paragraph (g) of this section, a notice of appeal must be filed with the next higher administrative level within 15 days from the date of the first level Reviewing Officer's appeal decision. If the first level Reviewing Officer is the Forest Supervisor, the appeal is to the Regional Forester. If the first level Reviewing Officer is the Regional Forester, the appeal is to the Chief. The notice need only include the documents submitted at the previous level, the first level decision letter, and a statement addressing why the appellant believes the Reviewing Officer's decision is

erroneous. A copy of that statement must be provided to the first level Reviewing Officer also. The first level Reviewing Officer may provide a response to the notice of appeal to the second level Reviewing Officer; and must send a copy to the appellant. The review will be based on the existing record from the first level appeal, the second level notice of appeal, and any response by the first level Reviewing Officer. A decision shall be issued within 45 days after receiving the notice of appeal.

(l) *Stays.* (1) To request a stay, the appellant must:

(i) File a written request with the Reviewing Officer at the time the appeal is filed, simultaneously providing a copy to the Forest officer who made the initial decision to reoffer the timber sale in question.

(ii) Provide a written justification of the need for a stay, which includes a description of the specific activities to be stayed, and specific reasons why the stay should be granted, including:

(A) Harmful site-specific impacts or effects on resources in the area affected by the reoffered timber sale; and

(B) How the cited effects and impacts would prevent a meaningful decision on the merits.

(2) The Reviewing Officer shall rule on a stay request no later than 10 calendar days from receipt.

(i) If a stay is granted, the stay shall specify the activities to be stopped, duration of the stay, and reasons for granting the stay.

(ii) If a stay is denied in whole or in part, the decision shall specify the reasons for the denial.

(iii) A copy of the decision shall be sent to the appellant and the Forest Officer who made the initial decision to reoffer.

(iv) A Reviewing Officer's decision on a stay is not subject to further appeal or review.

(m) *Review procedures.* (1) The Reviewing Officer shall determine if the notice of appeal has been timely filed. In the event of question, legible postmarks will be considered evidence of timely filing. Where postmarks are illegible, the Reviewing Officer shall rule on the timely receipt of the notice of appeal. If the appeal is untimely, the Reviewing Officer will immediately dismiss the appeal and notify the Forest officer making the initial decision and the appellant.

(2) Upon receipt of a copy of the notice of appeal, the Forest Officer making the decision to reoffer a sale shall assemble the relevant decision documents and pertinent records and transmit them to the Reviewing Officer within 15 calendar days.

(3) In transmitting the decision documentation to the Reviewing Officer, the Forest Officer shall indicate how and specifically where the appellant's issues are addressed. Where time permits, the Forest Officer may also respond briefly to issues raised in the notice of appeal. A copy of the transmittal letter shall be provided to the appellant(s).

(4) The record on which the Reviewing Officer shall conduct a review consists of the notice of appeal, any other written comments received, the official documentation prepared by the Forest Officer making the initial decision to reoffer, and any related correspondence, including additional information requested by the Reviewing Officer.

(5) The review record is open to public inspection.

(n) *Requests for additional information.* At any time during the review, the Reviewing Officer may request additional information from an appellant, the Forest officer making the initial decision to reoffer, or anyone who has submitted written comments. In addition, the Reviewing Officer may discuss issues related to the appeal with the Forest officer making the initial decision to reoffer, appellants, or those receiving notice pursuant to paragraph (c) of this section, as needed to clarify information submitted or to seek resolution of the issues in question.

(o) *Decision.* (1) The Reviewing Officer shall issue a final decision on the appeal, in writing, within 90 days of the Reviewing Officer's receipt of the notice of appeal, with a copy to any person submitting comments.

(2) The Reviewing Officer's decision shall either affirm or reverse the original decision in whole or in part and include the reason(s) for the decision. The Reviewing Officer's decision may include instructions for further action by the Forest Officer making the initial decision.

(3) The Reviewing Officer's decision is the final administrative decision of the Department of Agriculture and that decision is not subject to further review under this section or any other appeal regulation, except for appeals to the second level filed pursuant to paragraph (g) of this section.

(p) *Dismissal.* (1) A Reviewing Officer shall dismiss and appeal without decision on the merits when:

(i) The appeal is not received within the time specified in paragraph (h) of this section;

(ii) The requested relief cannot be granted under existing facts, law or regulation;

(iii) The notice of appeal does not meet the requirements of paragraph (i) of this section;

(iv) The appellant withdaws the appeal; or

(v) The Forest Officer making the initial decision to reoffer a sale withdraws that decision.

(2) An appeal may be dismissed in whole or in part if an appellant challenges a Decision Notice or Record of Decision without referring to (i) changed circumstances or (ii) environmentally significant modifications which are alleged to have occurred after the initial timber sale was offered and the decision made to sell the timber.

(3) A Reviewing Officer's decision to dismiss is not subject to further appeal or review.

(4) A Reviewing Officer shall give written notice of dismissal to the appellant and Forest Officer whose initial decision or appeal decision is being appealed.

Dated: April 12, 1988

Richard E. Lyng,

Secretary.

[FR Doc. 88-8838 Filed 4-21-88; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Department Hearings and Appeals Procedures

AGENCY: Office of Hearings and Appeals, Department of the Interior.

ACTION: Final rulemaking.

SUMMARY: This rulemaking revises Departmental regulation § 4.413 *Service of notice of appeal and of other documents,* in 43 CFR Part 4, Subpart E—Special Rules Applicable to Public Land Hearings and Appeals, to clarify and update procedural requirements for service by appellants of a notice of appeal and of other documents upon counsel who may represent the Government as a party in appeal proceedings before the Interior Board of Land Appeals. Procedural requirements within the existing regulation § 4.413, pertaining to the manner of service of appeals documents and with respect to proof of service of appeals documents, as provided in § 4.401(c) of this title, are unchanged.

EFFECTIVE DATE: June 21, 1988. A 60-day effective date for implementation of the revised regulation has been chosen to allow the public to become familiar with the revised regulation.

ADDRESS: Any inquiries should be addressed to: Chief Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Frances A. Patton, Special Counsel; telephone: (703) 235–3810 (not toll free).

SUPPLEMENTARY INFORMATION: This rulemaking is designed principally to clarify procedural requirements for service by appellants of a notice of appeal and of other documents upon counsel who may represent the Government as a party in appeal proceedings before the Interior Board of Land Appeals. Procedural requirements pertaining to the manner of service of appeals documents and with respect to proof of service of appeals documents are unchanged.

Added to the regulation as revised, within subparagraph (c)(1), are requirements for service of a notice of appeal and of other documents upon the Associate Solicitor, Division of Energy and Resources, Office of the Solicitor, U.S. Department of the Interior (USDI), where the appeal it taken from a decision of the Director of the Minerals Management Service, USDI. Removed is the outdated reference in the existing regulation for service of appeals documents upon the Director of the U.S. Geological Survey.

Provisions have also been added to the regulation as revised, within subparagraph (c)(3), with respect to appeals taken from decisions of an adminstrative law judge, requiring service by appellants of a notice of appeal and of other ducments upon the attorney from the Office of the Solicitor USDI, who represented the Bureau of Land Management or the Minerals Management Service at a hearing, or in the absence of a hearing, who was served with a copy of the decision of the administrative law judge; or, upon the attorney from the Office of the General Counsel, U.S. Department of Agriculture, who represented the U.S. Forest Service at the hearing or, in the absence of a hearing, who was served with a copy of the decision by the administrative law judge where the hearing or decision of the administrative law judge involves a mining claim on national forest lands.

The revised regulation lists, in subparagraph (c)(2), State Offices of the Bureau of Land Management, USDI, and identifies in such listing for service of appeals documents, the particular Regional Solicitor or Field Solicitor of the Office of the Solicitor, USDI, who provides that State Office and its subdivisions with legal services and who may represent the Government as a party in the appeal proceedings. It provides, in subparagraph (c)(4), for service on such counsel until such time as a notice of appearance or substitution of counsel is filed in the proceedings, and thereafter for service as directed by the notice of appearance or substitution of counsel.

This rulemaking is being published as a final rule without prior publication of a proposed rule because changes are being made only to a rule of agency organization, procedure, and practice. 5 U.S.C. 553(b)(A). Further, the effect of this rulemaking is limited to clarification, updating, and reogranization of provisions in the existing Departmental regulation and prompt revision of the regulation is in the public interest.

Federal Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department has determined that this document constitutes a revision of a rule of agency organization, procedure, and practice, not subject to the provisions of Executive Order 12291, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The Department of the Interior has also determined, on the basis of the categorical exclusion of regulations of a procedural nature set forth at 516 DM 2 Appendix 1, section 1.10, that this rulemaking will not significantly affect the quality of the human environment.

This rule was drafted by William Murray, Assistant Solicitor, Onshore Minerals, and other attorneys in the Office of the Solicitor and submitted to the Office of Hearings and Appeals. The final rulemaking was prepared by Frances A. Patton, Special Counsel, Office of Hearings and Appeals.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Public lands.

Dated: February 10, 1988.

Earl Gjelde,

Under Secretary.

Accordingly, 43 CFR Part 4 is amended as follows:

PART 4—[AMENDED]

43 CFR Part 4 is amended as follows:

1. The authority citation for Part 4 continues to read:

Authority: R.S. 2478, as amended, 43 U.S.C. 1201, unless otherwise noted.

Subpart E—Special Rules Applicable to Public Land Hearings and Appeals

2. Section 4.413 is revised, as set forth below:

§ 4.413 Service of notice of appeal and of other documents.

(a) The appellant shall serve a copy of the notice of appeal and of any statement of reasons, written arguments, or briefs on each adverse party named in the decision from which the appeal is taken and on the Office of the Solicitor as identified in paragraph (c) of this section. Service must be accomplished in the manner prescribed in § 4.401(c) of this title not later than 15 days after filing the document.

(b) Failure to serve within the time required will subject the appeal to summary dismissal as provided in § 4.402 of this title.

(c)(1) If the appeal is taken from a decision of the Director, Minerals Management Service, or of the Director, Bureau of Land Management, the appellant will serve the Associate Solicitor, Division of Energy and Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, DC 20240.

(2) If the appeal is taken from a decision of other Bureau of Land Management (BLM) offices listed below (*see* § 1821.2–1(d) of this title), the appellant shall serve the appropriate Regional or Field Solicitor as identified:

(i) BLM Alaska State Office, including all District and Area Offices within its area of jurisdiction:

Regional Solicitor, Alaska Region, U.S. Department of the Interior, 701 C Street, Box 34, Anchorage, AK 99513;

(ii) BLM Arizona State Office, including all District and Area Offices within its area of jurisdiction:

Field Solicitor, U.S. Department of the Interior, 505 North Second Street, Suite 150, Phoenix, AZ 85004–3904;

(iii) BLM California State Office, including all District and Area Offices within its area of jurisdiction:

Regional Solicitor, Pacific Southwest Region, U.S. Department of the Interior, 2800 Cottage Way, Room E–2753, Sacramento, CA 95825–1890;

(iv) BLM Colorado State Office, including all District and Area Offices within its area of jurisdiction:

Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, P.O. Box 25007, Denver Federal Center, Denver, CO 80225;

(v) BLM Eastern States Office, including all District and Area Offices within its area of jurisdiction:

Associate Solicitor, Division of Energy and Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, DC 20240;

(vi) BLM Idaho State Office, including all District and Area Offices within its area of jurisdiction:

Field Solicitor, U.S. Department of the Interior, Federal Building, U.S. Courthouse, 550 West Fort Street, Box 020, Boise, ID 83724;

(vii) BLM Montana State Office, including all District and Area Offices within its area of jurisdiction:

Field Solicitor, U.S. Department of the Interior, P.O. Box 31394, Billings, MT 59107–1394;

(viii) BLM Nevada State Office, including all District and Area Offices within its area of jurisdiction:

Regional Solicitor, Pacific Southwest Region, U.S. Department of the Interior, 2800 Cottage Way, Room E–2753, Sacramento, CA 95825–1890;

(ix) BLM New Mexico State Office, including all District and Area Offices within its area of jurisdiction:

Field Solicitor, U.S. Department of the Interior, P.O. Box 1042, Santa Fe, MN 87504–1042;

(x) BLM Oregon State Office, including all District and Area Offices within its area of jurisdiction:

Regional Solicitor, Pacific Northwest Region, U.S. Department of the Interior, Lloyd 500 Building, Suite 607, 500 N.E. Multnomah Street, Portland, OR 97232;

(xi) BLM Utah State Office, including all District and Area Offices within its area of jurisdiction:

Regional Solicitor, Intermountain Region, U.S. Department of the Interior, 6201 Federal Building, 125 South State Street, Salt Lake City, UT 84138–1180;

(xii) BLM Wyoming State Office, including all District and Area Offices within its area of jurisdiction:

Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, P.O. Box 25007, Denver Federal Center, Denver, CO 80225;

(3) If the appeal is taken from the decision of an administrative law judge, the appellant shall serve the attorney from the Office of the Solicitor who represented the Bureau of Land Management or the Minerals Management Service at the hearing or, in the absence of a hearing, who was served with a copy of the decision by the administrative law judge. If the hearing involved a mining claim on national forest land, the appellant shall serve the attorney from the Office of General Counsel, U.S. Department of Agriculture, who represented the U.S. Forest Service at the hearing or, in the absence of a hearing, who was served with a copy of the decision by the administrative law judge.

(4) Parties shall serve the Office of the Solicitor as identified in this paragraph until such time that a particular attorney of the Office of the Solicitor files and serves a Notice of Appearance or Substitution of Counsel. Thereafter, parties shall serve the Office of the Solicitor as indicated by the Notice of Appearance or Substitution of Counsel.

(d) Proof of such service as required by § 4.401(c) must be filed with the Board (address: Board of Land Appeals, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, VA 22203), within 15 days after service unless filed with the notice of appeal.

[FR Doc. 88–8888 Filed 4–21–88; 8:45 am]
BILLING CODE 4310–79–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6784]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATE: May 4, 1988.

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

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made responsible through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the **Federal Register** that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, the criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised floodplain management regulations after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective

suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

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

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

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

§ 64.6 List of eligible communities.

State and Community Name	County or Parish	Community No.	Effective date
Louisiana:			
Carencro, Town of	Lafayette	220103	May 4, 1988.
Covington, City of	St. Tammany	220200	Do.
Donaldsonville, City of	Ascension	220014	Do.
Elton, Town of	Jefferson Davis	220096	Do.
Ferriday, Town of	Concordia	220055	Do.
Gilbert, Village of	Franklin	220073	Do.
Goldonna, Village of	Natchitoches	220290	Do.
Greensburg, Town of	St. Helena	220330	Do.
Grosse Tete, Village of	Iberville	220084	Do.
Henderson, Town of	St. Martin	220189	Do.
Jackson, Town of	East Feliciana	220333	Do.
Lockport, Town of	Lafourche	220254	Do.
Morse, Village of	Acadia	220007	Do.
Oil City, Town of	Caddo	220262	Do.
Ponchatoula, Town of	Tangipahoa	220211	Do.
New Mexico: Gallup, City of	McKinley	350042	Do.
Oklahoma:			
Boynton, Town of	Muskogee	400120	Do.
Colony, Town of	Washita	400253	Do.
Howe, Town of	LeFlore	400091	Do.
Spencer, City of	Oklahoma	400412	Do.
Sperry, Town of	Tulsa	400213	Do.
Sulphur, City of	Murray	400119	Do.
Warr Acres, City of	Oklahoma	400449	Do.
Texas:			
Albany, City of	Shackelford	480565	Do.
Beverly Hills, City of	McLennan	480925	Do.
Brookshire, Town of	Waller	481097	Do.
Burkburnett, City of	Wichita	480658	Do.
Cedar Hill, City of	Dallas	480168	Do.
Celina, City of	Collin	480133	Do.
Chandler, City of	Henderson	480326	Do.
Unincorporated Areas	Coryell	480768	Do.
Diboll, City of	Angelina	480008	Do.
Fulton, Town of	Aransas	480012	Do.
Glenn Heights, City of	Ellis	481265	Do.
Grey Forest, City of	Bexar	480039	Do.
LaJoya, City of	Hidalgo	480341	Do.
La Villa, City of	Do.	480342	Do.
Lumberton, City of	Hardin	481111	Do.
McAllen, City of	Hidalgo	480343	Do.
Quintana, Village of	Brazoria	481301	Do.
Rockwall, City of	Rockwall	480547	Do.
Rollingwood, City of	Travis	481029	Do.
San Benito, City of	Cameron	480113	Do.
San Juan, City of	Hidalgo	480348	Do.
San Leanna, City of	Travis	481305	Do.
Santa Rosa, City of	Cameron	480114	Do.
Silsbee, City of	Hardin	480285	Do.
Waller, City of	Waller	480641	Do.
Whitney, Town of	Hill	480865	Do.
Woodsboro, Town of	Refugio	480987	Do.

Issued: April 18, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-8840 Filed 4-21-88; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL MARITIME COMMISSION

46 CFR Part 502

[Docket No. 88-12]

Designation of Office to Receive Petitions for Review of Agency Orders

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: This rule designates the office and officer who must receive petitions for review under 28 U.S.C. 2112(a), as amended by Pub. L. No. 100-236, 10 Stat. 1731 (1988). The Commission designates the Office of General Counsel and the General Counsel.

EFFECTIVE DATE: April 22, 1988.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Office of the General Counsel, Federal Maritime Commission, Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION: On January 8, 1988, Congress enacted Pub. L. No. 100-236, 101 Stat. 1731 (1988), which amends 28 U.S.C. 2112(a) governing the selection of the appropriate court when petitions for review of agency orders are filed in two or more courts of appeal. The amendments to 28 U.S.C. 2112(a) are intended to replace, in part, the prior method of determining the proper court, the so-called "first to file" rule, and the resulting practice of the "race to the courthouse" when agency orders were issued. S. Rep. No. 263, 100th Cong., 1st. Sess. 1, *reprinted in* 1988 U.S. Code Cong. & Admin. News 3198. The amendments take effect 180 days after the date of enactment, July 6, 1988. Pub. L. 100-236, sec. 3, 101 Stat. 1731, 1732 (1988).

As amended, 28 U.S.C. 2112(a)(2) requires each agency to designate by rule the office and the officer who must receive petitions for review. The Commission designates the Office of General Counsel and the General Counsel and amends its Rules of Practice and Procedure at 46 CFR 502.2(b) to reflect those designations.

Finally, because this amendment to the Commission's Rules of Practice and Procedure has no effect on the substantive rights of parties and is a procedure specifically required by statute, public rulemaking procedure may be dispensed with pursuant to 5 U.S.C. 553(b)(A) and the amendment may become effective upon publication, pursuant to 5 U.S.C. 553(d)(3).

The Commission has determined that this rule is not a "major rule" as defined in Executive Order 12291, 46 FR 12193, February 27, 1981, because it will not result in:

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

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

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

The Acting Chairman of the Federal Maritime Commission certifies pursuant to section 604(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental jurisdictions.

List of Subjects in 46 CFR Part 5

Administrative practice and procedure.

Therefore, pursuant to 5 U.S.C. 553 and 28 U.S.C. 2112(a)(2), Part 502 of Title 46, Code of Federal Regulations, is amended as follows:

PART 502—[AMENDED]

1. The Authority Citation for Part 502 is revised to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 559; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 46 U.S.C. app. 817, 820, 821, 826, 841a, 1114(b), 1705, 1707-1711, 1713-1716; and E.O. 11222 of May 8, 1965 (30 FR 6469).

2. In § 502.2, paragraph (b) is revised to read as follows:

§ 502.2 Filing of documents; hours; mailing address.

* * * * *

(b) Except for exhibits filed pursuant to § 502.118(b)(4) and petitions for review of final agency orders served on the Commission pursuant to 28 U.S.C. 2112(a), all documents required to be filed in, and correspondence relating to proceedings governed by this part should be addressed to "Secretary, Federal Maritime Commission, Washington, DC 20573-0001." Petitions for review of final agency orders served on the Commission pursuant to 28 U.S.C. 2112(a) shall be addressed to "General Counsel, Office of the General Counsel, Federal Maritime Commission, Washington, DC 20573-0001."

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88-8851 Filed 4-21-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 87-67; FCC 88-122]

Policy for the Distribution of United States International Carrier Circuits Among Available Facilities During the Post-1988 Period

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this Report and Order the Commission has decided to end all circuit distribution guidelines placed on the circuits used by AT&T for the provision of international message telephone service (IMTS) and 800-service overseas. In reaching this conclusion, the Commission found that circuit distribution guidelines that guarantee minimum levels of traffic to INTELSAT have served their purpose and are no longer needed to carry out the objectives of the Communications Satellite Act. It found that continuation of guidelines would be unnecessary in view of the successful growth of INTELSAT and the clear commitment of AT&T to continue to make substantial use of the INTELSAT system under its long-term agreement with Comsat. It also found that the continuation of guidelines would create disincentives for INTELSAT to take steps necessary to adapt to an increasingly competitive environment and be inconsistent with development of a policy that permits carriers and users to make facilities and service decisions free from unnecessary regulatory interferences.

EFFECTIVE DATE: May 23, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: James Ball, International Facilities Division, Common Carrier Bureau, (202) 632-7265.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in Common Carrier Docket

87–67, FCC 88–122, adopted March 24, 1988, and released April 14, 1988.

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

Summary of Report and Order

1. The Commission initiated this proceeding on April 10, 1987 with the release of a Notice of Proposed Rulemaking (NPRM) (52 FR 13727, April 24, 1987) for the purpose of developing a policy for the distribution of United States international carrier circuits among available facilities during the post-1988 period. Comments in this proceeding were filed June 1, 1987 and reply comments, June 16, 1987. On October 9, 1987, Comsat and AT&T submitted joint supplemental comments containing an agreement concerning AT&T's future satellite circuit use. Comments and reply comments on this submission were received November 16 and December 1, 1987, respectively.

2. In the NPRM, the Commission tentatively concluded that it should consider development of its post-1988 circuit distribution policy on a worldwide basis rather than continue to develop such policies on a region-by-region basis. The Commission also tentatively concluded that the blanket exemption from circuit distribution guidelines for North Atlantic and Pacific Ocean region circuits used by all U.S. carriers except AT&T to provide all services should be continued and extended to all regions of the world. None of the parties objected to this tentative conclusion.

3. The NPRM primarily focused on the distribution of AT&T's IMTS and 800-service overseas circuits in the post-1988 period. Comments were initially requested on three policy options with a common theme of movement away from the imposition of circuit distribution guidelines on AT&T. Under the first option, the Commission would remove itself from decisions about the distribution of all circuits, including AT&T's IMTS and 800-service overseas circuits, at year end 1988. The second opinion would continue the current process of phasing in increased flexibility for AT&T in its circuit distribution while concurrently phasing out Commission involvement in those decisions. The third option would phase out Commission involvement in circuit distribution over a time period equal to that in which INTELSAT uses space segment in which it has invested capital. The NPRM also invited submission of other circuit distribution policy alternatives for the post-1988 period, set forth the factors the Commission would consider in analyzing the various post-1988 circuit distribution policy options and requested the information from AT&T and Comsat necessary to perform such analysis.

4. Comsat and AT&T subsequently submitted joint supplemental comments in the proceeding. The joint supplemental comments presented the Commission with an agreement between the parties in which they established: (1) A set of commitments relating to AT&T's worldwide use of Comsat's INTELSAT space segment capacity for the IMTS circuits activated through 1994, and (2) a framework for discussions and exchanges of information that would provide a basis for AT&T's further use of Comsat's INTELSAT space segment capacity after 1994. Comsat and AT&T intended the agreement as a replacement for Commission imposed circuit distribution guidelines. They requested the Commission find that the agreement consistent with the public interest and rely upon it as a basis for withdrawing all circuit distribution guidelines affecting the distribution of AT&T's IMTS circuits. The agreement is intended to be non-exclusive and does not preclude Comsat from reaching similar agreements with other U.S. international service carriers with respect to their IMTS traffic. The agreement also does not preclude AT&T from placing traffic not covered by the agreement on facilities of its choice, consistent with U.S. law and international obligations.

5. We conclude that we should end imposition of circuit distribution guidelines at this time. In reaching this conclusion, we have found that: (1) Circuit distribution guidelines that guarantee minimum levels of traffic to INTELSAT have served their purpose and are no longer needed to carry out the objectives of the Communications Satellite Act; (2) a continued regulatory policy that acts to merely guarantee traffic to INTELSAT creates disincentives for it to take steps necessary to adapt to an increasingly competitive environment; and (3) continuation of guidelines would be inconsistent with development of a policy that permits carriers and users to make facilities and service decisions free from unnecessary regulatory interference.

6. We have further concluded that, with certain modifications, the Comsat/AT&T agreement provides a basis for ending all circuit distribution guidelines at this time. The agreement assures INTELSAT of a substantial amount of AT&T traffic in the future which will provide a firm basis for INTELSAT's operations. Equally important, the agreement gives INTELSAT and Comsat substantial incentives to adapt to an increasingly competitive environment. This action, in concert with that already taken by the Common Carrier Bureau in considering the Comsat's tariff filing to implement the agreement, will preserve the ability of other U.S. carriers to make future facilities choices to meet their needs in a competitive environment. We have, however, retained jurisdiction and will monitor AT&T's future facility choices and Comsat's service offerings to: (1) Preserve our ability to ensure continued fulfillment of the objectives of the Communications Satellite Act; (2) promote the successful development of competition in international communications; and (3) provide satellite facilities that satisfy national defense and security needs.

Ordering Clauses

7. Accordingly, *it is ordered* that all circuit distribution guidelines currently applicable to AT&T's IMTS and 800-service overseas are *hereby terminated.*

8. *It is further ordered* that, subject to the modifications required in paragraph 47 of the Report and Order, the Comsat/AT&T agreement shall serve as the basis for ending all current circuit distribution guidelines applicable to AT&T IMTS and 800-service overseas.

9. *It is further ordered* that Comsat and AT&T shall submit to the Commission the modifications to the agreement that are required in paragraph 47 of the Report and Order within 30 days of the effective date of this Order.

10. *It is further ordered* that Comsat and AT&T shall apprise the Commission of any negotiations that may result in changes in or extensions of terms of the agreement and shall submit such changes or extensions to the Commission for review as soon as possible but no later than 90 days before they are to take effect. The changes or extensions may take effect absent Commission action to the contrary prior to the end of the 90-day period.

11. *It is further ordered* that the Commission shall monitor AT&T's facility choices and Comsat's services in order to: (1) Ensure continued fulfillment of the objectives of the Communications Satellite Act; (2) preserve the ability of

other U.S. carriers to compete in the international communications market; and (3) provide satellite facilities that satisfy national defense and security requirements.

12. *It is further ordered* that the Commission retains jurisdiction over the Comsat/AT&T agreement to require further changes in the agreement after notice and opportunity for comment in order to ensure fulfillment of the objectives identified in paragraph 54 of the Report and Order.

13. *It is further ordered* that AT&T shall submit to the Commission for public availability a copy of each semi-annual report that it provides to Comsat as required under Article VII of the agreement.

14. *It is further ordered* that Comsat and AT&T shall provide the Commission with any additional information which may be required in the future to ensure fulfillment of the objectives stated in paragraph 55 of the Report and Order.

15. *It is further ordered* that NTIA's motion to accept late filed comments and M/A-COM's motion to accept late filed reply comments are *granted.*

16. *It is further ordered* that this proceeding is *terminated.*

17. The information collection requirement in paragraph 56 of the Report and Order is not subject to the clearance procedures of section 3507 of the Paperwork Reduction Act of 1980, 20 U.S.C. 1221-23, since less than 10 persons are required to respond.

18. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. section 605, *it is certified* that sections 603 and 604 of the Act do not apply because the policy changes adopted in this proceeding will not have a significant economic impact on small entities. See 5 U.S.C. sections 603, 605(b) (1976). The Regulatory Flexibility Act does not apply to this proceeding because the Act excludes from its application all proceedings such as this that involve "a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, pries, facilities, appliances, services, or allowances therefor or to valuations costs or accounting practices relating to such rates, wages, structures, prices, appliances, services, or allowances."

19. *It is further ordered* that the Secretary of the Commission shall cause a summary of this Report and Order to be published in the **Federal Register** and shall mail a copy of this decision to the Chief for Advocacy of the Small Business Administration.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-8841 Filed 4-21-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[FCC 88-131]

Syracuse Peace Council v. Television Station WTVH, Syracuse, NY; Fairness Doctrine

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Through this action, the Federal Communications Commission reaffirmed its earlier decision (52 FR 31768, August 24, 1987) that enforcement of the fairness doctrine violates the first amendment and, therefore, is no longer in the public interest. The action was taken to respond to several petitions filed as a result of that earlier decision.

EFFECTIVE DATE: April 8, 1988.

ADDRESS: 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Richard J. Bozzelli, Special Assistant to the General Counsel, (202) 632-7020.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order,* FCC 88-131, adopted March 24, 1988, and released April 7, 1988.

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

Summary of Memorandum Opinion and Order

1. On August 4, 1987, the Commission responded to the remand decision of the United States Court of Appeals in *Meredith Corp. v. FCC* by concluding that the fairness doctrine, on its face, violated the first amendment and contravened the public interest. (52 FR 31768, August 24, 1987). Thus, the Commission vacated its earlier order, 99 FCC 2d 1389 (1984), in which it had determined that Meredith Corporation, licensee of television station WTVH in Syracuse, New York, had violated the fairness doctrine, and terminated the proceeding.

2. In response to the 1987 decision, the Commission received the following filings: (1) A Petition for Reconsideration of Geller and Lampert filed September 1, 1987, by Henry Geller and Donna Lampert (Geller and Lampert); (2) a Petition for Partial Reconsideration of the Order, filed September 3, 1987, by Freedom of Expression Foundation, Inc. (FEF); (3) a Partial Opposition to the Petition for Reconsideration of Geller and Lampert, filed September 11, 1987, by Telecommunications Research and Action Center and Syracuse Peace Council (TRAC); (4) an Opposition to the Petition for Reconsideration of Geller and Lampert filed September 16, 1987, by Meredith Corporation (Meredith); (5) an Opposition to Petition for Reconsideration of Geller and Lampert filed September 16, 1987, by the Radio-Television News Directors Association (RTNDA); (6) an Opposition to the Petition of Freedom of Expression Foundation for Partial Reconsideration of the Order, filed September 16, 1987, by People for the American Way (PFAW); (7) an Opposition to the Petition for Reconsideration of Geller and Lampert, filed October 23, 1987, by CBS Inc. (CBS); (8) an Opposition to Petitions for Reconsideration and Clarification filed October 26, 1987, by the Office of Communication of the United Church of Christ and the Communications Commission of the National Council of Churches (UCC); (9) a Reply to Opposition petitions filed November 9, 1987, by Geller and Lampert.

3. FEF asked that the Commission reconsider footnote 75 of the August *Order,* in which the Commission noted, "[W]e need not—and do not—decide here what effect today's ruling will have on every conceivable application of the fairness doctrine." FEF argued that the Commission should specifically determine that continued enforcement of the personal attack rule and the political editorial rule also violates the first amendment. The Commission denied that request because the issues were beyond the scope of this proceeding. However, the FEF petition was referred to a separate, pending proceeding with respect to a Joint Petition for Expedited Rulemaking Action and for Clarification of Memorandum Opinion and Order Ending Enforcement of the Fairness Doctrine, filed August 25, 1987, by the Radio-Television New Directors and others. That petition requested that the Commission either conclude the rulemaking proceeding currently outstanding with respect to the personal attack and political editorial rules (48 FR 28, 295, 1983) or clarify the August

Order, concluding that those rules would no longer be applied to radio and television licensees.

4. Geller and Lampert asked that the Commission reconsider the August *Order* on the grounds that: (1) Enforcement of the fairness doctrine is mandated by the Communications Act; (2) the Commission should have considered alternative means of enforcing the fairness doctrine before eliminating it; and (3) the Commission erred in elimination the first prong of the doctrine, which required broadcasters to cover controversial issues of vital importance to their communities. Additionally, Geller and Lampert urged the Commission to adopt their proposed alternative of implementing a malice test in the contemporaneous, case-by-case enforcement of the doctrine and to increase enforcement of the first prong in conjunction with its enforcement of the malice alternative. Numerous comments were received supporting or opposing the Geller and Lampert petition, and all were considered before the Commission reached its decision.

5. The Commission, in its current *Memorandum Opinion and Order*, denied the Geller and Lampert petition for reconsideration, maintaining that, in light of decisions by the Federal Court of Appeals, the fairness doctrine was not mandated by the Communications Act and that the Commission was obligated to consider and rule on Meredith's constitutional arguments in its defense. Furthermore, because the fairness doctrine was not codified, the Commission was under no legal obligation to consider or to adopt alternatives to the doctrine before ruling on Meredith's claim that the doctrine was unconstitutional as then administered. The Commission pointed out that, in a separate proceeding (*Fairness Alternatives Report*, 2 FCC Red 5272, (1987)), it considered and rejected, as constitutionally unsound and contrary to the public interest, alternatives to the doctrine, and in the instant decision, it again rejected for similar reasons, alternatives to the doctrine including the contemporaneous, case-by-case malice approach proposed by Geller and Lampert.

6. The Commission also rejected the argument that the doctrine cannot be eliminated without eviscerating the general public interest mandate under the statute. Instead, the Commission emphasized that their action leaves sections 312(a)(7) and 315, as well as the Act's public interest mandate, intact. In fact, because the Commission found in this proceeding that the fairness doctrine violated the first amendment, its elimination, *a fortiori*, was consistent with, not violative of, the Commission's public interest mandate.

7. The current Geller and Lampert proposal, the Commission stated, failed to achieve "the First Amendment principles underlying the doctrine." The Commission saw little difference between the current Geller and Lampert proposal and an earlier Geller and Lampert proposal that the Commission had already rejected. The Commission asserted that, although the current Geller and Lampert proposal would reduce the chilling effects associated with the fairness doctrine, it would not eliminate them. It added that, in its August *Order*, it found that the existing multiplicity of broadcast outlets allows achievement of the fairness doctrine's goal of diversity of viewpoints without government intervention into the content of speech. Thus, no content-based alternative to the doctrine was deemed necessary to achieve that goal.

8. Finally, the Commission denied the petitioners' request to reconsider the decision to discontinue enforcement of the first prong of the fairness doctrine. Geller and Lampert argued that the decision should be reversed because that prong was eliminated without adequate notice and that there was insufficient reason for that elimination. They also argued that enforcement of the prong was mandated by the Communications Act.

9. In denying this request for reconsideration, the Commission stated that, in eliminating the first prong of the fairness doctrine in August, it had not ruled that the first prong obligation standing alone was unconstitutional. Rather, the Commission found that because "both parts of the doctrine are interdependent and integral to the overall regulatory scheme [of fairness]," it would not sever the first part of the doctrine and consider only whether to continue enforcement of the second part. Instead, it decided that if the enforcement of the doctrine was unconstitutional, it would discontinue enforcement of the entire doctrine, because the elimination of either part would essentially make the doctrine, as it had developed over the years, a nullity. That is, while the first part of the doctrine might conceivably be enforced as an independent policy matter, it simply would not then be the "fairness doctrine," but a new programming requirement devoid of the essential "fairness" component of the old policy. Also, according to the Commission, such a policy would be largely duplicative of the current requirement that broadcasters cover issues that are responsive to the needs and interests of their communities.

10. Geller and Lampert argued that, by eliminating the first prong obligation in August, the Commission called into question the continued validity of the issue responsive obligation. The Commission rejected this contention, noting that, although the first part of the fairness doctrine may overlap with other regulatory requirements developed in other contexts, it was not intended to suggest that the first part obligation under the fairness doctrine and the duty to air issue responsive programming are identical. Thus, petitioners' view that, by eliminating the first prong of the doctrine, the Commission has effectively declared unconstitutional its policy requiring broadcasters to provide programming responsive to the needs and interests of their communities is incorrect. Indeed, the Commission explicitly noted in its August decision that the constitutionality of the issue responsive obligation was not at issue in this case. Issue responsive obligations remain in full force and effect, and to the extent that petitioners fear that licenses will no longer cover issues of interest to their communities, the Commission believes that the continued existence of the issue responsive obligation should alleviate that fear.

11. *Accordingly, it is ordered* That the Petition of Freedom of Expression Foundation for Partial Reconsideration of the Order *is denied* to the extent indicated herein and *is referred*, together with the corresponding oppositions filed thereto, for consideration in connection with the separate proceeding regarding the personal attack and political editorial rules.

12. *It is further ordered* That the Petition for Reconsideration of Geller and Lampert *is denied*.

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-8843 Filed 4-21-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

Federal Acquisition Regulation (FAR); Promotion of American Aerospace Exports of Domestic and International Exhibits; Correction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule in Federal Acquisition Circular (FAC) 84–36 published in the Federal Register on Tuesday, April 12, 1988 (53 FR 12128).

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523–4755.

SUPPLEMENTARY INFORMATION: In FR Doc. 88–7992 beginning on page 12128, make the following correction:

31.205–1 [Corrected]

On page 12130, in the second column, in the third sentence, add a period following the word "demonstration" and begin a fourth sentence by adding the three words "This paragraph applies".

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: April 18, 1988.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

[FR Doc. 88–8914 Filed 4–21–88; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. T84–01; Notice 14]

Technical Amendment; Final Listing of High-Theft Lines for 1988 Model Year; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Technical Amendment.

SUMMARY: This technical amendment adds a new car line to the January 5, 1988, final listing of high-theft lines for Model Year (MY) 1988 published by the agency in its Final Rule at 53 FR 133. The new MY 1988 car line was determined to be a likely high-theft vehicle but was inadvertently omitted from the agency's MY 1988 listing. The list of high-theft car lines is intended to inform the public, particularly law enforcement groups, of the car lines that are subject to the marking requirements of the theft prevention standard for MY 1988.

EFFECTIVE DATE: This amendment becomes effective April 22, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Kurtz, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202–366–4808).

SUPPLEMENTARY INFORMATION: On October 24, 1985, NHTSA published a new Part 541, Federal Motor Vehicle Theft Prevention Standard, 50 FR 43166. Part 541 sets forth performance requirements for inscribing or affixing identification numbers into or onto covered original equipment major parts, and the replacement parts for those original equipment parts, on all vehicles in lines selected as high-theft lines.

Section 603(a)(2) of the Motor Vehicle Information Cost Savings Act (15 U.S.C. 2023(a)(2), hereinafter "the Cost Savings Act") specifies that NHTSA shall select high-theft lines with the agreement of the manufacture, if possible. NHTSA has published the procedures that it follows in selecting lines as high-theft lines at 49 CFR Part 542. On January 5, 1988, the agency published its listing of high-theft MY 1988 car lines at 53 FR 133 which included five newly selected lines for MY 1988 and those car lines that were previously selected as high-theft car lines beginning with MY 1987. A sixth MY 1988 car line was inadvertently omitted from the final listing. This amendment corrects that error, by adding the General Motors Buick Reatta car line to the list.

Section 603(d) of the Cost Savings Act (15 U.S.C. 2023(d)) provides that the theft prevention standard must continue to apply to all lines that have been selected as high-theft lines, unless those previously selected lines receive an exemption under section 605 of the Cost Savings Act (15 U.S.C. 2025).

Section 605 provides that a manufacturer may petition to have a high-theft line exempted from the requirements of Part 541, if the line is equipped as standard equipment with an anti-theft device. The exemption is granted if NHTSA determines that the standard equipment anti-theft device is likely to be as effective as compliance with Part 541 in reducing and deterring motor vehicle thefts. The omitted car line does not have an anti-theft device installed as standard equipment.

The revised listing is intended to inform the public, particularly law enforcement groups, concerning which car lines are subject to the marking requirements of the theft prevention standard for the 1988 model year, and which car lines are exempted from the theft prevention standard for the 1988 model year because of standard equipment anti-theft devices.

To repeat, the agency and motor vehicle manufacturers have come to an agreement on these selected car lines, including the omitted line, in accordance with 49 CFR Part 542, and section 603 of the Cost Savings Act. Accordingly, this correction would not impose any additional responsibilities on vehicle manufacturers. It would only inform the public of previous agency action and ensure that all determined likely high-theft car lines are listed.

Accordingly, NHTSA finds for good cause that notice and opportunity for comment on this correction are unnecessary. Based on these same facts, the agency finds for good cause that this correction should be effective as soon as it is published.

List of Subjects in 49 CFR Part 541

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

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

PART 541—[AMENDED]

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

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

2. Appendix A of Part 541 is revised for General Motors car lines to read as follows:

Appendix A—Lines Subject to the Requirements of This Standard

* * * * *

Manufacturer	Subject lines
General Motors	Buick Electra.
	Buick LeSabre.
	Buick Reatta.
	Buick Regal.
	Buick Riviera.
	Cadillac Deville.
	Cadillac Eldorado.
	Cadillac Seville.
	Chevrolet Camaro.
	Chevrolet Nova.
	Oldsmobile Cutlass Supreme.

Manufacturer	Subject lines
	Oldsmobile Delta 88.
	Oldsmobile 98.
	Oldsmobile Toronado.
	Pontiac Bonneville.
	Pontiac Fiero.
	Pontiac Firebird.
	Pontiac Grand Prix.

* * * * *

Issued on April 18, 1988.

Diane K. Steed,

Administrator.

[FR Doc. 88-8829 Filed 4-21-88; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 53, No. 78
Friday, April 22, 1988

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 76

Regulation of Uranium Enrichment Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is considering the addition of new regulations Title 10 (Part 76) for uranium enrichment facilities. The construction and operation of such facilities currently would be licensed pursuant to the Commission's regulations in 10 CFR Part 50 for other production and utilization facilities, such as nuclear power plants. In this notice, the Commission presents its current analysis of the applicability of the existing regulations, in 10 CFR Part 50, to uranium enrichment facilities and poses questions for the purpose of eliciting comments on whether a separate set of regulations for uranium enrichment licensing is desirable.

The General Design Criteria presented in this notice may be proposed for codification in the new regulation. These criteria may also be modified, depending on comments received in response to this notice, and upon further staff analysis.

DATES: The comment period expires on July 21, 1988. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: *Mail comments. to:* The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to: 11555 Rockville Pike (One White Flint North) Rockville, MD, between 7:30 a.m. and 4:15 p.m. Examine copies of comments received at: the NRC Public Document Room, 1717 H Street NW., Washington, DC

FOR FURTHER INFORMATION CONTACT: A. Thomas Clark, Jr., Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–0697.

SUPPLEMENTARY INFORMATION:

Background

A uranium enrichment facility is a production facility as defined by section 11(v) of the Atomic Energy Act of 1954, as amended. The regulations which currently govern the Commission's review and evaluation of an application for a production facility are contained in 10 CFR Part 50. Part 50 provides no specific guidance for licensing uranium enrichment facilities. The NRC staff has never received an application for a uranium enrichment facility. The staff, however, has licensed facilities which process uranium hexafluoride, which is the principal chemical form of uranium used in the gaseous diffusion process and the centrifuge process, the current methods used to produce enriched uranium.

However, other methods for enriching uranium can be and are being developed. For example, for several years the Department of Energy has fostered the development of an Atomic Vapor Laser Isotope Separation (AVLIS) process for enriching uranium. The commercial use of these methods would also be subject to regulation by the Commission.

On April 7, 1986, the Department of Energy (the Department or DOE) published a notice in the **Federal Register** (51 FR 11811) requesting expressions of interest for participation in the Department's uranium enrichment program. In addition, on February 17, 1987, the Department submitted a report to the Congress on the privatization of DOE's uranium enrichment enterprise. The report was prepared in response to issues raised in Conference Report H.R. 99–1005 (House Joint Resolution 738 Continuing Appropriation, 1987). The letter transmitting the report indicated that a more specific recommendation would be made by the Department at the end of March on the restructuring of the enrichment enterprise. On March 31, 1987, the Department provided further details on the proposed restructuring. The principal component of the restructuring would be a federally chartered enrichment corporation, which might be subject to regulation by the U.S. Nuclear Regulatory Commission. The NRC staff has also been meeting with some private companies, all of which are expressing an interest in engaging in uranium enrichment under NRC license and regulation.

This advance notice of proposed rulemaking is being published to provide the public, the Department, and the prospective regulated industry an opportunity to provide advice and recommendations to the Commission on the subject of uranium enrichment licensing. The NRC staff has developed guidance, provided below, which would form the foundation for a new rule, if initiated. Because rulemaking may take several years, and applications for private enrichment might be imminent, the NRC staff will proceed with the review of applications and issuance of appropriate licenses and permits, on the basis of the current regulations in 10 CFR Part 50 and the guidelines contained in this advance notice subject to any revisions which might be appropriate based on comments received.

As noted above, current regulations already provide a framework for the licensing review of production facilities. The initiation of a rulemaking to more closely define the substance of NRC review should not hold up the processing to completion of submitted applications.

Uranium Hexafluoride and Public Health and Safety of Uranium Enrichment

Although the regulation of uranium enrichment facilities could include any type of technically feasible enrichment process, as a practical matter the two predominant techniques, gaseous diffusion and gaseous centrifugation, enrich the uranium utilizing the chemical form of uranium hexafluoride. The principal reason for using this form is that the compound is a gas at reasonable temperatures and pressures. The release of uranium hexafluoride from process equipment is a more severe chemical (toxicological) hazard than a radiation (radiological) hazard as discussed below.

If uranium hexafluoride is released to the atmosphere it will react

exothermally with moisture in the air to produce hydrogen fluoride (HF) and uranyl fluoride (UO_2F_2). Both compounds can be toxic. Hydrogen fluoride is a corrosive acid vapor which can severely damage tissue, especially the moist tissue of the lungs if inhaled in sufficient concentrations. If uranyl fluoride is inhaled or ingested, it can cause internal injury to the kidneys and sufficient quantities can be lethal.

In order to demonstrate that the chemical hazard of uranium hexafluoride reaction products far exceeds that of its radiation hazard one might consider the following example related to just one of the reaction products, uranyl fluoride. If a person inhaled sufficient uranyl fluoride, as a result of being exposed to a plume from released uranium hexafluoride (enriched to six percent U–235), such that there was a 50/50 chance of surviving (50 percent lethality) the chemically toxic effects, that person would receive only about 2.5 rem committed (lifetime) total body dose equivalent or about the maximum amount a radiation worker can receive in one calendar quarter (3 rem). Obviously, even further chemical injury could be sustained by the same individual from the hydrogen fluoride produced during the same release of uranium hexafluoride.

Design Guidance Standards Based on Chemical Effects

Based on the above discussion the staff will be guided mainly by the chemical effects of reaction products from uranium hexafluoride in its outlook on design for the protection of the health and safety of the public. The Atomic Energy Act provides authority for the Commission to consider any consequence to the public health and safety inherent in the physical characteristics of licensed source or special nuclear material such as uranium hexafluoride. The staff herein proposes reference values to be used for the evaluation of sites and designs with respect to potential accidents at uranium enrichment facilities. These proposed reference values for UO_2F_2 and HF, based on chemical toxicity, are intedned to be comparable with the original intent of the reactor siting criteria in 10 CFR Part 100, i.e., a whole-body radiation dose guideline value fixed at the point where it is believed that clinically observable threshold effects begin to occur. The staff thus proposes using quantities or concentration values which are at the lower range or average threshold level for chemically toxic effects which, if exceeded, could cause transient or permanent injury.

The staff considers that an intake of about 9 mg of uranium is the level at which slight transient kidney injury is expected to occur, and an intake of about 40 mg of uranium is a reasonable estimate of the threshold level at which permanent kidney damage may begin to occur (see NUREG–1140).[1] Therefore, for design purposes the staff is considering the calculated maximum amount that an adult at or behond the controlled site boundary could inhale, as a result of credible accidents of low probability to be in the range of 9 to 40 mg. Facilities designed such that maximum effects would not exceed this range should not have a significant adverse effect on the health and safety of the public.

For exposure to HF, levels which cause permanent injury are not clearly defined. Exposure to HF at a concentration of 100 mg/m ^{3} is estimated to be unbearable for one minute. HF at 13 mg/m ^{3} would be detectable by smell and cause possible irritation. Above 26 mg/m ^{3}, HF would cause irritation and possible health effects.[2] Therefore, the staff considers that 26 mg/m ^{3} HF is the maximum concentration that a person at or beyond the controlled site boundary could be exposed for short periods, as a result of credible incidents of low probability. Enrichment facilities designed to limit any release to a value below this reference concentration will not have a significant adverse effect on the health and safety of the public.

Analysis of the Applicability of 10 CFR Part 50 to Uranium Enrichment

The NRC staff has reviewed each section of 10 CFR Part 50 to determine which sections do not apply, which sections will apply, including the nature of their applicability, and those which will apply in part. This analysis is based on the staff's judgment as to technical and procedural applicability. The analysis is intended to form a basis for the NRC staff's approach to licensing of uranium enrichment facilities.

A. Those Sections of 10 CFR Part 50 Which Do Not Apply

1. Sections and appendices related only to nuclear reactor licensing:

Sections 50.34a, 50.36a, 50.43, 50.44, 50.46, 50.47, 50.48, 50.49, 50.55a, 50.60, 50.61, 50.62, 50.64, 50.72, 50.73, and 50.109.

Appendices A, C, E, G, H, I, J, K, L, M, N, O, Q, and R.

2. Sections not applicable for reasons other than 1:

Section	*Reason*
50.11	Exemptions for Federal agencies
50.21	Research and development only
Appendix D	Reserved
Appendix F	Reprocessing only
Appendix P	Reserved

B. Those Sections of 10 CFR Part 50 Which Apply Completely

1. Sections related to administrative procedures: Section 50.1 through 50.10, 50.12, 50.13, 50.20 through 50.32, 50.36b, 50.37 through 50.40, 50.41, 50.42, 50.45, 50.50 through 50.53, 50.56, 50.58, 50.59, 50.70, 50.76, 50.80 through 50.110 except 50.109.

2. Appendix B.

C. Those Sections of 10 CFR Part 50 Which Apply Partially

1. Paragraphs (g) and (i) of § 50.33 do not apply; all other paragraphs apply.

2. Section 50.33a refers to information requested by the Attorney General for antitrust review. Paragraph (c) is reserved. Paragraphs (a), (b), and (d) apply only to nuclear power reactors. Paragraph (e) applies to a uranium enrichment application.

3. Section 50.34, "Contents of Applications; technical information," applies in part to a uranium enrichment plant. The extent to which paragraphs of § 50.34 apply is discussed below:

A. Paragraph (a), Preliminary Safety Analysis Report

The following paragraphs pertain principally to nuclear power plants: (1), (3)(i), (4), (10), and (11). Replacement paragraphs related directly to the intent of these paragraphs should be prepared unless they are only applicable to nuclear power plants.

B. Paragraph (b), Final Safety Analysis Report

The following paragraphs pertain principally to nuclear power plants: (1), (2)(i), (4), (6)(v), (6)(vii), and (9). Replacement paragraphs related directly to the intent of these paragraphs should be prepared unless they are only applicable to nuclear power plants.

C. Paragraph (c), Physical Security Plan

This paragraph applies in its entirety.

[1] Copies of NUREG–1140 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for public inspection and/or copying at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

[2] Just, R.A., "Report on Toxicological Studies Concerning Exposures to UF_6 and UF_6 Hydrolysis Products," KID–5573, Rev. 1, July 1984.

D. Paragraph (d), Safeguards Contingency Plan

This paragraph applies in its entirety.

E. Paragraph (e) applies in its entirety.

F. Paragraph (f) does not apply.

G. Paragraph (g) does not apply.

4. Section 50.35 applies, except for paragraph (a)(4)(ii), which refers to nuclear power reactor siting criteria. A replacement paragraph related to siting criteria for a uranium enrichment facility should be prepared.

5. Section 50.36 applies in part to uranium enrichment. The following paragraphs related to nuclear power plants will not apply: (c)(1)(i)(A) and (c)(1)(ii)(A). Paragraphs (c)(1)(i)(B) and (c)(1)(ii)(B) apply to fuel reprocessing plants, but could equally as well apply to uranium enrichment plants. Paragraph (c)(2) applies to both nuclear power plants and reprocessing plants. This paragraph could apply to uranium enrichment plants in the same manner as it applies to fuel reprocessing plants. All other paragraphs apply to uranium enrichment except (c)(7), which is specific to nuclear power plants.

6. Section 50.54, "Conditions of Licenses," applies in part to uranium enrichment. Paragraph (a) applies to nuclear power plants and fuel reprocessing plants, but could be applied to a uranium enrichment plant. The following paragraphs apply to a uranium enrichment plant in their entirety: (b), (c), (d), (e), (f), (g), (h), (i), (l), (n), (p), (v), (x), (y), (aa), and (cc). The following paragraphs apply only to nuclear power plants: (j), (m), (o), (q), (r), (s), (t), (u, (w), (z), and (bb). Paragraphs (i-l), and (k), apply to operator licensing and may or may not be applicable to uranium enrichment.

7. Section 50.55, "Conditions of construction permits," applies in part to uranium enrichment. The following paragraphs apply in their entirety to uranium enrichment: (a), (b), (c), and (d). Paragraph (e) applies only to nuclear power plants. Paragraph (f) applies to both nuclear power plants and fuel reprocessing plants (quality assurance) and could apply to a uranium enrichment plant.

8. Section 50.57, "Issuance of operating license," applies in part to uranium enrichment. Paragraphs (a) and (b) apply wholly. Paragraph (c) applies only to nuclear power plants.

9. Section 50.71, "Maintenance of records, making of reports," Paragraphs (a) through (d) apply wholly. Paragraph (e) applies to nuclear power plants, but could apply to a uranium enrichment plant.

Existing Regulatory Basis for Applying Safeguards to Enrichment Facilities

1. Section 50.34(c) requires that each applicant for a license to operate a production or utilization facility must include a physical security plan as part of their application.

2. Section 50.78 requires each holder of a construction permit (issued under Part 50), if requested by the Commission, to submit installation information on Form N–71, permit verification thereof by the International Atomic Energy Agency, and take such other action as may be necessary to implement the US/IAEA Safeguards Agreement, in the manner set forth in §§ 75.6 and 75.11 through 75.14.

3. Section 73.1(b)(1)(i) states that Part 73 prescribes requirements for the physical protection of production and utilization facilities licensed pursuant to Part 50.

4. The material control and accountability requirements of § 70.51(b) (1), (2), (5), and (6), § 70.51(c) and 70.51(d) pertain to enrichment facilities.

5. The Material Control and Accountability Reform Rule, as contained in §§ 74.51, 74.53, 74.55, 74.57, and 74.59, pertains to facilities authorized to possess five formula kilograms (or more) of strategic special nuclear material, except for reprocessing plants and nuclear reactors licensed pursuant to Part 50. Thus, this rule would apply to an enrichment facility that handles or produces high enriched uranium (but not those limited to low enriched uranium production).

6. Sections 70.51, 70.57, and 70.58 (in their entirety) pertain to any facility authorized to possess special nuclear material to moderate strategic significance, except that nuclear reactors licensed pursuant to Part 50 are exempted from §§ 70.57 and 70.58. Thus, an enrichment facility that handles or produces uranium enriched above 10 percent but less than 20 percent (in the U–235 isotope) would be subject to §§ 70.51, 70.57, and 70.58.

Existing Safeguards Regulations That do not Apply to Enrichment Facilities but Could be Applied Either by a Condition of License or by Amending 10 CFR Part 74

1. Section 74.31 (i.e., the Low Enriched Uranium Reform Rule) contains material control and accountability (MC&A) regulations for facilities authorized to possess special nuclear material of low strategic significance, but specifically exempts production and utilization facilities licensed pursuant to Part 50.

Draft General Design Criteria for Uranium Enrichment

The staff has prepared draft General Design Criteria for uranium enrichment which are intended to apply to any technique used for that purpose. These draft General Design Criteria have been drawn from several sources, including those previously proposed for other types of fuel cycle facilities and those in use in 10 CFR Part 50 for nuclear power plants. They are intended to provide general guidance as to topics which must be considered and the overall performance objectives related to each criterion. The actual implementation of the general design criteria will be different than in the case of nuclear power plants and will depend upon the specific processes and designs being considered and will be commensurate with the safety function of the specific structures, systems or components related to those designs. As experience is gained on the application of the criteria, modifications may be deemed appropriate to the criteria. It is also expected that designs to implement the criteria will in most instances not be comparable with that of nuclear power plants. In particular, the confinement criteria might apply to only limited areas of the plant where significant releases could occur which, in turn, could cause exposure in excess of the reference values for toxic effects.

As discussed in a previous section of this notice, the current technologies, using the chemical form uranium hexafluoride, would be of more immediate concern. In this section we provide these draft criteria as based on the NRC staff's current considerations as to potential hazard to the health and safety of the public. We note, in particular, that the draft criteria presented for design for effects of natural phenomena are characterized by return periods. These criteria should be used in conjunction with data provided by competent authorities which relate design variables such as ground acceleration and wind speed to return period.

General Design Criteria

An application for a construction permit for a uranium enrichment facility must include the principal design criteria for the proposed facility. These General Design Criteria establish minimum requirements for the principal design criteria which are commensurate with their safety function. These General Design Criteria may not be complete. Any omissions do not relieve the applicant from the requirement of

providing the necessary safety features in the design of a specific facility. In addition to satisfying the General Design Criteria, the applicant must:

(1) Design against the loss of confinement capability or other capability which would jeopardize the health and safety of the public where such loss of capability results from any single failure in systems having safety significance;

(2) Provide diversity in systems commensurate with their safety function;

(3) Minimize the possibility of non-random, concurrent failures of important elements in protection systems;

(4) Provide design criteria and design bases for resistance of parts of the facility to upper limit accidents and for maximum probable natural phenomena when the consequences of such events endanger the health and safety of the public;

(5) Provide adequate protection for employees from hazards which could affect their performance of actions required to protect the public from exposure to hazardous materials.

There may be some facilities for which the General Design Criteria are not sufficient and for which additional criteria must be satisfied in the interest of public safety. Also some of the General Design Criteria may not be necessary or appropriate for a specific facility. For facilities such as these, departures from the General Design Criteria must be identified and justified.

General Requirements

Quality Standards and Records

Structures, systems, and components which are determined to have safety significance shall be designed, fabricated, erected, and tested in accordance with the quality assurance criteria set forth in Appendix B to 10 CFR Part 50. Appropriate records of the design, fabrication, erection, and testing of structures, systems, and components which are determined to have safety significance must be maintained by or under the control of the licensee throughout the life of the facility.

Protection Against Environmental Conditions

(a) Structures, systems, and components which are determined to have safety significance shall be designed to withstand the effects of, and be compatible with, the environmental conditions associated with operation, maintenance, shutdown, testing, and accidents.

(b) Structures, systems, and components which are determined to have safety significance shall be protected against dynamic effects, including effects of missiles and discharging fluids, that may result from natural phenomena, accidents at nearby industrial, military, or transportation facilities, equipment failure, and other similar events and conditions both inside and outside the facility.

Protection Against Fires and Explosions

Structures, systems, and components which are determined to have safety significance must be designed and located so that they can continue to perform their safety functions effectively under credible fire and explosion exposure conditions. Non-combustible and heat resistance materials must be used wherever practical throughout the facility, particularly in locations vital to the control of hazardous materials and to the maintenance of safety control functions. Explosion and fire detection, alarm, and suppression systems shall be designed and provided with sufficient capacity and capability to minimize the adverse effects of fires and explosion on structures, systems, and components which are determined to have safety significance. The design must include provisions to protect against adverse effects that might result from either the operation or the failure of the fire suppression system.

Sharing of Structures, Systems, and Components

Structures, systems, and components which are determined to have safety significance must not be shared between an enrichment facility and other facilities unless it is shown that such sharing will not impair the capability of the enrichment facility to perform its safety functions, including the ability to return to a safe condition in the event of an accident.

Proximity of Sites

An enrichment facility located near other nuclear facilities must be designed to ensure that the cumulative effects of their combined operations will not constitute an unreasonable risk to the health and safety of the public.

Testing and Maintenance of Systems and Components

Systems and components that are determined to have safety significance must be designed to permit inspection, maintenance, and testing.

Emergency Capability

Structures, systems, and components which are determined to have safety significance must be designed for emergencies. The design must provide for accessibility to the equipment of onsite and available offsite emergency facilities and services such as hospitals, fire and police departments, ambulance service, and other emergency agencies.

Design Basis for Normal Operation, for Accidents, and for Protection Against Natural Phenomena

Design

(a) Enrichment facilities must be designed so that the concentration of hazardous materials at or beyond the boundary of the exclusion area (1) under normal operating conditions, shall be as low as is reasonably achievable, and (2) as the result of design basis accidents including those of low probability, shall not create any undue risk to the health and safety of the public.

(b) The design of the facility must be adequate to provide protection against severe external events that could result in the release of quantities and concentrations of hazardous material which may be of public health and safety significance. The design bases for such events shall take into account their historic frequency and severity in the region of the site and the potential risk to public health and safety, including the inventory of hazardous materials in the facility and the size and the proximity of the population at risk. The type of severe events to be considered will vary among sites, however, earthquakes, tornadoes, and floods shall be considered in all cases, as described in paragraphs c, d, and e below.

(c) Historical information concerning the regional seismicity interpreted in light of regional structural geology and site geological conditions shall be used for determining the maximum vibratory ground motion which reasonably could be expected to affect the site during the operating life of the facility. Such an earthquake will have a mean return period of the order of 500 years.[3] Design earthquakes of shorter return period may be proposed, and shall be justified through considerations of the incremental risk to public health and safety relative to the 500-year interval.

(d) Historical information concerning the regional and local incidence and severity of tornadoes shall be used to establish a site-specific design tornado event. The characteristics of the design

[3] The return period should be related to vibratory ground motion through the use of seismic risk maps such as Figure CI-2 of "Tentative Provisions for the Development of Seismic Regulations for Buildings," Applied Technology Council, ATC 3-06, U.S. Department of Commerce-National Bureau of Standards Special Publication 510, National Science Foundation Publication 78-8. (An update of this map is expected soon.)

tornado shall be determined considering both the tornado frequency for the region in which the facility is located, as well as the frequency of occurrence for a tornado of a given intensity within that region.[4]

(e) The design basis flood as a minimum shall be the Standard Project Flood as defined and in common use by the Corps of Engineers. The Standard Project Flood is the floor resulting from the most severe flood-protection rainfall depth-area-duration relationship and isohyetal pattern of any storm that is considered reasonably characteristic of the region in which the watershed is located. If snow melt may be substantial, appropriate amounts shall be included with the floor-producing rainfall. When floods are predominantly caused by snowmelt, the Standard Project Flood shall be based on critical combinations of snow, temperature, and water losses.

(f) Structures, systems, and components which must withstand the design basis earthquake to meet the requirements of paragraph (a) shall be designed using a suitable dynamic analysis or a suitable qualification test to demonstrate that they can withstand the seismic and other concurrent loads, except where it can be demonstrated that the use of an equivalent static load method provides adequate conservatism.

(g) Conservative estimates of atmospheric dispersion of hazardous material based on local meteorological conditions shall be used to evaluate the impact of normal operations and of design basis accidents to demonstrate compliance with the requirements of paragraph (a).

Confinement Barriers and Systems

Confinement systems shall consist of confinement barriers and equipment which control against the release of hazardous materials to the environment. The confinement systems which are significant to safety shall be designed to protect against the effects of accidents or external natural phenomena and shall be fabricated, erected, appropriately tested, and maintained to ensure prevention of abnormal leakage, rapidly propagating failure, or gross rupture during the design life of the facility.

Compartmentalization of process inventory, when used as a method of reducing the amount of hazardous material capable of being released by any single or local failure of primary containment, shall be considered in design as a means to effectively isolate and contain the process inventory in modular units or states for all reasonable normal or abnormal conditions.

Ventilation Systems

Ventilation systems required for the confinement of hazardous materials shall be designed and appropriately tested to ensure their operability during normal or abnormal conditions. To accomplish this objective, these systems shall be designed to meet the following requirements:

(a) The desired ventilating air flow direction shall be maintained under operating and accident conditions.

(b) The ventilation system shall accommodate changes in operating conditions, such as variations in temperature or pressure, and shall be capable of safely controlling all off-gases that could be associated with normal or accident conditions.

(c) The continuity of necessary ventilation shall be assured by means of alternate equipment, fail-safe systems, or other provisions.

(d) Provisions shall be made for testing, during normal operations, all component functions having safety significance to the extent necessary to provide reasonable assurance that they will perform their design safety functions.

(e) Ventilation systems shall be designed to permit the continued occupancy of any and all areas where such occupancy is required for normal plant operations, for safe shutdown, and for maintaining the facility in a safe shutdown condition. Their design shall include protection against the intake and accumulation of hazardous materials. The design shall also permit the timely and safe evacuation of personnel from all areas.

(f) Ventilation systems shall be designed to confine the hazardous materials during normal operation and to ensure that the release of hazardous materials in the effluent gases is as low as reasonably achievable. Such systems shall also be designed to retain their confinement and separation capability to minimize releases resulting from an accident condition.

Process Safety

Protection Systems

(a) Protection systems shall be designed (1) to initiate action that will assure that specified acceptable operating design limits are not exceeded as a result of operational occurrences and (2) to sense potentially hazardous or accident conditions, and to activate systems and components required to ensure the safety of operating personnel and the public or to give audible and visual alarm so that action can be taken in a timely manner to ensure such safety. Systems and components shall be activated automatically where this mode is compatible with the safety requirements to be satisfied.

(b) Protection systems shall have reliability and *in situ* testability. The design or protection systems shall consider alternate methods at least sufficient to ensure that (1) no single failure results in loss of the protection functions and (2) removal from service of any component does not result in loss of the protection system such that it will operate with acceptable reliability. The protection systems shall be designed to permit the periodic testing of their functions while the plant is in operation to determine competency to perform their intended safety functions.

(c) Protection system shall be designed to fail into a safe state or into a state demonstrated to be acceptable on some other defined basis if conditions such as disconnection of the system, loss of energy or motive power, or adverse environments are experienced.

Instrumentation and Control Systems

Instrumentation and control systems shall be provided to monitor variables and operating systems that are significant to safety over anticipated ranges for normal operation, for abnormal operation, for accident conditions, and for safe shutdown. These systems shall ensure adequate safety of process and utility service operations in connection with their safety function. The variables and systems that require constant surveillance and control include process systems having safety significance, the overall confinement system, confinement barriers and their associated systems, and other systems that affect the overall safety of the plant. Controls shall be provided to maintain these variables and systems within the prescribed operating ranges under all normal conditions. Instrumentation and control systems shall be designed to fail into a safe state or to assume a state

[4] The techniques used in "U.S. Tornadoes, Part 1, 70-Year Statistics, T. Theodore Fujita, the University of Chicago," "Historical Estreme Winds for the United States—Atlantic and Gulf of Mexico Coastlines, M.J. Changery, NOAA, May 1982, NUREG/CR-2639," and "Methodology for Estimating Extreme Winds for Probabilistic Risk Assessments," J. V. Ramsdell, et al., NUREG/CR-4492, PNL-5737, October 1986, to relate return period to design wind speed serve as examples of acceptable techniques. Mean return periods of 10,000 years are likely to yield satisfactory wind speeds.

demonstrated to be acceptable on some other basis if conditions such as disconnection, loss of energy or motive power, or adverse environments are experienced.

Separation of Protection Systems and Control Systems

Protection systems shall be separated from control systems to the extent that a change or failure in a control system leaves intact a protection system with acceptable reliability and independence requirements.

Control Areas

A control room or control areas shall be designed to permit occupancy and actions to be taken to operate the plant safely under normal conditions and under abnormal or accident conditions to either operate the plant safely or to shut down the plant and maintain the plant in a safe condition. There shall be an alternate system designed to allow the plant to be put into a safe condition if any one control room or control area is removed from service.

Process Systems as Primary Confinement Barriers

Process components and systems are the primary confinement barrier. The design of each process system shall provide capability for the system to maintain its integrity and operability as necessary to protect the public health and safety. Provisions shall be included for the safe handling of anticipated nonroutine process conditions.

Utility Services

Onsite utility service systems shall be provided when such onsite service is necessary for emergency use to protect the health and safety of the public. Onsite utility services shall meet the following criteria:

(a) The design of each utility service system required for emergency conditions shall provide for the meeting of safety demands under normal and abnormal conditions. The design of utility services and distribution systems having safety significance shall include alternate systems to the extent necessary to maintain, with adequate capacity, the ability to perform safety functions assuming a single failure.

(b) Emergency utility services shall be designed to permit testing of their functional operability and capacity, including the full operational sequence of each system for transfer between normal and emergency supply sources, and the operation of associated safety systems.

(c) Provisions shall be made so that, in the event of a loss of the primary electric power source or circuit, reliable and timely emergency power will be provided to instruments, confinement systems, utility service systems, and process systems in amounts sufficient to allow operations to be shut down safely and to be maintained in a safe shutdown condition with all safety devices essential to safe shutdown functioning.

Nuclear Criticality Safety

Safety Margins

The design of process and storage systems shall include demonstrable margins of safety for the nuclear criticality parameters that are commensurate with the uncertainties in the process and storage conditions, in the data and methods used in calculations, and in the nature of the immediate environment under accident conditions. All process and storage systems shall be designed to be maintained subcritical and to ensure that no nuclear criticality accident can occur unless at least two unlikely, independent, and concurrent or sequential changes have occurred in the conditions essential to nuclear criticality safety.

Methods of Control

(a) Favorable geometry, in which equipment or systems are subcritical by virtue of neutron leakage under worst credible conditions, is the preferred method of nuclear criticality control.

(b) Where the favorable geometry method of nuclear criticality control is not practical, the use of permanently fixed neutron-absorbing materials (poisons) is the next preferred method of control.

(c) Where both the favorable geometry and the permanently fixed neutron-absorbing materials (poisons) methods of nuclear criticality control are not practical, administrative controls of moderation, fissile material concentration, total fissile material, or the use of soluble neutron-absorbing materials (poisons) shall be employed when combined with margins of safety measurements or appropriate analysis and engineered safety features.

Neutron Absorbers

Where solid neutron-absorbing materials (poisons) are used for the prevention of nuclear criticality, the design shall provide for positive means to verify their continued efficacy. Soluble neutron absorbing materials may be used as a primary nuclear criticality control provided (a) two independent methods are provided to ensure the presence of the required concentration of neutron absorber and (b) the equipment containing the fissile material is located behind sufficient barriers and shielding to reduce the probability and extent of accidental contamination of the environment and accidental radiation exposure to personnel in the event of a criticality accident.

Ancillary Criteria for Nuclear Criticality Safety

(a) Process and storage systems shall be designed to ensure that no mechanisms that could cause segregation of fissile materials can be present in components whose nuclear criticality safety is dependent on the homogeneous distribution of fissile material.

(b) Components whose nuclear criticality safety is dependent on a limiting concentration of fissile material shall be designed so that either (1) mechanisms that could cause critical concentrations of fissile materials are not present or (2) concentration is controlled by positive instrumental means.

(c) Process and storage systems shall be designed to ensure that the transfer of fissile material from safe systems to unsafe systems is not possble as a consequence of any single failure or operating error.

(d) Confinement system components shall be designed to ensure that leakage from equipment or from one confinement zone to another confinement zone cannot result in a condition that would result in nuclear criticality.

(e) The spacing between discrete accumulations of fissile materials shall be controlled so as to maintain a subcritical state.

(f) A criticality monitoring system shall be maintained in each area where special nuclear material is handled, used, or stored which will energize clearly audible alarm signals if accidental criticality occurs.

Radiological Protection

Exposure Control

Radiation protection systems must be provided for all areas and operations where onsite personnel may be exposed to radiation or airborne radioactive materials. Structures, systems, and components for which operation, maintenance, and required inspections may involve occupational exposure must be designed, fabricated, located, shielded, controlled, and tested so as to control external and internal radiation exposures to personnel. The design must include means to:

(a) Prevent the accumulation of radioactive material in those systems requiring access;

(b) Decontaminate those systems to which access is required;

(c) Control access to areas of potential contamination or radiation;

(d) Measure and control contamination of areas requiring access;

(e) Minimize the time required to perform work in the vicinity of radioactive components; for example, by providing sufficient space for ease of operation and designing equipment for ease of repair and replacement; and

(f) Shield personnel from radiation exposure.

Radiological Alarm Systems

Radiological alarm systems must be provided in accessible work areas as appropriate to warn operating personnel of radiation and airborne radioactive material concentrations above a given setpoint and of concentrations of radioactive material in effluents above control limits. Radiation alarm systems must be designed with provisions for calibration and testing their operability.

Effluent and Direct Radiation Monitoring

(a) As appropriate effluent systems must be provided. Means for measuring the amount of radionuclides in effluents during normal operations and under accident conditions must be provided for these systems. A means of measuring the flow of the diluting medium, either air or water, must also be provided.

(b) Areas containing radioactive materials must be provided with systems for measuring the direct radiation levels in and around these areas.

Effluent Control

Facilities must be designed to provide means to limit levels as low as is reasonably achievable the release of radioactive materials in effluents during normal operations; and control the release of radioactive materials under accident conditions.

Decommissioning

The facility must be designed so as to facilitate decommissioning. Provisions must be made to facilitate decontamination of structures and equipment, and facilitate the removal of radioactive wastes and contaminated materials at the time the facility is permanently decommissioned.

Review Plan Topics for NRC Staff

The Commission has taken into account the information contained in the previous paragraphs in this notice, the information guidance set forth in Regulatory Guide 3.2.5, "Standard Format and Content of Safety Analysis Reports for Uranium Enrichment Facilities," and experience gained in previous evaluations of other types of fuel cycle facilities in order to determine the individual topics for its review and evaluation of the safety of a uranium enrichment facility. These topics are as follows: seismology, geology, hydrology, meteorology, site location factors, structural analysis, mechanical equipment analysis, criticality prevention, fire/explosion prevention and protection, ventilation system analysis, identification and sharing of structures, systems, and components important to safety, radioactive waste treatment, packaging, and disposal, radiation protection, chemical safety, accident analysis and emergency planning, decontamination and decommissioning, management organization and quality assurance, technical specifications, human factors, operator licensing, safeguarding special nuclear material, and the protection of classified information. It is expected that each of these topics will be addressed separately in any safety evaluation report prepared by the staff for a uranium enrichment facility.

Questions Related to the Regulation of Uranium Enrichment Facilities

In light of the previous discussion, the U.S. Nuclear Regulatory Commission is particularly interested in receiving comments concerning the following:

1. Are the siting criteria set forth in the General Design Criteria appropriate and complete for uranium enrichment facilities?

2. Are there factors related to protection of the environment and the public other than the chemical toxicity of the reaction products of uranium hexafluoride, that are not taken into account in the bounding conditions in the General Design Criteria?

3. Should the criteria of Appendix B to 10 CFR Part 50, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," be applied in its present form to uranium enrichment facilities?

4. What activities should be performed by a licensed operator and what requirements should apply?

5. Should the technical specification categories applicable to fuel reprocessing plants, as set forth in 10 CFR 50.36, be applied to uranium enrichment facilities?

6. Considering the discussion in this notice concerning the health effects to persons by the uptake of uranium, what value of uranium mass should be used for a basis of design calculation comparable to the twenty-five rem whole body value used for guidance in 10 CFR Part 100?

List of Subjects for Proposed 10 CFR Part 76

Classified information, Hazardous substances, Penalty, Radiation protection, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material, Uranium.

The authority citation for this document is:

(Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841)).

Dated at Rockville, MD, this 18th day of April 1988.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 88-8883 Filed 4-21-88; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 522, 541, 542, 543, 544, 545, 547, 548, 549, 563, 569a, 569b, 569c, and 571

[No. 88-271]

Extension of Time Period for Board Action on Certain Outstanding Proposals

Date: April 11, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rules; extension of time period for board action.

SUMMARY: Pursuant to its recently adopted regulatory review procedures, *see* Board Res. No. 88-269, published in the **Federal Register** on Thursday, April 21, 1988 the Federal Home Loan Bank Board ("Board") hereby gives notice that it is extending the time period for Board action on the following outstanding proposed regulations outlined in **SUPPLEMENTARY INFORMATION** until October 11, 1988.

This extension of time will allow the Board to further study the issues raised by the proposals in light of passage of the Competitive Equality Banking Act of 1987. The Board is not soliciting additional comments on these proposals, it is only extending the time period for possible Board action until October 11, 1988, pursuant to its recently adopted regulatory review procedures.

DATE: The time period for possible Board action on these proposals expires on October 11, 1988.

FOR FURTHER INFORMATION CONTACT: Deborah Dakin, Acting Regulatory Counsel, (202) 377–6445; or Carol J. Rosa, Paralegal Specialist, (202) 377–7037, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552 or the appropriate contact persons listed in the referenced **Federal Register** documents.

SUPPLEMENTARY INFORMATION: The outstanding proposals to be considered further by the Board for possible final action are:

1. Corporate Governance Part I, adopted by the Board on September 13, 1985; 50 FR 38832 (Sept. 25, 1985);

2. Conservators and Receivers, adopted by the Board on November 8, 1985; 50 FR 48970 (Nov. 27, 1985);

3. Corporate Governance Part II, adopted by the Board on November 22, 1985; 50 FR 52482 (Dec. 24, 1985);

4. Over-the-Counter Financial Options Trading; Accounting for Financial Options, adopted by the Board on December 20, 1985; 50 FR 53336 (Dec. 31, 1985);

5. Adjustable Rate Mortgage Home Loan Disclosures, adopted by the Board on January 29, 1987; 52 FR 3665 (Feb. 5, 1987);

6. Accounting Policy Relating to Acquisition, Development and Construction Loans, adopted by the Board on March 4, 1987; 52 FR 7887 (March 13, 1987);

7. Indemnification of FHLBank Officers, Directors and Employees, adopted by the Board on April 1, 1987; 52 FR 12425 (April 16, 1987);

8. Regulatory Capital Requirements, adopted by the Board on June 10, 1987; 52 FR 23845 (June 25, 1987).

The Board notes that this action does not constitute a representation that the Board will take final action with respect to these proposals, only that it may do so within the six-month extended time. Moreover, this action carries no implication whatsoever with respect to the Board's view of the merits of the proposals listed here.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–8901 Filed 4–21–88; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 056CE, Notice No. 23–ACE–041]

Special Conditions; GROB Model 115 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Special Conditions.

SUMMARY: This special condition is proposed for the GROB Model 115 Series Airplanes. The airplane will have a novel and unusual design feature when compared to the state of technology envisaged in the airworthiness standards of 14 CFR Part 23 of the Federal Aviation Regulations (FAR). This novel and unusual design feature includes the use of composite materials for primary flight structure, for which the regulations do not contain adequate or appropriate airworthiness standards. This notice contains the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the airworthiness standards of Part 23.

DATE: Comments must be received on or before May 23, 1988.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 056CE, Room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 056CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FORTHER INFORMATION CONTACT: Bobby W. Sexton, Aerospace Engineer, Standards Office (ACE–110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action on this proposal. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 056CE." The postcard will be date stamped and returned to the commenter. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Type Certification Basis

The type certification basis for the GROB Model 115 Airplane is as follows: Part 21 of the Federal Aviation Regulations (FAR), § 21.29; Part 23, effective February 1, 1965, as amended by amendments 23–1 through 23–32, effective December 12, 1985; Part 36, effective December 1, 1969, as amended by amendments 36–1 through the amendment effective on the date of type certification; exemptions, if any; and the special conditions that may result from this proposal.

Background

On June 23, 1986, GROB Werke GmbH and Company KG, Flugzeugbau, Am Flugplatz, D–8939 Mattsies, Federal Republic of Germany, made application to the FAA for a type certificate for the GROB Model 115 Airplane. The GROB Model 115 will be a two-place, single-engine airplane with tricycle landing gear, a gross weight of 1874 pounds, and constructed using composite material in the primary structure.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or approprate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.17(a)(2).

The proposed type design of the GROB Model 115 Airplane contains a novel or unusual design feature not

envisaged by the applicable Part 23 airworthiness standards. Special conditions are considered necessary because the airworthiness standards of Part 23 do not contain adequate or appropriate safety standards for the novel or unusual design feature of the GROB Model 115 Airplane.

The GROB Model 115 airframe is made of advanced composite material and is assembled by the extensive use of bonding. This material and its assembly is completely different from the typical semi-monocoque aluminum airframes that have been predominant since the early 1940's. Composite material of the type used on the GROB Model 115 Airplane is generally not susceptible to initiation of fatigue cracks by the application of repetitive loads, but is susceptible to damage in the form of cracks, breaks, and delaminations from instrinsic and discrete source growing under application of repetitive loads. Because of this and other factors, the FAA has determined that the wing fatigue requirements of § 23.572 are inadequate to assure that composite material structure can withstand the repeated loads of variable magnitude expected in service.

The use of composite materials and extensive bonding of these materials in primary flight structure is a novel and unusual design feature with respect to the type of airplane construction envisaged by the existing airworthiness standards of Part 23. Because the requirements of Part 23 do not require the level of substantiation necessary for composite material structure, special conditions are proposed to include the necessary airworthiness standards, as a part of the type certification basis for the GROB Model 115 Airplane. This special condition is proposed to assure that a level of safety exists for airplanes from bonded, composite materials equivalent to those existing for aluminum airplanes.

The proposed special condition will require the wings and other composite structural components critical to safe flight be evaluated by damage tolerance criteria. The damage tolerance consideration includes principal strucrural elements such as the wing, wing carry-through, wing attaching structure, fuselage, and the vertical and horizontal stabilizers and their carry-through structures, since failure of these structures could have catastrophic results. When damage tolerance is shown to be impractical, the proposed special condition is worded to permit approval, based on safe-life testing. Metal details may continue to be evaluated to the fatigue requirements of § 23.572.

Damage tolerance criteria for composite structure, in combination with the existing material requirements of Part 23, such as §§ 23.603 and 23.613, will provide a level of safety for the composite material airframe structure used in the GROB Model 115 Airplane equivalent to that required by the airworthiness standards of Part 23.

In addition to those components requiring fatigue/damage tolerance evaluations, other components that are critical to flight safety, such as moveable control surfaces and wing flaps, must also be protected against loss of strength or stiffness. Protection conventionally is provided through design and inspection. Since composite material strength is susceptible to manufacturing defects and damage from discrete sources, including lightning strikes, process controls and inspectability are limited; therefore, structures design must provide for these limits with adequate protection allowances.

The lack of adequate service experience with composite material structures in airplanes type certificated to the airworthiness standards of Part 23, the unusual mechanical properties characteristics, and the experience with composite material structural bonding, to date, necessitate proposing special conditions to assure an appropriate level of safety for the GROB Model 115 airframe structure. This proposed special condition is intended to require: (1) Accounting for environment effects; i.e., temperature and humidity on material mechanical properties in all structural substantiation analyses and tests, (2) limit load residual strength with impact damage from discrete sources; (3) ability to carry ultimate load with realistic intrinsic and discrete impact damage at the threshold of detectability, and (4) design features to prevent disbonds greater than the disbonds for which limit load capability has been shown. Proof-testing of each production component to limit load and reliance on manufacturing quality control procedures between limit and ultimate load may be used in lieu of "design features", provided each bonded joint is subjected to its critical design limit load during the proof testing. Acceptable non-destructive testing techniques do not yet exist in state-of-the-art composite technology to reliably identify weak bonds. However, proof-testing of each production article may be discontinued if such tests are developed and accepted by the FAA.

Because the composite material and bonding may require preventative maintenance and inspection procedures different from those commonly utilized for aluminum airframes, the proposed special condition requires that instructions for continued airworthiness be established in addition to those required by § 23.1529.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety, Tires.

The authority citation for this special condition is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.49.

The Proposed Special Condition

Accordingly, the Federal Aviation Administration proposes the following special condition as a part of the type certification basis for the GROB Model 115 Airplanes:

1. Evaluation of Composite Structure

In lieu of complying with § 23.572, and in addition to the requirements of §§ 23.603 and 23.613, airframe structure, the failure of which would result in catastrophic loss of airplane, in each wing, wing carry-through, wing attaching structure, horizontal stabilizer, stabilizer carry-through and attaching structures fuselage, vertical stabilizer and attaching structure, wing flaps, and all movable control surfaces must be evaluated to damage tolerance criteria prescribed in paragraphs (a) through (j) of this special condition, unless shown to be impractical. In cases shown to be impractical, the aforementioned structure must be evaluated in accordance with the criteria of paragraphs (a) and (k) of this special condition. Where bonded joints are used, the structure must also be evaluated in accordance with the residual strength criteria in paragraph (h) of this special condition.

(a) It must be demonstrated by tests, or by analysis supported by tests, that the structure is capable of carrying ultimate load with impact damage. The level of impact damage considered need not be more than the established threshold of detectability considering the inspection procedures employed.

(b) The growth rate of damage that may occur from fatigue, corrosion, intrinsic defects, manufacturing defects; e.g., bond defects, or damage from discrete sources under repeated loads

expected in service; i.e., between the time at which damage becomes initially detectable and the time at which the extent of damage reaches the value selected by the applicant for residual strength demonstration, must be established by tests or by analysis supported by tests.

(c) The damage growth, between initial detectability and the value selected for residual strength demonstrations, factored to obtain inspection intervals, must permit development of an inspection program suitable for application by operation and maintenance personnel.

(d) Instructions for continued airworthiness for the airframe must be established consistent with the results of the damage tolerance evaluations. Inspection intervals must be set so that after the damage initially becomes detectable by the inspection method specified, the damage will be detected before it exceeds the extent of damage for which residual strength is demonstrated.

(e) Loads spectra, load truncation, and the locations and types of damage considered in the damage tolerance evaluations must be documented in test proposals.

(f) The structure of the fuselage must be shown by residual strength tests, or by analysis supported by residual strength tests, to be able to withstand critical limit flight loads, considered as ultimate loads, with damage consistent with the results of the damage tolerance evaluations.

(g) Each wing, wing carry-through, wing attaching structure, vertical stabilizer, horizontal stabilizer, horizontal stabilizer carry-through and attaching structure, wing flaps, and all movable control surfaces, must be shown by residual strength tests, or analysis supported by residual strength tests, to be able to withstand critical limit flight loads, considered as ultimate loads, with the extent of damage consistent with the results of the damage tolerance evaluations.

(h) In lieu of a non-destructive inspection technique which assures ultimate strength of each bonded joint, the limit load capacity of each bonded joint critical to safe flight must be substantiated by either of the following methods used singly or in combination:

(1) The maximum disbonds of each bonded joint consistent with the capability to withstand the loads in paragraphs (f) and (g) of this special condition must be determined by analysis, tests, or both. Disbonds of each bonded joint greater than this must be prevented by design features.

(2) Proof testing must be conducted on each production article which will apply the critical limit design load to each critical bonded joint.

(i) The effects of material variability and environmental conditions; e.g., exposure to temperature, humidity, erosion, ultraviolet radiation, and/or chemicals, on the strength and durability properties of the composite materials must be accounted for in the damage tolerance evaluations and in the residual strength tests.

(j) The airplane must be shown by analysis to be free from flutter to V_D with the extent of damage for which residual strength is demonstrated.

(k) For those structures where the damage tolerance method is shown to be impractical, the strength of such structures must be demonstrated by tests, or analysis supported by tests, to be able to withstand the repeated loads of variable magnitude expected in service. Impact damage in composite material components which may occur must be considered in the demonstration. The impact damage level considered must be consistent with detectability by the inspection procedures employed.

Issued in Kansas City, Missouri, on April 1, 1988.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 88-8826 Filed 4-21-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-28-AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to Boeing Model 767 series airplanes, which would require inspection of the aft pressure bulkhead for damage and cracking, and repair, if necessary. This proposal is prompted by reports of damage on the aft side of the pressure bulkhead sustained during maintenance operations. This condition, if not corrected, could lead to failure of the aft pressure bulkhead and depressurization of the airplane.

DATE: Comments must be received no later than June 15, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-28-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Baillie, Airframe Branch, ANM-120S; telephone (206) 431-1927. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-28-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: Several operators of Boeing Model 767 series airplanes have reported damage (e.g., dents, tears, nicks, gouges, corrosion, or scratches) on the aft side of the aft pressure bulkhead sustained while accomplishing maintenance operations in the bulkhead vicinity. This type of accidental damage

to the aft pressure bulkhead, if left undetected, could lead to failure of the bulkhead and depressurization of the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 767–53–0026, dated November 19, 1987, which describes inspection procedures and references repairs for aft pressure bulkhead damage and cracking.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection for damage or cracking, and repair, if necessary, of the aft pressure bulkhead, in accordance with the service bulletin previously mentioned.

It is estimated that 82 airplanes of U.S. registry would be affected by this AD, that it would take approximately 12 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $39,360.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 767 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, line numbers 1 through 175, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent a condition that would lead to depressurization of the airplane, accomplish the following:

A. Prior to the accumulation of 6,000 flight cycles or within the next 1,000 flight cycles after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 6,000 flight cycles, perform a detailed visual inspection of the aft side of the entire Body Station 1582 pressure bulkhead for damage (as defined in the Structural Repair Manual) and cracking, in accordance with Boeing Service Bulletin 767–53–0026, dated November 19, 1987, or later FAA-approved revisions.

B. Repair damage and/or cracking, prior to further flight, in accordance with Boeing Service Bulletin 767–53–0026, dated November 19, 1987, or later FAA-approved revisions.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on April 12, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88–8824 Filed 4–21–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–NM–29–AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 767 seiries airplanes, which would require the covering of a gap in the engine compartment firewall between the core cowl and thrust reverser cowl interface at the pylon to cowl fillet fairing. This proposal is prompted by reports of a gap in the firewall in this area of approximately ⅜ inch by 4 inches. It has been determined that this gap exists on all Model 767 airplanes. This condition, if not corrected, could lead to penetration of an engine fire through this gap, which may then spread to other parts of the airplane.

DATE: Comments must be received no later than June 10, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 88–NM–29–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Steven P. Clark, Propulsion Branch, ANM–140S; telephone (206) 431–1963. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A

report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-29-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. *Discussion:* Recently, a gap was found in the engine firewall of a production Model 767 airplane between the core cowl and thrust reverser cowl interface at the pylon to cowl fillet fairing. The gap is approximately ⅜ inch wide by 4 inches long. The gap was found on an airplane equipped with Pratt and Whitney JT9D-7R4 engines; however, it has since been determined that the gap also exists on airplanes equipped with General Electric CF6-80A, -80A2, and -80C2 engines. This firewall gap results from an error in the basic type design of the airplane; therefore, it exists on all delivered Model 767 airplanes.

The purpose of the firewall is to isolate the rest of the airplane from a fire in the engine compartment. This firewall gap, if not corrected, could lead to penetration of an engine fire through the gap, which may then spread to other parts of the airplane.

Since this condition exists on other airplanes of this same type design, an AD is proposed which would require the installation of a firewall seal to cover the gap, in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region. Boeing is currently developing service bulletins for both the Pratt and Whitney JT9D and General Electric CF6 installations, which would accomplish the intent of this proposed AD. When these service bulletins are reviewed and approved by the FAA, they may be referenced as an acceptable means of compliance with this AD.

It is estimated that 88 airplanes of U.S. registry would be affected by this AD, that it would take approximately 14 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. It is estimated that parts would cost approximately $1,800 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $207,680.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 767 series airplanes are operated by small entities. A copy of a draft regulatory evalution prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To preclude the spread of an engine fire to other parts of the airplane through a gap in the engine firewall, accomplish the following:

A. Within 90 days after the effective date of this AD, install a firewall seal to cover a gap located between the engine core cowl and thrust reverser cowl at the pylon to cowl fillet fairing, in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on April 14, 1988.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 88-8825 Filed 4-21-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 88-ANE-11]

Proposed Control Zone for Boire Field, Nashua, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice (NPRM) proposes to designate a control zone to encompass airspace surrounding the airport of Boire Field, Nashua, NH. The action will allow positive control of aircraft operations in the vicinity of the airport during instrument meteorological conditions. Airspace affected by designation of the control zone extends upward from the surface of the ground within a five-mile radius of the airport, with extensions needed to contain IFR arrival and departure operations. The control zone is planned on a part-time schedule as follows:

October 1–April 30, from 8:00 a.m. local to 6:00 p.m. local.

May 1–September 30, from 7:00 a.m. local to 9:00 p.m. local.

DATE: Comments must be received on or before June 17, 1988.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ANE-530; Manager, Operations, Procedures, and Airspace Branch, Air Traffic Division; 12 New England Executive Park; Burlington, MA 01803.

The official docket may be examined in the Office of the Regional Counsel, FAA New England Region; 12 New England Executive Park; Burlington, MA 01803; telephone 617-273-7309.

FOR FURTHER INFORMATION CONTACT: John Silva, Airspace Specialist; Operations, Procedures, and Airspace Branch, Air Traffic Division; Federal Aviation Administration; 12 New England Executive Park; Burlington, MA 01803; telephone 617-270-2428.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views

or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88–ANE–11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in consideration of the comments received. All comments submitted will be available for examination in the Office of Regional Counsel, FAA New England Region; 12 New England Executive Park; Burlington, MA 01803; both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration; Manager, Operations, Procedures, and Airspace Branch; 12 New England Executive Park; Burlington, MA 01803. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate a control zone to encompass airspace surrounding Boire Field, Nashua, NH. This action will allow for positive control of aircraft operations in the vicinity of the airport during instrument meteorological conditions and enhance aviation safety in that area. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zone.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) 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.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Nashua, NH (NEW)

Within a 5-mile radius of Boire Field, Nashua, NH (lat. 42°,46'54" N., long. 71°,30',55" W.), and within 4 miles each side of the Manchester VORTAC 249° radial, extending from the 5-mile radius zone to 3 miles southwest of the VORTAC, excluding that portion within the Manchester Control Zone, and within 3 miles each side of 303° T (319° M) bearing from the Lowis NDB (lat. 42°49'24' N., long. 71°36'10" W.), extending from the 5-mile radius zone to 8 miles northwest of the airport. This control zone is effective during the specific days and time established in advance by a Notice to Airmen. The effective days will thereafter be continuously published in the Airport/Facility Directory.

Issued in Burlington, Massachusetts, on April 8, 1988.

James I. Lucas,

Manager, Air Traffic Division, New England Region.

[FR Doc. 88–8827 Filed 4–21–88; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

Conduct of Members and Employees of the Commission

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to revise its Code of Conduct for Commission members and employees. Section 140.735–8(a) of the Commission's Code of Conduct, 17 CFR 140.735–8(a), generally prohibits Commission members or employees from accepting any gift, meal, entertainment or other thing of monetary value from an organization or person with whom they transact official business. Section 140.735–8(b) of the Code of Conduct, 17 CFR 140.735–8(b), provides several exceptions to this general prohibition.

The proposed rule changes would revise certain of these exceptions to conform to an interpretation of similar governmentwide ethics provisions recently issued by the Office of Government Ethics. The revisions would permit commission members and employees to accept food and refreshments at certain meetings and, under certain circumstances, at widely-attended events sponsored by what otherwise might be prohibited sources, provided that the General Counsel approves such acceptance in advance. The Commission's proposed rule changes, which relate solely to agency organization, procedure, and practice, have been approved by the Office of Government Ethics of the Office of Personnel Management.

DATE: Comments must be submitted on or before June 6, 1988.

ADDRESS: Comments should be submitted to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Helen G. Blechman, Assistant General Counsel, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street NW.,

Washington, DC 20581. Telephone: (202) 254–9880.

SUPPLEMENTARY INFORMATION: The Commission has generally deemed informal contacts and interchange of ideas with members of the commodities industry, their representatives, and other individuals or entitles with an interest in its regulatory actions to be an important supplement to the formal appearance and submissions made to the Commission by these entities and persons. Accordingly, Commission members and staff frequently participate in educational programs sponsored by non-federal entities that serve to educate the commodities industry and the general public about the Commission's regulatory activities. In addition to formal educational programs, Commission members and employees are often invited to attend group functions given by regulated entities, self-regulatory organizations, trade associations, and other entities having an interest in Commission activities and business. Commission staff is also often invited with other federal officials to attend trade fairs and similar gatherings which display new equipment and services that are becoming available to the government. The Commission deems the opportunities for sharing views and obtaining information at such widely-attended gatherings to be beneficial to the functioning of the agency.

However, as explained below, an October 23, 1987 Office of Government Ethics ("OGE") memorandum interpreting Executive Order 11222 and 5 CFR 735.202 precludes Commission members and employees from accepting food and refreshment at certain of these gatherings absent an amendment to the Commission's Code of Conduct.

Section 140.735–8(a) of the Commission's Code of Conduct, 17 CFR 140.735–8(a), which is patterned after Section 201 of the Executive Order 11222 and 5 CFR 735.202(a), prohibits Commission members or employees from accepting, directly or indirectly, any gift, gratuity, favor, meal, entertainment or other thing of monetary value from an organization or person (1) with whom they transact business on behalf of the United States; (2) who has, or is seeking to obtain, contractual or other business or financial relations with the Commission; (3) who conducts operations or activities regulated by the Commission; or (4) who has interests that may be substantially affected by the performance or nonperformance of their official duty. Section 140.735–8(b), 17 CFR 140.735–8(b), provides several exceptions to this general prohibition in accordance with Executive Order 11222 and 5 CFR 735.202(b). For example, 140.735–8(b)(3), 17 CFR 140.735–8(b)(3), permits acceptance "when, on infrequent occasions, food and refreshments of nominal value are offered in the ordinary course of a luncheon or dinner meeting or other meeting."

Stated to reflect long-term policy, the OGE October 23, 1987 memorandum interpreted language identical to that found in § 140.735–8(b)(3) to permit acceptance of food and refreshments only at:

(1) the kind of luncheon or dinner attended by a large group at which the commission member or employee is the guest speaker (the "rubber chicken" exception), or

(2) the real working meeting at which food is brought in to facilitate the continuance of the work and is not itself the focus of the meeting (the "working meeting" exception).

See 5 CFR 735.202(b)(2). Under the OGE interpretation, Commission members and employees are precluded under 17 CFR 140.735–8(b)(3) from accepting food and refreshments during so called "one-on-one" meetings or at more widely-attended events unless either the "rubber chicken" or "working meeting" exceptions apply. The present proposal provides notice of the OGE interpretation by adding a footnote to 17 CFR 140.735–8(b)(3).

OGE's October 23, 1987 memorandum also encourages agencies to promulgate a regulation permitting acceptance of food and refreshments at widely-attended group events sponsored by what otherwise might be prohibited sources. Such group events may, include, *inter alia*, conferences, seminars, receptions or holiday parties sponsored by regulated entities, or trade fairs sponsored by entities seeking to obtain contractual or other business with the Commission, at which food and refreshments are served.

In accordance with OGE's suggestion, 5 CFR 735.202(b) and Executive Order 11222 (which permits agency heads to adopt regulations providing for "such exceptions [to the general prohibition against acceptance of food and refreshments] as may be necessary and appropriate in view of the nature of their agency's work and the duties and responsibilities of their employees"), the Commission is proposing to add § 140.735–8(b)(9) to its Code of Conduct. The proposed rule would permit Commission members and employees to accept food and refreshments at widely-attended events sponsored by what otherwise might be prohibited sources, provided that the General Counsel approves such acceptance in advance. The General Counsel's determination shall be made after consideration of the five factors set forth in the proposed rule.

Regulatory Flexibility Act; Paperwork Reduction Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires agencies to consider the impact of proposed rules on small entities. It is not anticipated that these proposed revisions to the Code of Conduct will impose any new burden on small entities. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the rules proposed herein, if promulgated, would not have a significant economic impact on a substantial number of small entities.

The Paperwork Reduction Act, 44 U.S.C. 3504(h)(1), requires that no later than the publication of a notice of proposed rulemaking in the **Federal Register**, agencies shall forward a copy of any proposed rule which contain a collection of information requirement to the Director of the Office of Management and Budget. Because the rules proposed herein do not contain a collection of information requirement, or an "information collection request" within the meaning of 44 U.S.C. 3502(4), the Commission has determined that the provisions of the Paperwork Reduction Act do not apply.

List of Subjects in 17 CFR Part 140

Commodity futures, Conflicts of interests, Ethics, Organization, Functions and Procedures.

PART 140—[AMENDED]

Accordingly, the Commission, pursuant to the authority contained in Executive Order 11222 and 5 CFR 735.202(b)(2), proposes to amend its Code of Conduct, Subpart C of Part 140 of Chapter I of Title 17 of the Code of Federal Regulations as specified below:

1. The authority citation for Part 140, Subpart C, continues to read as follows:

Authority: Sec. 8a(5), 49 Stat. 1501, as amended (7 U.S.C. 12a(5)); E.O. 11222, 3 CFR, 1964–1965 Comp.; 5 CFR 735.104.

1a. Section 140.735–8(b) is proposed to be revised to read as follows:

§ 140.735–8 [Amended]

* * * * *

(b) *Exceptions.* This paragraph does not apply: (1) To things of nomial value; (2) when the circumstances make it clear that it is obvious family or personal relationships rather than the business of the persons concerned which govern and are the motivating

factors: (3) when, on infrequent occasions, food and refreshments of nominal value are offered in the ordinary course of a luncheon or dinner meeting or other meeting [14a]; (4) when unsolicited advertising or promotional materials, such as pens, pencils, note pads, calendars and other items of nominal value are offered; (5) when local transportation is provided to the member or employee while he is on official business and alternative arrangements are impracticable; (6) when the Commission, after due consideration, determines that an exeption is warranted and appropriate in a particular situation; (7) to customary loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees such as home mortgage loans; (8) if the General Counsel approves in advance, to reasonable travel and subsistence expense reimbursement by potential employers provided the Commission member or employee is engaged in bona fide post-Commission employment negotiations and is not on official business at the time; or

2. In § 140.735–8, a new paragraph (b)(9) is proposed to be added as follows:

§ 140.735–8 [Amended]

* * * * *

(b) * * *

(9) if the General Counsel approves in advance, to attendance and acceptance of food and refreshments served at widely-attended group events. In deciding whether Commission members and employees may attend and accept food and refreshments at such group events, the General Counsel will consider whether:

(i) It is in the Commission's interest that the Commission member or employee attend the event where food and refreshments are being served;

(ii) The sponsor of the event is an individual or entity that is regulated by the Commission, or an individual or entity that has some other business connection with the Commission or is directly involved in a matter pending before the Commission so that the timing or other circumstances surrounding the event would create an appearance of impropriety that outweighs the agency's interest in the Commission member's or employee's attendance;

(iii) The event will be of mutual interest to the government and industry such as a reception, seminar, conference, industry trade fair, or training session, whose informational value is not merely incidential to its entertainment value (In instances where the Commission has paid for a member's or employee's admission to a conference or seminar, the member or employee may participate in all events hosted by the conference organizers as part of the paid admission. However, attendance and acceptance of food and refreshments at receptions and other events hosted by parties other than the conference sponsor, but held during the course of the conference, must be approved in advance by the General Counsel in accordance with the requirements of this section);

(iv) The food and refreshments offered in conjunction with the event will be excessive;

(v) There are many other relevant factors that should be considered in reaching a determination.

* * * * *

Issued in Washington, DC, on April 18, 1988 by the Commission.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 88–8789 Filed 4–21–88; 8:45 am]

BILLING CODE 6351-01-M

[14a] For purposes of paragraph (b)(3) of this section, the Office of Government Ethics of the Office of Personnel Management, has defined the term "meeting" to mean a luncheon, dinner, or other meeting attended by a large group at which the Commission member or employee is the guest speaker, or a meeting at which food or refreshment is brought in to facilitate the continuance of the work and is not itself the focus of the meeting. *See* October 23, 1987 Memorandum Re: Acceptance of Food and Refreshments by Executive Branch Employees from Donald E. Campbell, Acting Director, Office of Government Ethics at 4–5.

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17 CFR Part 150

Exemption From Speculative Position Limits for Positions Which Have a Common Owner but Which Are Independently Controlled

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") recently amended speculative position limits for futures contracts on various agricultural commodities. 52 FR 38914 (October 20, 1987). At that time, the Commission amended the structure of, and particular levels set for, Federal speculative position limits. The Commission noted that the remaining portion of its reexamination of speculative position limits would involve issues relating to its aggregation policy. Accordingly, the Commission is now proposing rule amendments involving the aggregation of positions which have a common owner but are independently controlled.

DATE: Comments must be received by July 21, 1988.

ADDRESS: Comments should be sent to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 and should make reference to "Exemption for Independently Controlled Positions."

FOR FURTHER INFORMATION CONTACT: John Mielke, Associate Director, or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. (202) 254–3310 or 254–6990, respectively.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Framework

Speculative position limits have been a tool for the regulation of futures markets for over half a century. During this time, the Congress consistently has expressed confidence in the use of speculative position limits as an effective means of preventing unreasonable or unwarranted price fluctuations. Indeed, one purpose of the Commodity Exchange Act, 7 U.S.C. 1 *et seq.* (1982) ("Act"), is

> to provide a measure of control over those forms of speculative activity which too often demoralize the markets to the injury of producers and consumers and the exchanges themselves.
>
> H.R. Rep. No. 421, 74th Cong., 1st Sess. 1 (1935).

In this regard, section 4a(1) of the Act, 7 U.S.C. 6a(1), states that:

> [e]xcessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity.

Accordingly, the Congress provided the Commission with the authority to

> fix such limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market as the Commission finds are necessary to diminish, eliminate, or prevent such burden.
>
> Section 4a(1) of the Act.

The Commission's predecessor agency, the Commodity Exchange Authority, promulgated speculative position limits for futures contracts on many of those commodities which were then regulated under the Act. These included speculative position limits on

corn, wheat, other grains, cotton, soybeans and other agricultural commodities. *See* 17 CFR Part 150.

Effective enforcement of speculative position limits is dependent, in part, on a clear understanding of what positions are to be included in determining whether the applicable limit has been breached. The Congress recognized this requirement by including within section 4a of the Act a standard for the aggregation of positions. Thus, section 4a(1) provides that:

> [i]n determining whether any person has exceeded such limits, the positions held and trading done by any persons directly or indirectly controlled by such person shall be included with the positions held and trading done by such person; and further, such limits upon positions and trading shall apply to positions held by, and trading done by, two or more persons acting pursuant to an expressed or implied agreement or understanding, the same as if the positions were held by, or the trading were done by, a single person.

This aggregation standard has remained central to the meaningful enforcement of speculative position limits since its enactment.

In 1968, the Congress amended the language of the aggregation standard to include positions "held by" one trader for another. Pub. L. 90–258, Sec. 2, 82 Stat. 26 (1968). The Senate Report accompanying the 1968 amendment stated that:

> [a]all of the changes made by this section incorporate longstanding administrative interpretations reflected in orders of the [Commodity Exchange] Commission.

S. Rep. No. 947, 90th Cong., 2d Sess. 5 (1968).[1]

B. Regulatory Framework

Since its creation, the Commission periodically has reviewed its policies pertaining to speculative position limits. For example, the Commission initially redefined "hedging" (42 FR 42748 (August 24, 1977)), raised speculative position limits in wheat (41 FR 35060 (August 19, 1976)), and published a policy statement on aggregation (44 FR 33839 (June 13, 1979)).

Subsequently, after gaining greater experience with the administrative of speculative position limits, the Commission thoroughly reexamined its speculative position limit policy. As a result, the Commission promulgated Rule 1.61, 17 CFR 1.61 (1987), which requires that all contract markets not subject to Federal speculative position limits adopt and enforce exchange-set speculative position limits. More recently, the Commission has issued a clarification of its hedging definition with regard to the "temporary substitute" and "incidental" tests 52 FR 27195 (July 20, 1987), and issued guidelines regarding the inclusion of exemptions from exchange-set speculative position limits in financial futures contracts for risk-management positions. 52 FR 34633 (September 14, 1987). Finally, the Commission revised Federal speculative position limits, adding Federal limits for soybean meal and soybean oil and amending the structure and levels of speculative position limits. 52 FR 38914 (October 20, 1987). At that time, the Commission noted that it was studying issues related to its aggregation policy, the remaining area to be addressed during this ongoing reevalation of speculative position limit policy.

C. Existing Commission Policy on Aggregation

In 1979, the Commission issued its Statement of Policy on Aggregation of Accounts and Adoption of Related Reporting Rules ("1979 Aggregation Policy"), 44 FR 33839 (June 13, 1979). In that interpretation, the Commission provided guidance to futures commission merchants ("FCMs") and others regarding the aggregation of positions for participants in controlled and guided account programs. At its heart, the Commission's 1979 Aggregation Policy regarding control of trading is premised upon the belief that:

> All traders who operate customer trading programs share the ability, through control of large trading blocks, to influence the market.

44 FR 33839, 33842.

The 1979 Aggregation Policy provided guidance with respect to the meaning of the "control" criterion of the aggregation standard contained in section 4a of the Act. In that policy statement, the Commission reasoned that the burden of determining, in the first instance, whether an FCM controls trading programs is properly placed on the FCM. The Commission further determined that FCMs will be assumed to control all discretionary customer accounts and accounts which are part of a customer trading program "unless specified conditions indicative of the absence of control exist." These factors include, among others: Account opening agreements which vest authority in a trader other than the FCM to direct trading on behalf of the customer; advertising which indicates that a trader other than the FCM directs trading in a specified trading program; agreements between the FCM and other traders which demonstrate the nature of the relationship between the two; the degree of supervision by the FCM of independent traders; confidentiality of trading decisions of a customer trading program from others; lack of access to general research information of the FCM; minimal financial interests by the FCM in the independent accounts;[2] and lack of common trading patterns. 44 FR 33843–44.

D. Requests for Reassessment of Commission Aggregation Policy

Representatives of certain segments of the futures industry, such as commodity pool operators and commodity trading advisors, have brought to the Commission's attention issues concerning the application of the aggregation standard to managed trading accounts. In this regard, it should be noted that such issues were also raised before the Congress during the Commission's 1986 reauthorization.[3] These concerns focus on the "ownership" criterion of the aggregation standard.

In this regard, the Commission received from the Managed Futures Trade Association ("MFTA") a petition for rulemaking to amend Commission Rule 1.61(g), the rule which establishes the aggregation standard exchanges must adopt in connection with the enforcement of exchange-set speculative position limits.[4] The MFTA petition,

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[1] Prior to the creation of the Commission, section 4a(1) had long been the subject of interpretative statements issued by the Administrator of the Commodity Exchange Authority. *See* 44 FR 33843 (June 13, 1979) for a discussion of these interpretive statements.

[2] In addition to the aggregation of positions of persons trading in concert, the aggregation standard in the Act contains two criteria, ownership or control. The 1979 Aggregation Policy noted that a financial interest by an FCM in a guided account program which is ten percent or greater, in addition to fulfilling the ownership criterion, is also considered to be an indicia of control. See also, Commission Rule 1.3(y), 17 CFR 1.3(y) (1987).

[3] During the Commission's 1986 reauthorization, the House of Representatives reported that:

> [d]uring the Subcommittee hearings on reauthorization, several witnesses expressed dissatisfaction with the manner in which certain market positions are aggregated for purposes of determining compliance with speculative limits fixed under Section 4a of the Act. The witnesses suggested that, in some instances, aggregation of positions based on ownership without actual control unnecessarily restricts a trader's use of the futures and options markets. In this connection, concern was expressed about the application of speculative limits to the market positions of certain commodity pools and pension funds using multiple trading managers who trade independently of each other.

H.R. Rep. No. 624, 99th Cong., 2d Sess. (1986) at page 43.

[4] Commission Rule 1.61(g) provides that:

> In determining whether any person has exceeded the [exchange-set speculative position] limits established under paragraphs (a) and/or (b) of this section, all positions in accounts for which such person by power of attorney or otherwise directly or

Continued

dated May 20, 1987, requests that the Commission amend the existing aggregation standard required to be adopted by exchanges by adding a proviso to exclude the separate accounts of a commodity pool where trading in those accounts is directed by unaffiliated commodity trading advisors acting independently.[5]

The petition argues that the current ownership standard as applied to "multiple-advisor commodity pools, is unfair and unrealistic." MFTA Petition at page 4. The petitioner reasons that:

> The multi-advisor commodity pool may (own) the accounts and the positions in the accounts, but the pool operator does not control or influence the trading of the positions. The Commission must recognize that such ownership by a pool will not result in any trading practice which may effect an unwarranted or unreasonable price fluctuation in a futures or options contract, because the owner of the accounts is not directing, controlling or coordination in any manner the trading.
>
> MFTA Petition at page 5.

The Petitioner further reasons that the application of the aggregation standard to such multi-advisor pools "interferes with the appropriate functioning of a commodity pool as an investment vehicle for the public customer," and that, by permitting economies of scale with respect to the administrative expenses of commodity pools, "the ultimate beneficiaries of exempting multi-advisor pools from certain of the aggregation requirements would be their public investors." MFTA Petition at page 7.

In addition to the MFTA Petition, the Commission received a similar Petition for Rulemaking from the Chicago Board of Trade, dated May 19, 1987 ("CBT Petition"). The CBT Petition also sought to revise the aggregation standard by "not requir[ing] the owner of futures and options positions to combine them for purposes of determining compliance with speculative limits if he does not also control trading." CBT Petition at page 1.

The CBT Petition provided for an exemptive procedure and a case-by-case determination upon application to the exchange. With respect to exemptions for such positions from Federal speculative position limits, the CBT Petition requested that the Commission cede this authority to the exchanges.

The CBT supported its petition on grounds similar to the MFTA Petition. In particular, the CBT argues that

> this petition should free many futures and options market participants from limitations they face currently on their use of these markets. This revision should increase market liquidity and make the markets more attractive for risk management activities. It should result in fuller realization of the fundamental economic purposes of the markets and an improved competitive position of the U.S. futures and options markets vis-a-vis foreign exchanges and domestic off-exchange products. CBT Petition at pages 7–8.

II. Accommodation of Changing Market Conditions

The rationale advanced by the MFTA and CBT Petitions for eliminating the ownership criterion for aggregating positions is that, where unaffiliated, independent advisors control the trading of commonly owned accounts, and follow different trading programs, the overall position should not trade as a block and, therefore, should not unduly influence the market. This is consistent, the Petitions argued, with the Commission's rationale for its aggregation policy—that is, to restrict positions of such a magnitude that can affect the markets. However, to the extent that the trading by various advisors is in fact independent and follows different programs, the entity's speculative position generally should be spread throughout the markets. Thus, the random trading of independent accounts controllers normally should lessen the impact of speculative position limits on the entity's trading. Moreover, while the factual circumstances and nuances of control of accounts may vary, ownership generally is susceptible to ready verification.

Nevertheless, the Commission is aware that entities currently using multiple account controllers remain concerned that unless they provide internal review and controls, the overall position of the entity, on occasion, may exceed speculative position limits for particular markets. Such entities have further reasoned that the consequent requirement to track the positions of their independent controllers and to take remedial action is administratively difficult. They argue that such arrangements lead to inefficient operations and can compromise the independent judgment of the account controllers. Finally, such entities have argued that the current aggregation policy acts as a cap on the amount of capital which can be included within a multi-advisor entity resulting in increased administrative and operational overhead.

In this regard, the Commission considered carefully the MFTA and CBT Petitions and the opinions made known to it concerning these issues. Both ownership and control have long been included as the appropriate aggregation criteria in the Act and Commission regulations. Generally, inclusion of both criteria has resulted in a bright-line test for aggregating positions. And as noted above, although the factual circumstances surrounding the control of accounts and positions may vary, ownership generally is clear.

The present aggregation standard aids futures traders in classifying positions which must be aggregated by establishing a clear standard for enforcement of the speculative position limits. In the absence of an ownership criterion in the aggregation standard, each potential speculative position limit violation would have to be analyzed with regard to the individual circumstances surrounding the degree of trading control of the positions in question. This would greatly increase uncertainty. Accordingly, the Commission denies the MFTA Petition and reaffirms the appropriateness of including both control and ownership as bases for aggregating positions.

Nevertheless, the Commission has determined to grant limited relief by proposing an additional exemption from speculative position limits for positions of commodity pools which are traded in separate accounts by unaffiliated account controllers acting independently. As explained in greater detail below, such an exemption from speculative position limits would be available on a case-by-case basis, upon application to the Commission. This approach is consistent, for the most part, with the relief requested by the MFTA Petition.[6] The Commission believes that

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indirectly controls trading shall be included with the positions held by such person; such limits upon positions shall apply to positions held by two or more persons acting pursuant to an expressed or implied agreement or understanding, the same as if the positions were held by a single person.

This standard is based upon the criteria set forth in section 4a of the Act.

[5] Unlike the 1979 Aggregation Policy which focused on the control test of aggregation, the MFTA Petition is addressed to the "holds" or ownership part of the aggregation standard. The criteria included in the MFTA Petition appear to be derived from those of Commission Rule 1.46, 17 CFR 1.46 (1987), which requires the closing out of off setting positions except for positions carried in the separate accounts of a commodity pool where trading in the accounts is directed by unaffiliated commodity trading advisors acting independently. 17 CFR 1.46(d)(4)

[6] The approach proposed by the Commission is, in some ways, also similar to that of the CBT Petition. However, the Commission is proposing an exemption from speculative position limits for such positions rather than altering the aggregation standard itself. Moreover, the CBT Petition contains certain other provisions which have not been justified adequately. These include, in particular, permitting applicants to file for an exemption after speculative position limits have been exceeded and

Continued

the proposed exemption fully addresses the legitimate needs of market participants, in particular multi-advisor commodity pools, but retains the benefit of the bright-line aggregation standard. Moreover, this approach appears to be consistent with the understanding of the House of Representatives, which reported that:

> the Commission is not prohibited from granting exemptions from the literal application of the speculative limits set under the provisions of Section 4a so long as such exemptions are not contrary to the stated purposes of those provisions. In this regard, the Committee recognizes the Commission's concern about the effect that any such exemptions may have on speculative activity * * *. H.R. Rep. No. 624, 99th Cong., 2d Sess. 43 (1986).

III. The Proposed Rules

The Commission is proposing to provide an exemption from speculative position limits in addition to the existing exemptions for bona fide hedging transactions and spread or arbitrage positions between futures and option contracts.[7] This additional exemption from speculative position limits is proposed for positions held in the separate accounts of independent account controllers of a commodity pool operator or the operator of a trading vehicle which is excluded, or who has itself qualified for exclusion, from the definition of "pool" or "commodity pool operator," respectively, under Commission Rule 4.5, 17 CFR 4.5 (1987).[8]

The Commission is proposing that the exemption be made available upon a case-by-case determination. This requires that commodity pool operators or other eligible market users apply to the Commission for an exemption in advance of exceeding speculative position limits. Similar to the exemption for anticipatory hedges (17 CFR 1.3(z)(2)(i)(B), (ii)(C) and (III), the proposed exemption for multi-advisor accounts is restricted during contract expiration. As proposed, the exemption applies only to positions outside of the spot month. Under this exemption, the overall positions of the commodity pool operator or other eligible entity would be set for particular contract markets at a level in accordance with the application filed by the entity with the Commission and consistent with the Act's objectives of maintaining fair and orderly markets. However, as proposed, the overall position held or controlled by each independent account controller may not exceed applicable speculative position limits.

The Commission proposes to define "independent account controller" as a person authorized to control trading on behalf of, but without the day-to-day direction of, a commodity pool operator or entity excluded from that definition or from the "pool" definition under Commission Rule 4.5 on whose behalf the person trades. Moreover, the independent account controller must be unaffiliated with any other such account controller. This requirement is consistent with Commission Rule 1.46, 17 CFR 1.46 as amended by 53 FR 609 (January 11, 1988), and with the MFTA Petition.

To qualify as being unaffiliated, independent account controllers may neither control another account controller directly or indirectly, nor be under the common control, either direct or indirect, of another entity. In this regard, it should be noted that for the exemption to be available, the unaffiliated independent account controller may not be an employee of the commodity pool operator nor have an employment or other contractual relationship with any other commodity trading advisor trading for the commodity pool. This provision ensures that the account controller will, in fact, have a relationship sufficiently independent of the commodity pool operator or other entity. Nevertheless, the Commission is requesting comment on whether, in certain instances, an employee of a commodity pool operator can trade with the same degree of independence as an unaffiliated account controller. In this regard, commenters should address what specific internal procedures, if any, would ensure that trading decisions by employees in fact are independent. That is, are there standards or criteria which provide an appropriate basis for enforcement under which a person associated with a commodity pool operator could be deemed to be operating an independent program for aggregation purposes? With respect to associated persons of futures commission merchants, however, as explained in connection with the recent amendment to Commission Rule 1.46, such an associated person may be deemed to be unaffiliated where that associated person: (1) Is separately registered as a commodity trading advisor, (2) separately promotes and holds himself out to the public as an independent CTA, (3) directs trading based upon the trader's own independent trading system and (4) provides a separate disclosure document to the customer. See, 53 FR 609 at page 611 (January 11, 1988).

With respect to the role of commodity pool operator, or similar entity, the Commission recognizes that the commodity pool operator is required to supervise diligently the handling of its trading vehicle by the account controller. In relation to trading, this generally consists of overseeing that the account controllers' trading adheres to previously specified conditions. In the event such supervision results in the pool operator advising the independent account controller on day-to-day operations or trading decisions, the account controller can no longer claim independence.

In order to obtain this exemption, the commodity pool operator or entity excluded from that definition under Rule 4.5 must demonstrate to the Commission the independence of its account controllers. The evidence specifically required by the proposed rule includes notarized affidavits of the commodity pool operator and of the independent account controllers. These affidavits must detail the delegation of trading control to the independent account controller and the relationship of the independent account controller to the pool operator or other entity and to the other account controllers. In this regard, independent account controllers must certify that they have no knowledge of the trading decisions of other independent account controllers.

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the potential applicability of the exemption to traders other than commodity pool operators or other similar entities. Moreover, the granting by exchanges of exemptions from Federal speculative position limits would be administratively inefficient and confuse the enforcement of those limits. Accordingly, the Commission denies the CBT Petition.

[7] It should be noted that certain additional exemptions from exchange-set speculative position limits have been established pursuant to Commission Rule 1.61, 17 CFR 1.61. In particular, the Commission, consistent with the recommendation of its Financial Products Advisory Committee, issued guidelines regarding the inclusion of exemptions from exchange-set speculative position limits for certain risk-management positions. 52 FR 34633 (September 14, 1987).

[8] Under Rule 4.5(a)(4), certain trading vehicles are deemed not to be commodity pools because of their very nature. Thus, their operators need not take any action—*i.e.*, to make certain representations on operating criteria—to take advantage of the relief available under the rule. The operators of other trading vehicles set forth in Rule 4.5 must, however, make such representations for relief to be effective—*e.g.*, that the vehicle will trade commodity interests solely for bona fide hedging purposes or, alternatively, with respect to certain long positions, in an "unleveraged," incidental manner.

The Commission wishes to make clear, then, that in proposing this exemption from speculative position limits for the operators of Rule 4.5 trading vehicles it has not sought to expand upon the operating criteria of the rule or to disturb any existing relief from position limits that may be available to these persons. Rather, the Commission has sought to ensure that these persons would be entitled to the same relief from speculative position limits as provided for commodity pool operators.

In support of the affidavits, documents such as powers of attorney, account opening documents, and updated CFTC Form 40s are required. As proposed, the exemption is available only to independent account controllers who are registered with the Commission as a futures commission merchant, introducing broker, commodity trading advisor, or associated person of a futures commission merchant, introducing broker or commodity trading advisor.

The Commission, in its discretion, may approve, deny, approve upon conditions, or rescind approval of applications previously approved by the Commission. In particular, the Commission may condition its approval to specified contract markets or to a specified overall level. An adverse action by the Commission on any such application, including denial of the application, approval upon conditions, or withdrawal of a previous approval, will be accompanied by a brief statement of the grounds of the action. The Commission may rescind approval of or modify a previously granted application at any time.

Subject to the above, exemptions which have been granted will remain in force as long as the conditions noted on the application continue to exist. Notice of any material changes in the facts stated on an application must be filed with the Commission within ten days of their occurrence. Moreover, notice of the addition or substitution of independent account controllers must be made to the Commission prior to trading by the additional account controllers. Finally, the Commission, in its discretion, may issue a special call for supplementation or updating of applications.

The Commission proposes to delegate to the Director of the Division of Economic Analysis, or the Director's delegee, the authority to approve, deny, approve, deny, approve upon conditions, or rescind approval of previously approved applications for exemptions and to issue special calls for supplementation and updating of applications.

III. Related Issues

In addition to the general issues discussed above regarding the continued applicability of the ownership criterion, questions also have been raised regarding the continued appropriateness of the Commission's aggregation standard which provides that a beneficial interest in an account or positions of ten percent or more constitutes a financial interest tantamount to ownership. This threshold financial interest serves to establish ownership under both the ownership criterion of the aggregation standard and as one of the indicia of control under the 1979 Aggregation Policy.

In particular, certain instances have come to the Commission's attention where beneficial ownership in several otherwise unrelated accounts may be greater than ten percent, but the circumstances surrounding the financial interest clearly exclude the owner from control over the positions. The Commission is requesting comment on whether further revisions to current Commission rules and policies regarding ownership are advisable in light of the exemption hereby being proposed. If such financial interests raise issues not addressed by the proposed exemption for independent account controllers, what approach best resolves those issues while maintaining a bright-line aggregation test?

In proposing the exemption from speculative position limits for such positions, the Commission is not proposing to amend its reporting requirements. However, the Commission may find it necessary to issue special calls for Form 103 reports to some account holders or owners to monitor better their overall positions.

Finally, the Commission anticipates that at such time as it adopts a final rule establishing the above proposed exemption from Federal speculative position limits, it will provide explicit guidance to the exchanges regarding similar permissible exchange exemptions.[9] In particular, the Commission intends to describe the elements for such an exemption from exchange speculative positions limits which should be included in proposed exchange rules submitted for Commission approval under Commission Rules 1.61(e) and 1.41 and section 5a(12) of the Act. The Commission, at this time, however, seeks comment regarding particular issues, if any, which may arise from the exemptive provision proposed herein if applied to exchange speculative position limits in a self-regulatory setting.

IV. Other Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of these rules on small entities. The Commission has previously determined that "large traders" are not "small entities" for purposes of the RFA. 47 FR 18618 (April 30, 1982). These proposed rules are exemptions from limits on the size of speculative positions which typically may be held by the largest traders in these markets. Accordingly, if promulgated, these rules would have no significant impact on a substantial number of small entities. For the above reason, and pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities. However, the Commission particularly invites comments from any firms or other persons which believe the promulgation of these amendments might have a significant impact upon their activities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, (PRA) 44 U.S.C. 3501 *et seq.*, imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA the Commission has submitted these proposed rules and their associated information collection requirements to the Office of Management and Budget.

Persons wishing to comment on the information which would be required by these proposed rules should contact Bob Neal, Office of Managment and Budget, Room 3228, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joseph G. Salazar, CFTC Clearance Officer, 2033 K Street NW., Washington, DC 20581, (202) 254–9735.

List of Subjects in 17 CFR Part 150

Agricultural commodities, Exemptions from speculative position limits, Position limits.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act, and in particular, sections 2(a)(11), 4a and 8a(5) of the Commodity Exchange Act, 7 U.S.C. 4a(j) 6a, and 12a(5), the Commodity Futures Trading Commission hereby proposes to amend Part 150 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

[9] In this regard, it should be noted that by letter dated February 24, 1988, the Chicago Board of Trade submitted for Commission approval under section 5a(12) of the Act proposed amendments to CBT rules which would exempt from its speculative position limits, on a case-by-case determination, positions owned, but not controlled, by a trader. That submission currently is pending.

PART 150—LIMITS ON POSITIONS

1. The authority citation for Part 150 continues to read as follows:

Authority: 7 U.S.C. 6a and 12a(5) (1982).

2. Section 150.1 is amended by adding a paragraph (d) to read as follows:

§ 150.1 Definitions.

As used in this part—

* * * * *

(d) "Independent account controller" means a person registered as a futures commission merchant, introducing broker, commodity trading advisor, or associated person of a futures commission merchant, introducing broker or commodity trading advisor authorized to control trading by, and on behalf of, but without the day-to-day direction of a commodity pool operator or the operator of a trading vehicle which is excluded, or who itself has qualified for exclusion from, the definition of the term "pool" or "commodity pool operator," respectively, under § 4.5 of this Chapter, who is unaffiliated with any other such independent account controller trading for the commodity pool or trading vehicle and whose trading is supervised by the pool operator or trading vehicle only to the minimal degree necessary to fulfill its duty to supervise diligently the trading for such pool or trading vehicle.

* * * * *

3. Section 150.3 is proposed to be revised to read as follows:

§ 150.3 Exemptions.

(a) *Positions which may exceed limits.* The position limits set forth in § 150.2 of this part may be exceeded to the extent such position are:

(1) *Bona fide* hedging transactions as defined in § 1.3(z) of this chapter;

(2) Spread or arbitrage positions between futures and option contract traded on the same board of trade in any one commodity which are as a totality offsetting, and upon such conditions as specified by the board of trade in rules adopted pursuant to §§ 1.64 and 1.41 of this chapter; or

(3) Positions not for the spot month and which are carried for a commodity pool operator, or the operator of a trading vehicle which is excluded, or who itself has qualified for exclusion from, the definition of the term "pool" or "commodity pool operator," respectively, under § 4.5 of this Chapter, in the separate account or accounts of an independent account controller which has been approved by the Commission under paragraph (b) of this section, *provided however*, that the overall positions held or controlled by each such independent account controller may not exceed the limits specified in § 150.2 of this part.

(b) *Application for exemption of independent account controllers.* Any commodity pool operator or the operator of a trading vehicle which is excluded, or who itself has qualified for exclusion from, the definition of the term "pool" or "commodity pool operator," respectively, under § 4.5 of this Chapter, who directly or indirectly holds but does not control positions in contract markets having speculative position limits set forth in § 150.2 of this part, may file with the Commission an application for exemption from those limits for the positions held or controlled by an independent account controller.

(1) *Filing the application.* Such applications shall be made to the Commission's regional office to which the trader would be required to file a Form 40 report under § 18.04 of this Chapter, unless otherwise directed by the Commission or its delegee, and must include the following:

(i) An affidavit, duly notarized, of the commodity pool operator or the operator of a trading vehicle which is excluded, or who itself has qualified for exclusion from, the definition of the term "pool" or "commodity pool operator," respectively, under § 4.5 of this Chapter, identifying each independent account controller and stating that each named independent account controller has been delegated authority to trade the account without further direction and that the commodity pool operator or the operator of a trading vehicle which is excluded, or who itself has qualified for exclusion from, the definition of the term "pool" or "commodity pool operator," respectively, under § 4.5 of this Chapter, retains only such oversight as appropriate to fulfill its duty to supervise diligently trading by the independent account controllers. If the applicant is an organization, the affidavit must be that of a partner, officer or trustee authorized by the organization to bind the organization;

(ii) An affidavit, duly notarized, of each independent account controller certifying that the controller in fact exercises complete authority with respect to directing the trading of the account, is unaffiliated, and does not have knowledge of trading decisions by any other account controller; and

(iii) Documents supporting the above affidavits including:

(A) A list of the contract markets having speculative position limits in § 150.2 of this Chapter for which the exemption is requested;

(B) A binding power of attorney or other such binding grant of authority memorializing the relationship between the owner and each independent account controller;

(C) Proof of registration of each account controller with the Commission or a list of each such person's category of registration, registration identification number, effective date of the registration and name of the registrant if different from that on the application;

(D) Account opening documents verifying that the independent account controller maintains a separate account for such trading;

(E) Updated Form 40s of the independent account controller and owner, as required by § 18.04 of this Chapter, unless such forms have been filed with the Commission under separate cover, and

(F) Any additional information required by the Commission which, in light of the circumstances of the application, appears to be necessary to demonstrate the nature of the relationship between the owner and independent account controller.

(2) *Approval of application for exemption for independent account controllers.* The Commission may remit and not accept for filing incomplete applications. In its discretion, based upon the evidence provided in the application, the Commission may approve, deny or approval upon conditions applications for exemptions from the speculative position limits set forth in § 150.2 of this Part. Commission denial or approval upon conditions of such an application for exemption shall be accompanied by a brief statement of the grounds of denial or conditions. Commission approval of such an application may be withdrawn or modified at any time. Withdrawal or modification of a previously granted approval of such an exemption shall be accompanied by a brief statement of the grounds of withdrawal or modification.

(3) *Supplementation and updating of applications.* To remain valid, applications must be supplemented or updated:

(i) Ten days prior to the addition or substitution of independent account controllers or other change in the ownership or control of the accounts of registration status of the account owners or independent account controllers;

(ii) Within ten days of any other material change in the application; or

(iii) Within such time as maybe specified by the Commission upon special call by the Commission to the applicant.

(4) *Delegation of authority.* (i) The Commodity Futures Trading Commission hereby delegates, until the

Commission orders otherwise, to the Director of the Division of Economic Analysis or the Director's delegee the authority to remit and not accept for filing incomplete applications, to approve, deny approval upon conditions, withdraw approval or modify applications for exemption filed under § 150.3 of this Part, and to issue special calls for supplementation and updating of such applications.

(ii) The Director of the Division of Economic Analysis may submit any matter which has been delegated to the Director under paragraph (b)(4)(i) of this section to the Commission for its consideration.

(iii) Nothing in this section may prohibit the Commission, at its election, from exercising the authority delegated to the Director of the Division of Economic Analysis under paragraph (b)(4)(i) of this section.

Issued in Washington, DC, this 19th day of April, 1988, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 88-8871 Filed 4-21-88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 868

[Docket No. 83N-0193]

Medical Devices; Offers To Submit or to Develop a Performance Standard for Breathing Frequency Monitor (Neonatal Apnea Monitor)

AGENCY: Food and Drug Administration.

ACTION: Notice of disposition of offers.

SUMMARY: The Food and Drug Administration (FDA) is announcing that two offers to develop a performance standard for breathing frequency monitors were submitted in response to a request for offers published in the Federal Register. The offer submitted by the Emergency Care Research Institute was accepted and a Cooperative Agreement Award of $249,991 was granted to support the development effort for the first year.

FOR FURTHER INFORMATION CONTACT: Regarding questions of a technical nature: Glenn E. Conklin, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

Regarding questions about the cooperative agreement process: Robert L. Robins, Grants and Assistance Agreements Section, (HFA-520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6170.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 10, 1982 (47 FR 39816), FDA published a final rule classifying the generic type device breathing frequency monitor (21 CFR 868.2375) into class II. Both the neonat ' ventilatory effort monitor (apnea monitor) and the breathing frequency monitor were grouped into that generic type of device.

In the **Federal Register** of July 8, 1983 (48 FR 31392), FDA initiated a proceeding to establish for the breathing frequency monitor a performance standard under section 514 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360d). FDA did not receive any request for a change in the classification of the device. Therefore, further action was not required under section 514(b) of the act.

In the **Federal Register** of February 26, 1986 (51 FR 6886), FDA continued the proceeding to establish a performance standard for the breathing frequency monitor, pursuant to section 514(c) of the act and 21 CFR Part 861, by publishing a notice inviting any interested person, including any Federal agency, to submit, on or before April 28, 1986, an existing standard as a proposed performance standard for the device or to submit an offer to develop such a proposed standard. By that notice, FDA limited the proceeding to those breathing frequency monitors commonly called neonatal apnea monitors which are intended for use on infants to detect cessation of breathing.

In the **Federal Register** of July 1, 1986 (51 FR 23832), FDA advised that in accordance with the provisions of section 514(e)(3) of the act and 21 CFR 861.32, if any offer to develop a performance standard for a class II device for which the agency has issued a notice under section 514(c) of the act is accepted, FDA may, upon application (which may be made before the acceptance of the offer), agree to contribute to the offeror's cost in developing a proposed standard if FDA determines that such contribution is likely to result in a more satisfactory standard than would be developed without such contribution. Support would be provided through the means of a Cooperative Agreement Award to non-Federal institutions and individuals and through an interagency agreement to Federal institutions. Cooperative Agreement Awards would be subject to the cost principles set forth in the Federal Acquisition Regulations System. Cooperative agreements are authorized under Pub. L. 95-224 and interagency agreements under the Economy Act of 1932 as amended (31 U.S.C. 1535; formerly 31 U.S.C. 686). Subsequently, FDA allocated approximately $250,000 to contribute to the offeror's cost for the first year of effort in developing a proposed standard.

II. Discussion

A special review committee of agency experts was established on February 5, 1987, by the Director, Center for Devices and Radiological Health. The purpose of this committee was to review and evaluate the five offers submitted in response to the notice in the **Federal Register** of February 26, 1986 (51 FR 6886). No offer or existing standard was received from any Federal agency, and FDA has determined that it is not feasible to pursue the development of a performance standard by a Federal agency.

Because the standards development process did not appear to be well understood by the applicants and because the notice announcing the conditions under which Federal funds would be available was not published until after their submissions, the five offers were considered to be pre-applications. Only pre-applicants were determined to be eligible to submit a formal application. In letters dated March 6, 1987, each pre-applicant was invited to submit a formal application by April 6, 1987. The agency enclosed information, including evaluation criteria and comments on the pre-application, to assist the pre-applicants in preparing a fully responsive formal application.

Two formal competitive applications for the cooperative agreement to develop the apnea monitor standard were received. These were from the Department of Pediatrics, University of Washington, Seattle, WA 98195, and from the Emergency Care Research Institute (ECRI), 5200 Butler Pike, Plymouth Meeting, PA 19462. Each application was reviewed and evaluated, based upon the published criteria. The committee found ECRI to be more responsive to the agency's needs and recommended approval of that application at the requested level of funding.

Accordingly, the committee unanimously recommended approval of the proposal submitted by ECRI, finding, inter alia, that the application addressed the published evaluation criteria very well, that ECRI has extensive

experience in testing medical devices including apnea monitors, and that ECRI appears to have excellent facilities and has proposed to make use of nationally renown clinical centers and consultants.

While the committee found that the University of Washington appears to have good facilities and credentials, the committee concluded that the applicant did not appear to have sufficient experience in developing standards or in techniques used to test apnea monitors, and that the application lacked a suitably specific plan of action.

A summary evaluation statement for both applications was submitted for review to the National Advisory Environmental Health Sciences Council at its meeting on June 1 and 2, 1987. The council concurred with the recommendation of the special review committee.

In accordance with the provisions of section 514(e)(1) of the act and 21 CFR 861.28, FDA has determined that ECRI is qualified to develop a performance standard for neonatal apnea monitors and is technically competent to undertake and complete the development of that standard as specified in the proposed rule in the **Federal Register** of February 26, 1986 (51 FR 6886). FDA has also determined that ECRI will qualify with respect to procedures prescribed for performance standards development (21 CFR Part 861). In making those determinations, FDA has considered ECRI's financial stability, expertise, experience, and any potential conflicts of interest and other relevant information submitted pursuant to section 514(c)(3) of the act and 21 CFR 861.26.

In accordance with the provisions of section 514(e)(3) of the act and 21 CFR 861.32, FDA has further determined that contribution to the offeror's cost in developing a proposed standard is likely to result in a more satisfactory standard than would be developed without such contribution. Accordingly, FDA has agreed to contribute to that cost.

III. Cooperative Agreement Award

The agency issued a Notice of Grant Award (cooperative agreement) to ECRI in the amount of $249,991 for the first year of a 3-year project period. This award may be renewed noncompetitively for the second and third year. Continuation of the project is predicated upon successful performance and the availability of Federal appropriations.

The financial terms of the cooperative agreement are: (1) The agreement shall follow the appropriate cost principles for grants as defined by the Office of Management and Budget circular pertinent to ECRI as a nonprofit organization (circular A–122); (2) the grantee shall submit quarterly financial status reports to the Grants and Assistance Agreements Section, FDA (address above) and (3) the grantee shall submit an Indirect Cost Proposal to the Division of Cost Allocation, Department of Health and Human Services, Region III, within 90 days after receipt of the Notice of Grant Award (cooperative agreement).

Pursuant to 21 CFR 20.90, data and information otherwise exempt from public disclosure may be disclosed to the grantee and its employees for use only in their work for FDA under the cooperative agreement. The grantee shall submit written assurance to the Grants and Assistance Agreements Section that all criteria set forth in 21 CFR 20.90 shall be implemented.

The primary product to be delivered to FDA by ECRI, by the end of the first year, is a draft performance-standard document. This standard must contain definitions, performance requirements, test methods, and labeling requirements (including disclosure requirements). In addition, the document must contain an introduction, applicable references, and necessity and feasibility rationale for each of the requirements of the standard. The standard shall require that device labeling include a statement of the intended uses of the device; instructions for each intended use; a description of malfunctions; uses not intended for the device; adequate maintenance and service information; and a theory of operation description, including any algorithms or filtering used in the detection of apnea. The test methods developed must be readily usable by manufacturers and by CDRH for determining compliance with the standard. While clinical trials may be necessary for validation of these test methods and for design validation of prototype apnea monitors, routine testing of apnea monitors for compliance with the standard should be possible without subjecting each production unit to clinical trials.

The following additional items are to be delivered to FDA by ECRI, by the end of the first year: (1) A final report that includes a description of the work performed under the cooperative agreement, additional rationale for the necessity and feasibility for each of the requirements of the standard, including an assessment of the degree of risk of illness or injury designed to be eliminated or reduced by the proposed standard, and a list of references used in the development of the standard; (2) hard copies of the references mentioned above, and (3) a mailing list for use for distribution of the draft proposed standard to interested persons.

Pursuant to 21 CFR 861.30, the agency will provide interested persons an opportunity to participate in the development of the standard by accepting comments on the draft performance standard. The agency will give notice in the **Federal Register** of the opportunity to submit comments.

During the second year, FDA expects the grantee to provide consultation to assist CDRH in reviewing the public comments on the draft performance-standard document. During the third year, FDS expects to publish the proposed performance standard in the **Federal Register** in a notice of proposed rulemaking, and expects the grantee to provide consultation to assist CDRH in reviewing the public comments on the proposed performance standard. The level of effort in the second and third years will depend on the outcome of the first year of the cooperative agreement and the amount and nature of the public comment received on the draft performance standard and on the proposed performance standard.

The grantee must agree to waive patent rights for any equipment developed under this agreement. FDA must be given (nonexclusive) rights to use, reproduce, and disseminate all materials, test equipment, and methodology developed or required to implement the standard, so that all of the foregoing will remain in the public domain.

Dated: April 13, 1988.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–8874 Filed 4–21–88; 8:45 am]

BILLING CODE 4160–01–M

Notices

Federal Register
Vol. 53, No. 78
Friday, April 22, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

VISTA Literacy Corps Projects; Availability of Funds

AGENCY: ACTION.

ACTION: Notice of Availability of Funds; VISTA Literacy Corps Project.

ACTION announces the availability of funds for fiscal year 1988 for a new VISTA Literacy Corps grant authorized by section 109 of the Domestic Volunteer Service Act Amendments of 1986 (Pub. L. 99–551) in the Commonwealth of Puerto Rico. VISTA Literacy Corps grants are for a twelve month period. No requests for renewals or continuations may be sought by grantees under this announcement.

Application packages and technical assistance on grant preparation are available from: Ruben Nazario, State Director, ACTION, Frederico DeGetau Federal Office Building, Carlos Chardon Avenue, Suite 662, Hato Rey, PR 00918, (809) 753–4314.

A. Background and Purpose

Volunteers In Service to America (VISTA) is authorized under Title I, Part A of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113). The statutory mandate of the VISTA program is to eliminate and alleviate poverty and its related problems in the United States. VISTA is a full-time, year-long volunteer program which encourages and enables men and women 18 years and older from all backgrounds to perform meaningful and constructive volunteer service. The Volunteers live among, and at the economic level of, the low-income people served. The VISTA program has served poor individuals most effectively by assisting low-income communities and residents to develop the facility, skills, and resources needed for achieving self-sufficiency. VISTA also enlists the commitment and support of the private sector toward attainment of this goal. Literacy training and education represent a longstanding and integral part of the VISTA mission. VISTA Volunteers have been involved in the mobilization of community efforts to combat illiteracy among disadvantaged populations since the inception of the VISTA program.

The Domestic Volunter Service Act Amendments of 1986 directed the VISTA program to commit additional volunteers to the literacy challenge through the formation of the VISTA Literacy Corps.

The statutory purpose of the VISTA Literacy Corps is to use VISTA Volunteers in developing, strengthening, supplementing and expanding the literacy efforts of both public and private nonprofit organizations at the local, State, and Federal levels to mobilize local, State, Federal and private sector financial and volunteer resources in attacking the problem of illiteracy, particularly within low-income areas throughout the United States. In addition, the VISTA Literacy Corps will encourage public/private partnerships; promote voluntarism; heighten the visibility of the literacy issue; and increase the capacity of low-income communities to address their respective literacy needs.

Objectives

The grant will utilize VISTA Volunteers in the following emphasis areas:

1. Literacy projects to provide comprehensive services that will curb the intergenerational transfer of illiteracy within low-income families by instructing parents and children together. In particular VISTA will seek literacy programs affiliated with libraries and Head Start projects that focus on the overall concerns of low-income families in need. Such programs should have the reading materials available that will entice and challenge all age groups represented in the family unit.

2. Literacy projects that provide special programs that will benefit unemployed parents. Cooperative arrangements with social services offices and job training partnership sites will receive priority consideration.

3. Literacy projects to concentrate on preventive educational training for potential school dropouts and other low-income young adults who may be "educationally at risk" as well as programs that offer retraining and remedial skills enhancement, particularly to inner-city youth.

B. Eligible Applicants

Eligible applicants for the VISTA Literacy Corps grant include: public or private nonprofit agencies; local, State and national literacy councils and organizations; community-based nonprofit organizations; local and State education agencies; local and State agencies administering adult basic education programs; educational institutions; libraries; anti-poverty organizations; and local, municipal and State governmental entities designated to administer job training plans under the Job Training Partnership Act.

C. Scope of Grant

The grant will support 10–15 VISTA Volunteers for one year of service. The amount of the grant includes the monthly subsistence and readjustment allowance for VISTA Volunteers. This support is commensurate with the cost-of-living of the assignment area and covers the cost of food, housing and incidentals, and a monthly stipend paid to the VISTA Literacy Corps Volunteer upon completion of his/her service.

The average Federal cost of one volunteer service year, i.e. total Federal cost divided by total number of VISTA volunteers, cannot exceed $8,000 nor will the amount of Federal funding for a single grant exceed $120,000. Grants of 10–15 volunteers may range from $80,000—$120,000 in Federal funds.

Applicants should demonstrate their commitment for matching the Federal contribution toward the operation of the VISTA Literacy Corps grant in the areas of volunteer transportation, supervision, and/or training. This support can be achieved through cash or allowable in-kind contributions. In particular, there must be a 50% non-Federal match for the supervisor's salary and fringe benefits. The supervisor of the VISTA project must serve on a full-time basis.

Publication of this announcement does not obligate ACTION to award a grant or to obligate the entire amount of funds available, or any part thereof, for grants under the VISTA Literacy Corps program.

D. General Criteria for Grant Selection

The general criteria for the VISTA Literacy Corps projects are consistent with those established for the selection of VISTA sponsors and projects. All of the following elements must be incorporated in the applicant's submission.

The project must:

- Be poverty-related in scope and otherwise comply with the provisions of the Domestic Volunteer Service Act of 1973 as amended (42 U.S.C. 4951, *et seq.*) applicable to VISTA and all published regulations, guidelines and ACTION policies;
- Comply with applicable financial and fiscal requirements established by ACTION or other elements of the Federal Government;
- Show that the goals, objectives, and volunteer tasks are attainable within the time frame during which the volunteers will be working on the project and will produce a measurable and verifiable result;
- Provide for reasonable efforts to recruit and involve low-income community residents in the planning, development and implementation of the VISTA project;
- Outline specific plans for the continuation of program activities upon the completion of ACTION funding;
- Have evidence of local public and private sector support (in the form of endorsement letters limited to those organizations, government entities, and institutions that are aware of and will be involved in supporting the VISTA project's efforts);
- Have a permanent mechanism of self-evaluation;
- provide frequent and effective supervision of the volunteers;
- Identify resources needed and make them available to volunteers to perform their tasks;
- Have the management and technical capability to implement the project successfully.

In addition to the general criteria, the authorizing statute stipulates that priority consideration will be given to the following literacy programs and projects that apply for funding:

- Those that assist individuals in greatest need of literacy training who reside in unserved or underserved areas with the highest concentration of illiteracy and of low-income individuals and families;
- Those that serve individuals reading at zero to fourth grade levels;
- Those that focus on providing literacy services to high risk populations;
- Those that operate in areas with the highest concentration of individuals and families living at or below the poverty level;
- Those providing literacy services to parents of disadvantaged children between the ages of two and eight who may be educationally at risk; and
- Statewide programs and projects that encourage the creation of new literacy efforts, encourage corrdination of intrastate literacy efforts and provide technical assistance to local literacy efforts.

E. Application Review Process

ACTION Region 2 will review and evaluate all eligible applications from the State/Commonwealth within their jurisdiction prior to submission to the Director of VISTA and Student Community Service Programs, ACTION, for final selection. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

F. Application Submission and Deadline

One signed original and two copies of all completed applications must be submitted to the appropriate ACTION Regional Office as noted in paragraph 2 of this announcement. The deadline for receipt of applications is 5 p.m. local time, Friday, June 10, 1988. Applications post-marked 5 days before the deadline date will also be accepted for consideration.

All grant applications and accompanying material must be in English an consist of:

a. VISTA Project Application (Form A–1421) and the VISTA Application for Federal Assistance (Form A–1421 B) with a detailed budget justification.

b. CPA certification of accounting capability.

c. Copy of recent Articles of Incorporation.

d. Proof of non-profit status or an application for non-profit status, and related documentation.

e. Current resume of potential VISTA Supervisor, if available, or the resume of the director of the applicant agency or project.

f. Organizational chart illustrating the relationship of the VISTA project to the overall objectives of the sponsor organization.

g. List of the members of the Board of Directors including their professional affiliations and/or literacy-related activities.

Signed at Washington, DC, this 20th day of April, 1988.

Donna M. Alvarado,

Director.

FR Doc. 88–8953 Filed 4–21–88; 8:45 am]

BILLING CODE 6050–28–M

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Valuation of Human Life in Regulatory Decisionmaking

AGENCY: Administrative Conference of the United States.

ACTION: Request for public comments; notice of meeting.

SUMMARY: The Administrative Conference's Committee on Regulation has under consideration a draft recommendation on valuation of human life in regulatory decisionmaking. Interested persons are invited to comment on the draft recommendation.

DATE: Please submit comments by May 5, 1988.

ADDRESS: Send comments to Sara Gordon, Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Sara Gordon, 202–254–7065.

SUPPLEMENTARY INFORMATION: The Administrative Conference's Committee on Regulation has under consideration a draft recommendation on valuation of human life in regulatory decisionmaking. The proposed recommendations are based in part on a draft report co-authored by Professor Clayton P. Gillette, Professor of Law at Boston University School of Law and Professor Thomas D. Hopkins, Associate Professor in the Department of Economics at American University. The text of the draft recommendations is printed in full below. Copies of the draft report are available from the Administrative Conference of the United States.

Regulations intended to lessen risks of accidents and illness ordinarily impose compliance costs on regulated entities and on rulemaking agencies. Promulgation of such regulations is a multi-faceted process, and these recommendations address one set of frequently encountered issues—the valuation of human life. Placement of a dollar value on human life is controversial and complex, and a wide array of approaches may be employed. The Conference recognizes the embryonic state of knowledge on this issue, and realizes that both methodologies and results will vary

across agencies. In this environment, however, it would be useful for agencies to take measures that would reveal publicly the processes by which they have determined the valuation of life incorporated in policy decisions. The Office of Management and Budget (OMB) could facilitate consistency by providing a central clearinghouse for research and information on life valuation issues.

The Conference's Committee on Regulation is tentatively scheduled to meet on Thursday, May 12 at 10 a.m. in the 9th Floor Conference Room of Steptoe & Johnson, 1330 Connecticut Avenue, NW., Washington, DC should further consideration of the recommendations be required in light of any comments that might be received. The Committee will decide whether to approve a draft recommendation for consideration by the Administrative Conference at its Plenary Sessions on June 9 and 10, 1988. Comments should be sent to the address given above.

Recommendation 88———

Valuation of Human Life in Regulatory Decisionmaking

Regulations intended to lessen risks of accidents and illness ordinarily impose compliance costs on regulated entities and on rulemaking agencies. In return, society gains numerous benefits, most notably the avoidance of fatalities, injuries and disease, and in some instances a reduction in property damage. Promulgation of such regulations is a multi-faceted process, and this recommendation addresses one set of frequently encountered issues—the valuation of human life.

Agencies often make reasonable estimates of the reduction in fatalities likely to follow implementation of a particular regulation, and of the further reduction likely for a somewhat more stringent regulation. It is rarely if ever possible to eliminate risk altogether, and it is nearly always the case that greater risk reduction raises compliance costs. Faced with such situations, agencies cannot avoid placing a value—either explicitly or implicitly—on the societal benefits of risk reduction. This recommendation addresses agency practices and constraints in benefits valuation when the benefit at issue is fatality avoidance.

Placement of a dollar value on human life is controversial and complex, and a wide array of approaches may be employed. Some agencies reject all explicit life monetization efforts, while others routinely build dollar estimates of life savings into their regulatory proposals. This diversity can be sharp even within the same department. Those agencies that are willing to utilize explicit normative benchmarks for the value of life appear to be moving toward reliance on the same basic estimating technique, generally referred to as "willingness-to-pay." This technique is premised on the assumption that by examination of marketplace behavior, one can roughly ascertain how much individuals would be willing to pay in order to reduce the probability of death from a particular hazard or cause, or how much they would accept (e.g., salary increases) to have that probability increased.

A broad range of dollar values can be observed in regulatory outcomes across programs and departments. In part, this reflects differing views about what explicit value is suitable for a given type of hazard, and in part it reflects judgments that, for reasons of policy or legal constraints, decisions should take no account of the value of life implicit in those decisions. Agencies retain substantial discretion in justifying decisions to implement or reject proposed regulations based on factors only tangentially related to the relative benefits that would be conferred through regulations.

The Conference recognizes the embryonic state of knowledge on this issue, and realizes that both methodologies and results will vary across agencies. In this environment, however, it would be useful for agencies to take measures that would reveal publicly the processes through which they have determined the valuation of life incorporated in policy decisions. Such a procedure will provide useful clarification and exposition of the unavoidable tradeoffs in regulating hazards, and will also assist in drawing attention to those hazards where further protection may be feasible at acceptable cost.

In this way, agency practice may also be measured against developments in the valuation techniques and evaluated for consistency with other agencies as well as with other regulations in the same agency. The Office of Management and Budget (OMB), in its oversight of executive branch regulatory activities, could facilitate consistency by providing a central clearinghouse for research and information on life valuation issues. OMB should also assist agencies by updating its guidance concerning discount rates used by agencies in deriving present value equivalents of future effects. The current government-wide general guidance on discounting is contained in OMB Circular A-94 which has not been updated since 1972.

Recommendation

1. Agencies that adopt regulations on the justification that the number of lives subsequently saved warrants incurring the associated compliance costs should state an explicit valuation utilized, or should disclose the amount per statistical life implicit in that determination and in alternative levels of stringency. Exceptions to this principle might exist where empirical information about either the regulation's costs or benefits is highly conjectural or where the benefits include a variety of non-market improvements where monetizable benefits are not obvious, e.g., aesthetic gains. In such cases agencies should strive to describe the imprecision of the valuation process so as to minimize the perception of substantial certainty.

2. In implementing paragraph 1, agencies should continue to use and develop appropriate methodologies for placing value on human life, including the "willingness-to-pay" methodology, but with full recognition that there remain substantial limitations on the ability of event the most complete study to incorporate all the variables that affect social valuations of human life. An agency's valuation should be accompanied by a statement of variables that the agency believes to have been slighted or omitted from consideration but that would affect (positively or negatively) the explicit values dervied. The agency also should explain how it factors any additional criteria.

3. Whenever agencies choose to discount costs and benefits in implementing paragraph 1, they should clearly and fully disclose what rates they are using, the methodology that generated those rates, and the sensitivity of outcomes to the particular rates applied. The Office of Management and Budget (OMB) should revise its guidance concerning the use of a discount rate in the valuation of costs and benefits to reflect recent learning on the subject, whether through revision of OMB Circular A-94 or through other means. However, such guidance should not necessarily adopt a specific discount rate. Rather, it should articulate the various methods by which a discount rate can be derived and the scope of subjects to which it can be applied.

4. OMB should create a central clearinghouse for research and information on life valuation issues. To this end, OMB should continue and expand its discussion of agency practices in the life valuation area (initiated in its 1987-88 edition of the

annual Regulatory Program of the United States Government).

Dated: April 19, 1988.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 88-8902 Filed 4-21-88; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Upper Fifteen Mile Creek Watershed, GA

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40CFR 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 Upper Fifteen Mile Creek Watershed, Emanuel and Jenkins Counties, Georgia.

FOR FURTHER INFORMATION CONTACT: B.C. Graham, State Conservationist, Soil Conservation Service, Federal Building, Box 13, 355 East Hancock Avenue, Athens, Georgia 30601; telephone: 404-546-2273.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant adverse local, regional, or national impacts on the environment. As a result of these findings, B.C. Graham, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns are reduced soil productivity from rill, sheet, and ephemreal gully erosion affecting cropland and offsite erosion sediment damage. The planned works of improvement include cost sharing and accelerated technical assistance to increase the application of land treatment measures such as terraces, grassed waterways, water and sediment control basins, diversions, contouring, underground outlets, and crop residue use.

The Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies, and interested parties. A limited number of copies of the environmental assessment are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. B.C. Graham.

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. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

B.C. Graham,

State Conservationist.

Date: April 15, 1988.

[FR Doc. 88-8832 Filed 4-21-88; 8:45 am]

BILLING CODE 3410-16-M

ARCTIC RESEARCH COMMISSION

Meeting

Notice is given that the Arctic Research Commission will meet in Washington, DC on 2-3 May 1988. On 2 May 1988 at 9:00 a.m. The Commission will meet with the Interagency Arctic Research Policy Committee at the U.S. Department of Interior, Room 5160, 18th & C Streets, NW., Washington, DC.

At 1:30 p.m. on 2 May, the Commission will hold an open meeting at the Arctic Research Commission Office, Interstate Commerce Commission Building, Room 6333, 12th & Constitution Avenue, NW. Topics discussed include:

1. Opening Remarks by Chairman (J. Roederer)
2. Comments from the Interagency Arctic Research Policy Committee (E. Bloch)
3. International Cooperation in Arctic Research (J. Roederer, R. Corell)
4. Arctic Information and Data (J. Roederer, T. Laughlin)
5. Logistics Support for Arctic Research (L. Perrigo)

The Commission will meet in Executive Session in the Commission Office, Interstate Commerce Commission Building, Room 6333, 12th & Constitution Avenue, NW. 3 May 1988. Topics to be discussed include Commission budget and finances, membership of Commission, and future plans and activities.

FOR FURTHER INFORMATION CONTACT: Mr. Lyle Perrigo, (907) 257-2738.

W. Timothy Hushen,

Executive Director, U.S. Arctic Research Commission.

[FR Doc. 88-8892 Filed 4-21-88; 8:45 am]

BILLING CODE 7555-01-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Bureau of Standards

Title: NBS Manufacturing Technology Centers

Form Number: Agency—N/A; OMB—N/A

Type of Request: New Collection

Burden: 20 respondents; 800 reporting hours NBS is establishing a new program for the purpose of accelerating the transfer of advanced manufacturing technology to small and medium-sized U.S. businesses. The goal of the NBS Manufacturing Technology Centers Program will be to assist firms in improving their productivity and competitiveness. NBS will solicit applications for nonprofit institutions that propose to develop and operate a Manufacturing Technology Center. The information collected will be used to evaluate the applicants resources and abilities.

Affected Public: Non-profit institutions

Frequency: One-time application; Annually

Respondent's Obligation: Required for benefit

OMB Desk Officer: Frank Reeder 395-3785

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Frank Reeder, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Date: April 18, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-8949 filed 4-21-88; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[A-588-803]

Initiation of Antidumping Duty Investigation; Digital Readout Systems and Subassemblies Thereof From Japan

AGENCY: Import Adminstration, International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of digital readout systems and subassemblies thereof from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before May 12, 1988. If that determination is affirmative, we will make a preliminary determination on or before September 6, 1988.

EFFECTIVE DATE: April 22, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond Busen or John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-3464 or 377-3965.

SUPPLEMENTARY INFORMATION:

The Petition

On March 28, 1988, we received a petition in proper form filed by Anilam Electronics Corporation on behalf of U.S. producers of digital readout systems and subassemblies thereof. In compliance with the filing requirements of 19 CFR 353.36, petitioner alleges that imports of digital readout systems and subassemblies thereof from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

United States Price and Foreign Market Value

United States price was based on U.S. selling prices to end users. Petitioner deducted ocean freight and insurance, inland freight, U.S. Customs duties, and handling charges.

Petitioner based foreign market value on a Japanese manufacturer's retail price quotes to Japanese end users.

Based upon a comparison of United States price and foreign market value, petitioner alleges dumping margins of between 62 and 104 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioners supporting the allegations.

We examined the petition on digital readout systems and subassemblies thereof from Japan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of digital readout systems and subassemblies thereof from Japan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by September 6, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS). In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (*TSUSA*) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the *TSUSA*, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs officers have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are digital readout systems and those subassemblies, and parts thereof, that are dedicated exclusively for use in the manufacture or production of digital readout systems. The term dedicated exclusively for use only encompasses those subassemblies that are specifically designed for use in digital readout systems, and may not be used for other purposes. The Department will determine whether certain subassemblies meet the above criteria during the course of this investigation. The products are currently provided for under *TSUSA* item number 710.8080 and currently classifiable under HS item number 9031.80.0080.

Digital readout systems (DROs) generally consist of an electronic console and one measurement transducer for each axis of linear or rotational displacement to be measured. Subassemblies consist of electronic consoles or transducers, the major components of DROs, and the major components of electronic consoles, namely printed circuit boards, and the two major components of transducers, glass strips with chrome grating, and reading heads. DROs provide linear or rotational displacement information for high precision industrial equipment such as metalworking machine tools.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without written consent of the Acting Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 12, 1988 whether there is a reasonable indication that imports of DROs and subassemblies thereof from Japan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise,

it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

April 18, 1988.

[FR Doc. 8889 Filed 4-21-88; 8:45 am]

BILLING CODE 3510-DS-M

[C-557-701]

Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Carbon Steel Wire Rod From Malaysia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Malaysia of carbon steel wire rod (wire rod) as described in the "Scope of Investigation" section of this notice. The estimated net bounty or grant is 17.71 percent *ad valorem* for all manufacturers, producers, or exporters in Malaysia of wire rod.

We are directing the U.S. Customs Service to suspend liquidation of all entries of wire rod from Malaysia that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit on entries of these products in the amount equal to the estimated net bounty or grant.

EFFECTIVE DATE: April 22, 1988.

FOR FURTHER INFORMATION CONTACT: Carole Showers or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-3217 or 377-0161.

SUPPLEMENTARY INFORMATION:

Final Determination

Based on our investigation, we determine that benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Malaysia of wire rod. For purposes of this investigation, the following programs are found to confer bounties or grants:

- Export Credit Refinancing.
- Pioneer Status Under the Investment Incentives Act of 1968.

We determine the estimated net bounty or grant to be 17.71 percent *ad valorem* for all manufacturers, producers, or exporters in Malaysia of wire rod.

Case History

Since the last **Federal Register** publication pertaining to this investigation [*Preliminary Negative Countervailing Duty Determination: Carbon Steel Wire Rod from Malaysia (Wire Rod II)* (53 FR 3413, February 5, 1988)], the following events have occurred. We conducted verification in Malaysia from February 25 to March 5, 1988, of the questionnaire responses of the Government of Malaysia, Amalgamated Steel Mills Bhd. (ASM), Perdama Corporation Sdn. Bhd. (Perdama), and Tejana Trading Corporation Sdn. Bhd. (Tejana). A supplemental reponse based on information reviewed at verification was submitted by the respondents on March 18, 1988. Prehearing briefs were filed on March 30, 1988. A public hearing was held on March 31, 1988. Posthearing briefs were filed on April 8, 1988.

Scope of Investigation

For purposes of this investigation, the term "carbon steel wire rod" covers a coiled, semi-finished, hot-rolled carbon steel product of approximately round soild cross-seciton, not under 0.20 inch in diameter, not over 0.74 inch in diameter, tempered or not tempered, treated or not treated, not manufactured or partly manufactured, and valued over or under 4 cents per pound. Wire rod is currently classified under items 607.1400, 607.1710, 607.1720, 607.1730, 607.2200, and 607.2300 of the *Tariff Schedules of the United States Annotated* and under items 7213.20.00, 7213.31.30, 7213.31.60, 7213.39.00, 7213.41.30, 7213.41.60, 7213.49.00, and 7213.50.00 of the Harmonized System.

Analysis of Programs

Throughout this notice, we refer to certain principles applied to the facts of the current investigation. These general principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

For purposes of this final determination, the period for which we are measuring bounties or grants ("the review period") is calendar year 1986. Based upon our analysis of the petition, the responses to our questionnaire, verification, and written comments from respondents and petitioners, we determine the following:

I. Programs Determined To Confer Bounties or Grants

We determine that bounties or grants are being provided to manufacturers, producers, and exporters in Malaysia of wire rod under the following programs:

A. Export Credit Refinancing

The Bank Negara Malaysia, the central bank of Malaysia, provides short-term export credit refinancing through commerical banks. The Export Credit Refinancing (ECR) programs, as revised in January 1986, provided pre- and post-shipment financing of exports for periods of up to 90 days. In December 1986, the maximum periods for financing under these programs were extended to 120 and 180 days, respectively. Currently, ECR offers order-based pre- and post-shipment financing and "certificate of performance" (CP) based pre-shipment financing. Order-based financing is provided on specific sales to specific markets. CP-based financing, which is a line of credit based on the previous 12 months' export performance, cannot be tied to specific sales in specific markets.

We verified that all three respondents received financing under the order-based ECR loan programs and that, of the three companies, only ASM received financing under the CP-based ECR loan program. Because only exporters are eligible for ECR loans, we determine that they are countervailable to the extent that they are provided at preferential rates.

In order to determine whether these loans were provided at preferential rates, we compared the interest rate charged to a benchmark interest rate. As a benchmark for short-term loans, it is our practice to use the most comparable, predominant commercial rate for short-term financing. For purposes of this determination, we are using the 90-day Bankers' Acceptance (BA) rate as the most comparable and commonly used alternative source of short-term financing. Based on this comparison, we find that ECR loans are provided at preferential rates and, therefore, are countervailable.

To calculate the benefit from ECR loans on which interest was paid in 1986, we used our short-term loan methodology, as set forth in the Subsidies Appendix. Because the order-based ECR loans were shipment specific, we included only those loans which financed exports of wire rod to the United States. For the order-based

ECR loans, we calculated the amount of interest that would have been paid using the BA benchmark and subtrated the amount of interest that was actually paid. We cumulated the interest benefits of the three respondents and divided by wire rod exports to the United States. The total value of wire rod exports to the United States is equal to the value of ASM's wire rod sales to the United States, which include sales made through Perdama and Tejana, plus the appropriate trading company markup.

Because the CP-based ECR loans were not shipment specific, we included interest paid on all loans outstanding in 1986. We calculated the amount of interest that would have been paid using the BA benchmark and subtracted the amount of interest that was actually paid. We divided this interest benefit by total exports to all countries, including only the trading company markup for wire rod sales to the United States since this was the only product on which trading company markup was provided and verified.

Adding the benefits from the order- and CP-based financing, we calculated an estimated net bounty or grant of 0.49 percent *ad valorem*.

B. Pioneer Status Under the Investment Incentives Act of 1968

In accordance with the Investment Incentives Act of 1968, as amended, pioneer status is available to companies producing a product (1) with favorable prospects of further development, including deveopment for export, or (2) currently being producred in insufficient quantities to meet the development needs of Malaysia, including export. Benefits granted under pioneer status include exemptions on the portion of income derived from sales of the pioneer product from the following: (1) the 40 percent corporate income tax, (2) the five percent development tax, (3) the three percent excess profits tax, and (4) the 40 percent dividend tax. Pioneer status benefits are available for a period of up to five years. The Investment Incentives Act also provides for extension of benefits for a period of up to three years. We verified that pioneer status was granted to ASM for wire rod production for the five-year period from July 1, 1979 to June 30, 1984. ASM received an extension of its pioneer status benefits through the 1987 tax year.

In our preliminary determination, we stated that additional information was needed to determine whether pioneer status conferred bounties or grants on the manufacture, production, or exportation of wire rod from Malaysia. In order to determine if the provision of pioneer status constitutes a countervailable subsidy, we must determine if the benefits provided are limited to a specific enterprise or industry, or group of enterprises or industries, in accordance with section 771(5)(B) of the Act. We typically consider three factors when making this determination: (1) the extent to which a foreign government acts (as demonstrated in the language of the relevant enacting legislation and implementing regulations) to limit the availability of a program; (2) the number of enterprises, industries, or groups thereof that actually use a program, which may include the examination of disproportionate or dominant users; and (3) the extent, and manner in which, the government exercises discretion in making the program available.

With respect to the first factor outlined above, the language of the Investment Incentives Act does not appear to limit pioneer status benefits to specific industries or companies. For example, Part II, Chapter 1, Section 4(1) of this Act states: "Any company . . . being desirous of establishing or participating in a pioneer industry for the purpose of producing any pioneer product or products and intending that a factory be constructed in Malaysia for that purpose, may make an application in writing to the Minister for a pioneer certificate * * *."

With respect to factor two, at verification we reviewed a Malaysian Industrial Development Authority computer printout, organized by industrial classification, which listed all companies that received pioneer status from January 1980 through November 1987. According to the printout, pioneer status benefits have been approved for hundreds of companies and almost as many products cutting across numerous industrial sectors. We learned at verification, however, that approximately 40 percent of those companies that apply for pioneer status have been rejected.

With respect to the third factor—government discretion in administering the subsidy program—the Investment Incentives Act does not give specific guidelines to be followed when either approving or denying pioneer status. It is our general policy when verifying domestic programs to review the procedures for approving or rejecting applications for benefits. In *Certain Refrigerator Compressors from the Republic of Singapore: Preliminary Results of Countervailing Duty Administrative Review* (50 FR 6025, February 13, 1985, *see* also the public verification report of November 19, 1984, for this review C–559–001), we asked for and received documentation showing the reasons for approval or rejection of applications for a training grant program. This documentation was requested even though thousands of applications covering a wide range of industries were approved yearly. Based on the review of that information, we found that program to be not countervailable. We followed similar procedures in *Final Affirmative Countevailing Duty Determination: Certain Fresh Cut Flowers from the Netherlands* (52 FR 3301, February 3, 1987). In that case we examined a program involving benefits provided by the European Community (EC) for the creation of cooperative organizations, and found that the Government of the Netherlands limited its selection of programs and projects to be sent to the EC for consideration. We also stated that we were unable to verity any standard criteria applied by the EC in the approval process of member status' sectoral programs and the individual investment project applications under the sectoral programs. As we stated in that case "because we saw no evidence of standard criteria applied in the approval of programs by the EC" we found that program to be limited to a specific group of enterprises or industries within the agricultural sector of the Netherlands and therefore countervailable. (*See* also *Final Affirmative Countervailing Duty Determination: Live Swine and Fresh, Chilled and Frozen Pork Products from Canada* (50 FR 25097, June 17, 1985).)

We must examine relevant documents to ensure that a situation does not exist where a program, which based on the statute appears to be available to all companies in a country, is being administered in a manner that is distortive. For example, the government could use its discretion in administering a program that is on its face available to all companies in a country to favor some applicants over others. Or the government might favor companies in a region requiring development over companies in more prosperous areas. In both cases, the domestic program would favor "specific" enterprises or industries. Accordingly, it is important for the Department to determine in each case the criteria used for granting or denying applications for domestic programs. In this case, the government did not provide information that would have allowed the Department to make this determination.

In this investigation, the Department recognized in its preliminary determination that government standards for approving or rejecting

applications could only be determined through review of approval and denial documentation and that, with the information available at the time of that determination, it was not even possible to determine on what basis ASM's original designation as a pioneer company was based. We thus notified the Government of Malaysia in our verification outline that it should be prepared to discuss the purpose and the provisions of the pioneer status program and provide application and approval files for review.

During verification, we askd to review information explaining the reasons for granting or denying a company's request for pioneer status. The Government of Malaysia denied us access to this information. We were eventually permitted, less than one week prior to this final determination, to view two documents which purported to demonstrate why ASM was granted pioneer status. The information shown to us at this very late date applied only to ASM. We could not verify this information not tie it to other documents. We still have not seen, however, any supporting documentation demonstrating the general approval process and guidelines followed that would allow us to determine the standards under which pioneer status is granted or denied. We were told at verification, however, that another wire rod company (a company that did not export to the United States) was rejected for pioneer status benefits. Three days prior to this determination, respondent told us that the statement made at verification about this company was incorrect. These apparent contradictory statements underscore the importance of reviewing at verification all relevant documentation pertaining to the program.

Because we were not able to review documents pertaining to the approval or rejection of applications for this program, we are unable to determine that the provision of pioneer status is non-specific. Therefore, we determine the program to be countervailable. Because we find the original granting of pioneer status to be countervailable, we also determine that any extension of such benefits is countervailable.

To calculate the benefit conferred by pioneer status, we applied the corporate tax rate of 40 percent and the development tax rate of five percent to the total tax-exempt income, as claimed on ASM's amended 1986 tax return, derived from the sales of wire rod, the designated pioneer status product. We next applied the excess profits tax rate of three percent to the tax-exempt income over two million ringgit. We then applied the dividends tax rate to the amount of dividends paid as reported in ASM's 1986 (amended) tax return. Finally, we added the benefits derived from each of the tax-exempt benefits and divided that amount by total sales of wire rod to arrive at a bounty or grant rate of 17.22. percent. The total value of wire rod sales is equal to the value of ASM's wire rod sales, which include export sales made through Perdama and Tejana, plus the appropriate trading company mark-up.

II. Programs Determined Not to Confer Bounties or Grants

We determine that bounties or grants are not being provided to manufacturers, producers, or exporters in Malaysia of wire rod under the following programs:

A. Loans from Malaysian Industrial Development Finance Corporation (MIDF)

MIDF, a public company incorporated under the Companies Act of Malaysia, was established in 1960 by the Malaysian government to provide a source of long-term financing for industrial development in Malaysia. Government holdings in MIDF account for 43.81 percent of total issued capital.

MIDF is not a bank; rather, it borrows money on the open market and then lends this money at a fixed rate above its own cost of borrowing. It provides long-term loans for purchasing machinery, building factories, and expanding existing manufacturing facilities. MIDF funds are only available for the financing of fixed assets. In Malaysia, MIDF is the prime lender of fixed-rate loans. We verified that one respondent, ASM, obtained long-term loans from MIDF that were outstanding during the review period.

At verification, we learned that in almost every case, MIDF financing was made through, and in conjunction with, commercial bank participation. For example, in the case of ASM, MIDF financing was one component of a loan package assembled by a Malaysian commercial bank. Once a loan package is developed, the commercial bank contacts MIDF on behalf of its client to apply for MIDF financing. MIDF relies on the initial screening done by the banks in order to provide financing to commercially-sound companies. The main guideline for receiving MIDF financing is the commercial-viability of the project and company. MIDF does its own internal assessment of the applicant focusing on (1) background, (2) management, (3) credit worthiness, (4) marketing, and (5) technical, financial, and economic benefits. At verification, we saw no evidence that such guidelines were not followed.

We have verified that MIDF financing has been provided to a wide variety of industries, including, among others, the food, steel, non-ferrous metals, machinery, wood products, textile, rubber, chemical and paper industries. Further, in contrast to our treatment of benefits provided under the Pioneer Status program, we have verified that MIDF financing is provided in accordance with guidelines which are followed by both the MIDF and commercial banks when reviewing projects for commercial feasibility. As such, we determine that these loans are not limited to a specific enterprise or industry, or group of enterprises or industries, and are not countervailable.

B. New Investments Fund

The Bank Negara Malaysia administers the New Investments Fund (NIF), providing long-term loans to promote further investment in, and development of, new productive capacity in the manufacturing, agriculture, tourism, and mining sectors. This program has been in effect since September 1985. NIF interest rates are variable and are tied to movement in the "basic lending rate." At verification, we found that this program was terminated as of December 29, 1987.

NIF guidelines were established by the Bank Negara, with advice from the Association of Malaysian Banks. These guidelines were then published and distributed to all commercial banks. NIF loans are provided to companies that have qualified for financing from commercial lending institutions. As with MIDF financing, NIF loans are given in connection with other commercial bank financing. We verified that ASM obtained an NIF loan in 1986 to finance modernization of its facilities. This NIF loan was made in connection with several other long-term loans from commercial banks.

At verification, we reviewed the process by which NIF loans are either approved or rejected for each industrial sector. We found no evidence that the published guidelines were not consistently applied. We also verified that NIF loans were provided to a wide range of industries in the manufacturing, agriculture, tourism, and mining sectors. As such, we determine that these loans are not limited to a specific enterprise or industry, or group of enterprises or industries, and are not countervailable.

C. Duty Drawback and Duty Exemptions

The Government of Malaysia allows for duty drawback and duty exemption

on imported materials physically incorporated into exported products, and for duty exemption on certain imported machinery. We verified that ASM received duty drawback and duty exemption on imported scrap and billets, and duty exemption for machinery imported into Malaysia in 1986.

Non-excessive import duty drawback and duty exemption on items physically incorporated into the final exported product are not countervailable. At verification, we reviewed the control systems used by the government to assure that duty drawback and duty exemption on imported scrap and billet met the two criteria outlined above. Because we found that these two criteria were met, we determine that duty drawback and duty exemption on physically incorporated inputs of wire rod are not excessive and, therefore, do not confer bounties or grants to manufacturers or producers of wire rod in Malaysia.

In accordance with section 771(5)(B) of the Act, duty exemption on imports of machinery is not countervailable if the benefits provided are not limited to a specific enterprise or industry, or group of enterprises or industries. At verification, we learned that machinery can be exempted from duty if it is not produced in Malaysia. Such machinery is contained on a list published by the Ministry of Finance and followed by Ministry of Customs officials at each port. We found that there is no application process for receiving these benefits. If an item is contained on the list, no duty is required. This list includes machinery used in a wide range of industries. We verified that each piece of duty-exempt machinery imported by ASM during 1986 was contained on the published list. We also verified that this exemption was not tied to any export requirement.

Because duty exemption of machinery is not limited to a specific enterprise or industry, or group of enterprises or industries, we determine that this program does not confer bounties or grants to manufacturers, producers, and exporters of wire rod in Malaysia.

D. Initial and Annual Depreciation Allowance

ASM, Perdama, and Tejana used the depreciation allowances contained in section 3 of the Income Tax Act of 1967. This section provides for a fixed initial depreciation allowance of 20 percent. This initial allowance is taken in conjunction with the annual depreciation allowance in the first year for recurring qualifying plant expenditures. Annual allowances are provide for in Schedules A & B of the Income Tax Act. The allowance is taken on a straight-line basis and is not to exceed 100 percent of the value of the asset. These are the standard depreciation allowances permitted in Malaysia; they are not tied to specific industries. Malaysian depreciation allowances are based on the useful life of the asset. There is no evidence on the record that annual allowances for steel are excessive or do not reflect the useful life of the assets. Therefore, we determine that initial and annual allowances are not countervailable.

III. Programs Determined Not To Be Used

We determine, based on verified information, that manufacturers, producers, or exporters in Malaysia of wire rod did not apply for, claim, or receive benefits during the review period for exports of wire rod to the United States under the following programs. These programs were described in *Wire Rod II*, supra, unless otherwise noted:

A. Export Tax Incentives

1. Abatement of Taxable Income Based on the Ratio of Export Sales to Total Sales and of Five Percent of the Value of Indiguenous Materials Used in Exports.

2. Allowance of a Percentage of Net Taxable Income Under Section 29 of the Investment Incentives Act of 1968.

(This program was listed as an abatement program in *Wire Rod II.*)

3. Allowance of Taxable Income of Five Percent for Trading Companies Exporting Malaysian-made Products.

(This program was listed as an abatement program in *Wire Rod II.*)

4. Double Deduction For Export Credit Insurance.

5. Double Deduction for Export Promotion.

6. Industrial Building Allowance.

B. Export Insurance Program

C. Government Financial Assistance

1. Long-Term Loans from the Industrial Development Bank of Malaysia (IDBM).

2. Long-Term Loans from the Development Bank of Malaysia (DBM).

D. Other Tax Incentives

1. Pioneer Status Under the Promotion of Investments Act of 1986.

2. Investment Tax Credit/Investment Tax Allowance.

3. Accelerated Depreciation Allowance.

The Income Tax Act of 1967, as amended in 1979, provides for accelerated depreciation to manufacturing and processing industries. Subsequent revisions of this allowance extended eligibility to the non-manufacturing sectors, as well as excluding certain types of plant and equipment. Under this program, the current annual allowance is set at 40 percent of the qualifying plant expenditures. Pioneer designated companies are ineligible to receive accelerated depreciation. We verified that none of the companies under investigation claimed allowances under this program during the review period.

4. Reinvestment Allowances.

Section 133A of the Income Tax Act of 1967 provides for a reinvestment allowance of 25 percent for capital expenditures on a factory, plant, or machinery for any approved project. Companies with pioneer status are ineligible to use this allowance. We verified that none of the companies under investigation claimed benefits under this program during the review period.

5. Reduction in the Cost of State Land for New Industry and Agriculture.

Individual state government authorities in Malaysia have control over prices charged on purchases of land in their respective states. We verified that none of the respondents received government-sponsored price reductions on their land.

IV. Programs Determined Not To Exist

We determine, based on verified information, that the following programs do not exist. These programs were described in *Wire Rod II*:

A. Abatement of Taxable Income of Five Percent of the Value of Malaysian Made Inputs Incorporated into Exports

B. Abatement of Taxable Income Based on a Percentage of the Value-Added of Exported Products

Interested Party Comments

Comment 1: Petitioners argue that the Department should use the average of the banker's acceptance (BA) rate and the overdraft rate as the benchmark for the ECR program. In support of their contention, petitioners cite *Oil Country Tubular Goods from Argentina; Preliminary Results of Countervailing Duty Administration Review (OCTG)* (51 FR 41649, November 18, 1986) where the Department used a weighted-average of several types of short-term financing as its benchmark.

Respondents contend that BA financing is the commercial equivalent of ECR financing and, therefore, the BA rate should be used as the benchmark for calculating benefits from ECR financing. Respondents further contend

that the use of the 90-day BA rate overstates the benefit from ECR financing and that the Department should use either the 30- or 60-day BA rates as a benchmark depending on the number of days the loan was outstanding. Finally, respondents state that no current benefit from ECR financing is being provided to Malaysian exporters since the commercial rate for BA financing is now less than the ECR financing interest rate.

DOC Position: In calculating benefits from short-term loans, the Subsidies Appendix states that the Department will use "the most appropriate national average commercial method of short-term financing". In *OCTG*, the Department found that there was no predominant alternative form of short-term financing comparable to the program under review. Therefore, we used as a benchmark a weighted-average of short-term commercial lending rates. In this case, however, BA financing is the predominant alternative form of financing in Malaysia for trade financing. Therefore, we consider the BA interest rate as the most appropriate rate to use as our benchmark.

As already stated, these loans are granted for up to 90 days. Further, the only BA rates contained in the questionnaire response were the 90-day rates. Respondents did not submit information concerning 30- and 60-day rates until several weeks after verification had ended, information which was not verified. Therefore, we have used the 90-day BA rate as our benchmark.

Finally, when calculating the benefit from a loan program, we look at the interest rates in effect during the review period. Only when a government has made a program-wide change prior to our preliminary determination that can be verified and measured do we take those changes into account. Fluctuating benchmark interest rates do not constitute a program-wide change. Therefore, we are not making any adjustment to our benefit calculation for the ECR program.

Comment 2: Petitioners argue that for the ECR loan received by ASM on a U.S. wire rod order which was subsequently cancelled, the Department should use the value of exports of wire rod to the United States as the denominator for valuing this subsidy since the loan benefits U.S. sales activities.

Respondents assert that, although the loan was granted based upon an export order of wire rod to the United States which was subsequently cancelled, any benefit received from that loan was not linked to any shipment to the United States during the review period. Respondents believe that the Department should exclude any benefit on the cancelled sale in their calculations or, at most, attribute any benefit accrued to total exports of all products.

DOC Position: We recognize that the sale to the United States on which this loan was based was cancelled. However, the funds were received by ASM and must be accounted for in our subsidy calculation. While respondents would have us allocate the benefits from this loan over total exports, we could only consider following that methodology if we had complete information on all loans received on cancelled sales. Since we do not have that information, we have allocated the benefit from the loan in question only over exports to the United States.

Comment 3: Petitioners argue that, since the Malaysian Government denied the Department access to documents relating to the exercise of discretion in granting or denying pioneer status, the Department must make adverse inferences regarding this program and determine that this program confers a bounty or grant. Petitioners further claim that respondents offered only circumstantial evidence and general explanations during the verification concerning this program.

Petitioners assert that there are two bases for finding pioneer benefits under the Investment Incentive Act of 1968 (the 1968 Act) countervailable. They state that under the 1968 Act, the Malaysian Government may grant pioneer status for export purposes. Alternatively, they contend that the initial granting of pioneer status may be characterized as a countervailable domestic subsidy limited to a specific group of industries or companies.

Respondents content that the Department saw every document at verification relating to pioneer status with the exception of an inter-agency memorandum recommending ASM's approval. Respondents argue that the Malaysian Government operates under legal constraints similar to those under which the U.S. Government will not release inter-agency memoranda. Furthermore, respondents state that the Department gave no notice to the Government of Malaysia before or during verification that disclosure of this particular document would ne necessary.

Respondents believe that benefits under pioneer status are not limited to any sector or region of the Malaysian economy, nor are they provided exclusively to companies that export.

Respondents state that export potential is just one of many factors considered in granting pioneer status; the program is not limited to exporters. They also state that pioneer benefits apply equally to both domestic and export sales.

DOC Position: See section I.B. of this notice.

Comment 4: Petitioners argue that, even if the Department finds the granting of pioneer status not countervailable, ASM's receipt of an additional year of pioneer benefits for producing a priority product is a countervailable benefit. They state that most pioneer products are not priority products, and that many of those products on the priority list have export requirements. Petitioners believe that respondents have admitted to the significant discretion the Government exercises in the designation of products as priority products. They further argue that ASM's eligibility for benefits denied to other sectors of the steel industry illustrates the program's discrimination with regard to different products within specific industries and the targeted nature of the priority product extension.

Respondents contend that the extension of pioneer status for priority products is automatic and applicable to virtually all manufactured products in Malaysia. Respondents assert that the designation "priority product" has been applied to products from virtually every sector of the economy. They believe that, given the breadth of industries and products receiving priority status, the extension for priority products should not be considered countervailable.

DOC Position: Given that we have found the initial provision of pioneer status to be countervailable, extensions of those benefits are also countervailable. *See* section I.B. of this notice.

Comment 5: With respect to calculation of benefits derived from the granting of pioneer status, petitioners state that the exemptions from payment of the income tax, development tax, dividend tax, and the excess profits tax should be countervailed and valued at what would have been paid during the review period.

Respondents contend that, even if pioneer status and/or its extension were found to be countervailable, ASM received no benefit during the review period. ASM's original pioneer status benefits ended in the 1985 tax year, and either with or without the extension, ASM was not liable for the payment of any taxes in the 1986 tax year. Therefore, according to respondents, the extension of pioneer status benefits had no effect on ASM's tax liability.

Respondents finally argue that, if the Department does consider pioneer status benefits to be countervailable, then it should recognize that ASM's eligibility will expire after the 1987 tax year and follow its policy to take into account changes in programs and eligibility.

DOC Position: When calculating the benefit from an income tax program, we generally compare the amount of tax paid when a company uses the program to the amount of tax it would pay absent the program. In this case, we saw that ASM would have paid no taxes during the review period even absent the program. However, the reason it would not have paid taxes is due at least in part, if not solely, to the fact that the carried-forward capital allowances it applied against taxable income were much larger than they would have been if ASM had not enjoyed pioneer status in prior years. Therefore, we determined that the capital allowances used to offset income in 1986 were due to ASM's pioneer status in previous years and found the total exemption on income from the pioneer status product in that year to be a benefit. *See* section I.B. of this notice.

As stated above, when calculating a benefit for a tax program we look at benefits received during the review period. Only when a government has made a program-wide change prior to our preliminary determination that can be verified and measured do we take those changes into account. In this case, we do not consider ASM's change in eligibility status to constitute a program-wide change. Therefore, we are not making any adjustment to our benefit calculation for the pioneer status program.

Comment 6: Petitioners argue that ASM benefitted from an abatement of five percent of taxable income under section 29 of the Investment Incentive Act of 1968. They state that in its prior investigation of wire rod from Malaysia, the Department verified that Angkasa Marketing, an ASM subsidiary, claimed this abatement for U.S. exports in the 1985 and 1986 years of assessment.

Petitioners argue that the difference in corporate identity should be ignored since the ASM owns 100% of Angkasa, Angkasa and ASM share the same board of directors and general manager, the financial results of Angkasa are consolidated with ASM, ASM controls Angkasa's export activities, and ASM directly benefits financially from benefits received by Angkasa. In support of its argument, petitioners cite the Department's remand determination in *Remand of Carbon Steel Wire Rod from Saudi Arabia (Saudi Wire Rod)* February 1, 1988, before the Court of International Trade) where the Department said the activities of a subsidiary may benefit its parent. Furthermore, according to petitioners, in the *Final Affirmative Countervailing Duty Determination: Brass Sheet and Strip from France) (Brass Sheet)* (52 FR 1218, January 12, 1987), the Department ruled that a subsidy granted to the parent corporation, which did not export during the period of investigation, was found to have benefitted the subsidiary that did export, even where the companies paid taxes separately and maintained separate financial records.

Petitioners believe Angkasa and ASM must be treated as a single entity to prevent the evasion of the countervailing duty law. They believe that a company may attempt to evade an order by exporting to the United States through different subsidiaries. If the Department does not reverse its preliminary decision, petitioners state that it will invite the circumvention of the countervailing duty law. Petitioners assert that the Department should conclude in its final determination that section 20 benefits claimed by Angkasa are countervailable and benefitted ASM.

Respondents contend that, since Angkasa did not export to the United States during the review period, it should not be under investigation. Respondents further contend that Angkasa and ASM are separate entities and should be so considered by the Department because they file separate tax returns, maintain separate financial statements and accounting records, and operate from separate office buildings. Respondents argue that the Department has rejected the argument that money is fungible and that benefits to other products and other related parties necessarily flow to the product and company under investigation. Respondent cites *Final Affirmative Countervailing Duty Determination: Iron Ore Pellets from Brazil* (51 FR 21961, June 17, 1986) to support this contention.

Respondents state that the standard methodology of the Department is to treat individual corporate entities separately unless there is a suspicion of a specific transfer of benefits. In this investigation, nothing suggests that benefits flowed from Angkasa to ASM. Furthermore, the Department learned at verification that it is impermissible to transfer such tax benefits to another company.

Respondents request that the Department continue its established practice of treating corporate entities separately and only investigate those companies that export to the United States during the review period. Furthermore, respondents believe that since Angkasa has not exported wire rod since 1986 or accrued any additional export allowance, the Department has no need to make an affirmative determination and set a deposit rate for a program that can no longer be used. Respondents suggest that even if the Department imputes Angkasa's export allowance to ASM, the subsidy would be zero.

DOC Position: Although Angkasa is wholly-owned by ASM, each company files separate income tax returns. The two companies report separate incomes, and there is no evidence that Angkasa passes on a benefit that it receives on its income to ASM. In fact, Malaysian law prohibits the transfer of income tax benefits.

In the past, the Department has not normally considered a company and its wholly-owned subsidiaries as one company for purposes of determining countervailing duties. For example, in *Brass Sheet*, although the Department recognized that money can pass from a parent to its subsidiaries and vice-versa, the benefits found in that case were attributed solely to the sales of the subsidiary. *Saudi Wire Rod*, cited by the petitioners deals with the transfer of ownership of a subsidiary of a government-owned company to another government-owned company. It does not address how benefits given directly to that subsidiary would be allocated.

Petitioners have raised the very troubling prospect of a subsidiary and its parent evading duties by alternating the years in which they apply for tax benefits or in which they export to the United States. At this time, we see no evidence of such a pattern developing between ASM and Angkasa. We will carefully monitor the activities of ASM and Angkasa during an administrative review, if one is requested, to ensure that transfer of benefits is not occurring. Because Angkasa is not being excluded from this determination, if it should resume exporting wire rod to the United States, any subsidies it receives in connection with such exports would be reflected in any countervailing duties assessed.

Verification

Except where noted, we verified the information used in making our final determination in accordance with section 776(a) of the Act. We used standard verification procedures including meeting with government and company officials, examination of relevant accounting records, and examination of original source

documents of the respondents. Our verification results are outlined in detail in the public versions of the verification reports which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

Suspension of Liquidation

We are directing the U.S. Customs Service to suspend liquidation on all entries of wire rod from Malaysia which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. In accordance with section 706(a) of the Act (19 U.S.C. 1671e), we are directing the U.S. Customs Service to require a cash deposit equal to 17.71 percent *ad valorem* for each entry of the subject merchandise. This suspension of liquidation will remain in effect until further notice.

This determination is published pursuant to section 705(d) of the Act [19 U.S.C. 1671d(d)].

April 18, 1988.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-8890 Filed 4-21-88; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

Senior Executive Service; Membership of General and Limited Performance Review Boards

The purpose of the General Performance Review Board (GPRB) is to review performance agreements, appraisals, ratings, and recommended action pertaining to employees in the Senior Executive Service and to make appropriate recommendations to the Director of NBS concerning such matters in such a manner as will assure the fair and equitable treatment of senior executives. The GPRB performs its review functions for all NBS senior executives except those who are members of the NBS Executive Board and those who are members of the GPRB.

The Limited Performance Review Board (LPRB) performs its review functions for all NBS senior executives who are members of the NBS Executive Board (except the NBS Deputy Director) and those senior executives who are members of the NBS GPRB.

The individuals who have been newly appointed by the Director of NBS to membership on the GPRB and LPRB or have had their term of membership extended are listed below:

GPRB

Dr. James E. Hill, Chief, Building Environment Division, National Engineering Laboratory, National Bureau of Standards, Gaithersburg, Maryland 20899. Term: January 1, 1988 to December 31, 1989;

Dr. Willie E. May, Chief, Organic Analytical Research Division, National Measurement Laboratory, National Bureau of Standards, Gaithersburg, Maryland 20899. Term: January 1, 1988 to December 31, 1989.

LPRB

Dr. Jeffrey D. Rosendhal, Assistant Associate Administrator for Space Science and Applications (Science), National Aeronautics and Space Administration, Washington, DC 20546. Term: January 1, 1988 to December 31, 1989.

The full membership and expiration dates of the GPRB and LPRB are listed below:

GPRB

Dr. Karl G. Kessler, Chair, Associate Director for International and Academic Affairs, Office of the Director, National Bureau of Standards, Gaithersburg, Maryland 20899. Expiration of Appointment: December 31, 1988;

Dr. James E. Hill, Chief, Building Environment Division, National Engineering Laboratory, National Bureau of Standards, Gaithersburg, Maryland 20899. Term: January 1, 1988 to December 31, 1989;

Dr. Willie E. May, Chief, Organic Analytical Research Division, National Measurement Laboratory, National Bureau of Standards, Gaithersburg, Maryland 20899. Term: January 1, 1988 to December 31, 1989;

Dr. Donald J. Sullivan, Chief, Time and Frequency Division, National Measurement Laboratory, National Bureau of Standards, Boulder, Colorado 80303. Expiration of Appointment: December 31, 1988;

Dr. William Tolles, Superintendent, Chemistry Division, Code 6100, Naval Research Laboratory, Washington, DC 20375-5000. Expiration of Appointment: December 31, 1988;

Dr. Sheldon Wiederhorn, Group Leader, Mechanical Properties, Institute for Materials Science and Engineering, National Bureau of Standards, Gaithersburg, Maryland 20899. Expiration of Appointment: December 31, 1988.

Ms. Helen M. Wood, Deputy Director, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, Maryland 20899. Expiration of Appointment: December 31, 1988.

LPRB

Dr. Burton H. Colvin, Chair, Director of Academic Affairs, Office of the Director, National Bureau of Standards, Gaithersburg, Maryland 20899. Expiration of Appointment: December 31, 1988;

Dr. Jeffrey D. Rosendhal, Assistant Associate Administrator for Space Science and Applications (Science) National Aeronautics and Space Administration, Washington, DC 20546. Term: January 1, 1988 to December 31, 1989;

Dr. Donald K. Stevens, Associate Director for Basic Energy Sciences, Office of Energy Research, Department of Energy, Washington, DC 20545. Expiration of Appointment: December 31, 1988.

FOR FURTHER INFORMATION CONTACT: Mrs. Elizabeth W. Stroud, Chief, Personnel Division, National Bureau of Standards, Gaithersburg, Maryland, telephone 301-975-3000.

Ernest Ambler,

Director.

Date: April 19, 1988.

[FR Doc. 88-8955 Filed 4-21-88; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1988; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1988 commodities to be produced by and a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: May 23, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On February 12, 1988 the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (53 FR 4200) of proposed additions to Procurement List 1988, December 10, 1987 (52 FR 46926).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and service listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the service procured by the Government.

Accordingly, the following commodities and service are hereby added to Procurement List 1988:

Commodities

Applicator, Wax
7920–00–633–8774
Pad, Wax Applicator
7920–00–633–9274
Buckle, Belt
8315–00–664–9126
8315–01–069–4982

Service

Janitorial Service
Federal Building, U.S. Post Office and Courthouse, Bryson City, North Carolina

C.W. Fletcher,

Executive Director.

[FR Doc. 88–8877 Filed 4–21–88; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1988; Proposed Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1988 services to be provided and commodities to be produced by workshops for the blind or other severely handicapped.

DATES: Comments must be received on or before: May 23, 1988.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the services and commodity listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following services and commodity to Procurement List 1988, December 10, 1987 (52 FR 46926).

Commodity

Mattress, Cover
7210–00–082–2081

Services

Janitorial/Custodial
Naval Weapons Station, Concord, California
Janitorial/Custodial
Targhee National Forest Supervisor's Office Building, 420 North Bridge Street, St. Anthony, Idaho
Janitorial/Custodial
Federal Office Building, Martinsburg, West Virginia
Janitorial/Custodial
Federal Building, 4th and F Street, Anchorage, Alaska
Janitorial/Custodial
911 Tacical Airlift Group, Pittsburg, Pennsylvania

Deletions

It is proposed to delete the following commodites and service from the Procurement List 1988, December 10, 1987 (52 FR 46926).

Commodities

Screwdriver, Cross Tip
5120–00–580–2361
5120–00–237–8174
Slippers, Convalescent Patient
6532–00–241–6393
6532–00–279–7794
6532–00–079–7889
6532–00–079–7899
6532–00–079–7902
6532–00–079–7904
6532–00–079–5055
6532–00–079–5056
6532–00–079–5057
Tape Stiffner Assembly
1330–01–051–1533

Service

Grounds Maintenance
Naval Postgraduate School, Monterey, California

C.W. Fletcher,

Executive Director.

[FR Doc. 88–8878 Filed 4–21–88; 8:45 am]

BILLING CODE 6820–33–M

COMMODITY FUTURES TRADING COMMISSION

Coffee, Sugar and Cocoa Exchange Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Commodity Futures Trading Commission ("Commission") previously published in the **Federal Register** a proposal of the Coffee, Sugar & Cocoa Exchange ("CSCE") for designation as a futures contract market in the International Market Index. The Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that, in this instance, an additional period for public comment is warranted.

DATE: Comments must be received on or before May 23, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CSCE International Market Index futures contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254–7227.

SUPPLEMENTARY INFORMATION: On October 22, 1987, the Commission published in the **Federal Register**, for a 60-day comment period, a notice of availability of the CSCE's proposed terms and conditions for the International Market Index futures contract (52 FR 39555). On February 5, 1988, the Commission republished in the **Federal Register**, for a 30-day comment period, notice of the availability of the terms and conditions of this proposed contract (53 FR 3420). In an April 15, 1988 letter to the Commission, the CSCE requested that the Commission republish the terms and conditions of the proposed contract "so that the public

and other interested parties may have the opportunity to comment on the application." As noted, the Director of the Division has determined that, for this proposed contract, an additional comment period is warranted.

Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CSCE in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CSCE in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC, 20581, by the specified date.

Issued in Washington, DC on April 19, 1988.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 88–8870 Filed 4–21–88; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Carrier Selection and Performance; DLA Form 1773; and None.

Type of Request: New.

Annual Burden Hours: 625.

Annual Responses: 2,500.

Needs and Uses: The Defense Logistics Agency (DLA), Office of the Secretary of Defense will use the form to provide information to DoD contractors regarding the selection of carriers to transport DoD purchased material. Contractors will use the information to contact primary or alternater carriers and to report performance or service deficiencies by carriers to DLA regional area offices. DLA reports carrier performance to the Military Traffic Management Command as part of their Carrier Performance Program.

Affected Public: Businesses or other for-profit.

Frequency: Daily.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 18, 1988.

[FR Doc. 88–8903 Filed 4–21–88; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Application for Training Leading to a Commission in the United States Air Force; AF Form 56; and OMB Control Number 0701–0001.

Type of Request: Extension.

Annual Burden Hours: 2,067.

Annual Responses: 6,200.

Needs and Uses: The Air Force uses AF Form 56 to collect information from applicants for training leading to a commission in the Air Force. Air Force application processing activities and approval authorities use the information submitted on the form to select applicants who qualify for officer training.

Affected Public: Applicants for training leading to an Air Force commisison.

Frequency: On Occasion.

Respondent's Obligation: Required 'o obtain or retain a benefit.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 18, 1988.

[FR Doc. 88–8904 Filed 4–21–88; 8:45 am]

BILLING CODE 3810-01-M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number. Department of Defense Standard Tender of Freight Services; MTMC Form MT 364–R; and OMB Control Number 0704–0261.

Type of Request: Revision.

Annual Burden Hours: 10,184.

Annual Responses: 13,578.

Needs and Uses: The information, in uniform format, is used to determine freight transportation charges, accessorial and security service costs, and to select carriers for 1.2 million GBL freight shipments annually. Respondents are freight carriers of all modes, except air cargo.

Affected Public: Businesses or other for profit, and small businesses or organizations.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Pascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Mascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 18, 1988.

[FR Doc. 88–8905 Filed 4–21–88; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Defense Science Board 1988 Summer Study on Countering Soviet Fire Support; Change in Location of Advisory Committee Meeting Notice

SUMMARY: The meeting of the Defense Science Board 1988 Summer Study on Countering Soviet Fire Support scheduled for April 20–21, 1988 as published in the **Federal Register** (Vol. 53, No. 35, Page 5293, Tuesday, February 23, 1988, FR Doc. 88–3772) will be held at Fort Sill, Oklahoma.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 18, 1988.

[FR Doc. 88–8906 Filed 4–21–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Subgroup to the Strategic Air Defense; Cancellation of Meeting

SUMMARY: The meeting notice for the Defense Science Board Task Force on Subgroup to the Strategic Air Defense for March 30, 1988 as published in the **Federal Register** (Vol. 53, No. 30, Page 4441, Tuesday, February 16, 1988, FR Doc. 88–3218.) has been cancelled.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 18, 1988.

[FR Doc. 88–8907 Filed 4–21–88; 8:45 am]

BILLING CODE 3810-01-M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, May 3, 1988; Tuesday, May 10, 1988; Tuesday, May 17, 1988; Tuesday, May 24, 1988; and Tuesday, May 31, 1988 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 18, 1988.

[FR Doc. 88–8908 Filed 4–21–88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Community College of the Air Force; Meeting

The Community College of the Air Force (CCAF) Board of Visitors will hold a meeting on May 24, 1988 at 8:00 am in the CCAF Conference Room, Room 121 Building 836, located at Maxwell Air Force Base, Montgomery, Alabama.

The meeting is open to the public. Agenda items include: Update on the State of the College; Changes to the 1989–90 *CCAF General Catalog;* The DANTES Telecourse Testing Program; Growth, Advancement, and Assessment; and an Update on the Student Processing System.

For further information contact Major Peter Macchia, Jr., (205) 293–7937, Community College of the Air Force, Maxwell Air Force Base, Montgomery, Alabama 36112–6655.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 88–8934 Filed 4–21–88; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Coastal Engineering Research Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Coastal Engineering Research Board (CERB).

Date of Meeting: May 18–20, 1988.

Place: Olympia Village, Oconomowoc, Wisconsin.

Time: 8:30 a.m. to 4:45 p.m. on May 18; 8:00 a.m. to 5:00 p.m. on May 19; 8:00 a.m. to 12:00 noon on May 20.

Theme: Coastal Engineering Implications of Changes in the Great Lakes Water Levels.

Proposed Agenda: The morning session on May 18 will consist of a review of CERB business, presentations and discussions on Graduate Education Initiative, Update of FY 88 Coastal Engineering R&D Program, and a general overview and briefing on the field trip.

The afternoon of May 18 will be devoted to a boat trip and tour of the Milwaukee Harbor structures, Milwaukee water intake, and southeast Wisconsin shoreline to Racine where there will be a ground tour of Racine Harbor.

The session on May 19 will consist of several presentations entitled: A Great Lakes Overview, The Riparian Viewpoint, IJC Task Force and Reference Study, Open Coast and Wave Runup Studies, Great Lakes Coastal Flooding and Pub. L. 99 Advance Measures, Wave Information Study, Chicago Lakefront, Shore Response to Changing Lake Levels, Monitoring Completed Coastal Projects Program, and Beach Nourishment—Design, Objectives, and Results. The session will also consist of a panel discussion entitled Problems and Actions Resulting from Fluctuating Lake Levels.

On May 20 there will be a presentation on North Central Division Coastal Engineering Research Needs and a panel discussion on Coastal R&D on the Great Lakes—Present and Future. Recommendations by members of the Board will also be presented.

This meeting is open to the public; participation by the public is scheduled for 10:15 a.m. on May 20.

The entire meeting is open to the public subject to the following:

1. Since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

2. Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or up to 30 days after the meeting.

Inquiries and notice of intent to attend the meeting may be addressed to Colonel Dwayne G. Lee, Executive Secretary, Coastal Engineering Research Board, U.S. Army Engineer Waterways Experiment Station, P.O. Box 631, Vicksburg, Mississippi 39180–0631.

Dwayne G. Lee,

Colonel, Corps of Engineers, Executive Secretary.

[FR Doc. 88–8831 Filed 4–21–88; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of The Committee: Army Science Board (ASB).

Dates of Meeting: 9–13 May 1988.

Times of Meetings:

1200–2100 hours, 9 May
0800–1300 hours, 10 May
0800–2000 hours, 11 May
0800–1700 hours, 12 May
0800–1215 hours, 13 May

Place: Monterey, CA.

Agenda: The Army Science Board Ad Hoc Subgroup for Tactical Applications of Directed Energy Weapons (DEW) will meet for the purpose of attending hearings and presentation by DoD and DOE organizations on HIgh Power Microwave programs and initiatives. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer Army Science Board.

[FR Doc. 88–8820 Filed 4–21–88; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before May 23, 1988.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: April 19, 1988.

Carlos U. Rice,

Director for Information Technology Services.

Office of Educational Research and Improvement

Type of review: New
Title: Survey on Education Partnerships
Frequency: One time only
Affected Public: Individuals or households
Reporting Burden:
Responses: 1,600
Burden Hours: 480
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: This survey will collect information from school principals concerning the number of partnerships the kinds of support they provide to schools, and the number of students directly involved in these partnerships. The study is needed to determine what has happened since the White House called upon the Department to encourage involvement of the private sector in education.

Type of Review: New
Title: Locator Information Update for NPSAS Longitudinal Components
Frequency: One time only
Affected Public: Individuals or households
Reporting Burden:
Responses: 4,000
Burden Hours: 200
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: This locator information update will obtain information on the enrollment and completion status of a subsample of students who

participated in the National Postsecondary Student Aid Study (NPSAS). The Department will use the information to conduct a field test linking longitudinal activities to the NPSAS and to determine the parameters necessary for the design of a base year sample to support longitudinal linkages.

Office of Postsecondary Education

Type of Review: Revision
Title: Perkins Loan Program Assignment Form
Frequency: On occasion
Affected Public: Individuals or households
Reporting Burden:
Responses: 80,000
Burden Hours: 40,000
Recordkeeping:
Recordkeepers: 3,000
Burden Hours: 1,500
Abstract: This form will be used to collect pertinent information regarding defaulted student loans from institutions participating in the Perkins Loan Program. The institutions use this form to assign defaulted student loans to the Federal Government for collection.

Type of Review: Extension
Title: Lender's Application for Payment of Insurance Claim
Frequency: On occasion
Affected Public: Businesses or other for-profit; non-profit institutions
Reporting Burden:
Responses: 24,000
Burden Hours: 3,600
Recordkeeping:
Recordkeepers: 12,000
Burden Hours: 1,440
Abstract: This form will be used by lenders to request payment of a claim under the Federal Insured Student Loan Program. The Department uses the information to match disbursement data for claim payment validation, to calculate the claim payment amount, and to provide the basis used in the collection of defaulted loans.

Type of Review: New
Title: Federal Collection Productivity Study
Frequency: One time only
Affected Public: Businesses or other for-profit
Reporting Burden.
Responses: 7
Burden Hours: 28
Recordkeeping:
Recordkeepers: 0
Burden Hours: 0
Abstract: The data collected in the study will provide the Department with information on the relative cost effectiveness of commercial collection activities versus Regional Office collection activities. The information is necessary to allow the Department to make informed decisions regarding allocation of resources for collection activities.

[FR Doc. 88-8872 Filed 4-21-88; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Idaho Operations Office, Foundry Industry Technology Development

AGENCY: Department of Energy.

ACTION: Solicitation for Financial Assistance Applications No. DE-PS07-88ID12724 for Foundry Industry Technology Development.

SUMMARY: The U.S. Department of Energy (DOE), Idaho Operations Office, is seeking applications for cost-sharing research for technology development in the foundry industry. The objective of this solicitation is to develop advanced technology to improve the competitive position of the U.S. Foundry Industry. This may be accomplished through major gains in manufacturing productivity and/or process cost reduction and/or product quality improvement. It is also desirable that the developed technology led to reduced energy consumption in the industry. The DOE has identified the following project areas to have significant potential for research and development in the foundry industry. However, applications are *not* limited to these projects areas, and the listed areas are *not* in any order of priority. *All* applications should explain why industry is not already pursuing the concept to be developed and why DOE funding is appropriate.

1. Novel raw materials or molten metal beneficiation or utilization.
   - Novel utilization of scrap turnings and borings.
   - Removal of tramp elements from scrap or molten metal.
   - Effective removal of manganese for high quality austempered ductile iron.
2. Optimization and/or process control of the foundry cupola.
   - Development of an on-line process model to characterize cupola melting.
   - Development of an on-line process control system for the cupola
   - Development of alternate cupola fuels (e.g., formcoke).
3. Development of new molding methods and/or molding materials.
   - Development of molding materials to replace sand.
   - Moldless casing utilizing electromagnetic shaping.
4. Development and/or optimization of new pattern-making technology.
   - Development of new pattern materials.
   - Optimizaton of the evaporative casting process.

The DOE anticipates awarding between one and four Cooperative Agreements as a result of this solicitation. Each agreement will provide Federal assistance to a research project on a cost-sharing basis. The DOE anticipates that $400,000 will be available for funding Phase I of awarded projects. Applications which do not state that the applicant will cost share 20% or more of Phase I and 20% or more of Phase II, will not be evaluated. At the end of Phase I, a go/no go decision will be made by the DOE and project participants as to whether the project will continue into Phase II. The DOE's decision will be based on the results of Phase I and the availability of funds. An additional $1,000,000 is anticipated to be available for funding Phase II projects. Private industry, educational institutions, nonprofit organizations, individuals, or other private organizations are invited to respond to this announcement. Applications from Federal agencies and/or laboratories owned, operated, or under the cognizance of the Federal Government will not be considered for selection and should not respond.

DATES: This solicitation will be issued on April 15, 1988. Applications are due by July 18, 1988.

Contracts: Potential applicants desiring to receive a copy of this solicitation should provide a written request to: E. M. Bowhan, Contracts Management Division, U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402.

Issued at Idaho Falls, Idaho, on April 13 1988.

H. B. Clark,
Director, Contracts Management Division

[FR Doc. 88-8833 Filed 4-21-88; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER88-343-000 et al.]

Northern States Power Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

April 19, 1988.

Take notice that the following filings have been made with the Commission:

1. Northern States Power Company

[Docket No. ER88-343-000]

Take notice that on April 13, 1988, Northern States Power Company (Minnesota) (NSP) tendered for unilateral filing as an initial rate six copies of unexecuted service agreements and rate schedules for transmission service provided by NSP to the following customers: the cities of Adrian, Jackson, Mountain Lake, Lakefield, Springfield, Westbrook, Windom, and Worthington, Minnesota, and Cooperative Power Association (CPA).

The eight cities and CPA purchase power and energy from either the Missouri Basin Municipal Power Agency (MBMPA) or the Western Area Power Administration (WAPA) or both. They require transmission service from NSP to deliver that power and energy from NSP interconnections with WAPA to NSP's interconnections with the system of Interstate Power Company, with which they are directly connected. The Company seeks in this filing to bring service to the eight cities and CPA under its current transmission rate of $14.77 per kilowatt per year filed on October 30, 1987 to reflect the reduction in the Federal income tax rate from 46% to 34%. That filing was accepted by order of December 4, 1987 in Docket No. ER88-76-000.

NSP requests that the present filing to place the eight cities and CPA on the $14.77 rate be allowed to become effective on July 1, 1988.

NSP has served copies of the filing on each affected customer and state commission.

Comment date: May 3, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Columbus Southern Power Company

[Docket No. ER88-344-000]

Take notice that on April 14, 1988, Columbus Southern Power Company (CSP) tendered for filing a Supplemental Agreement (Agreement) between the City of Westerville, Ohio (Westerville) and CSP dated as of January 1, 1988. The Agreement between Westerville and CSP revises the service agreements entered into as of March 12, 1982, May 1, 1983, and June 1, 1986, so as to provide Westerville with a reduced rate for long-term full requirements service and to reflect the decrease in the Federal corporate income tax rate pursuant to the Tax Reform Act of 1986.

CSP and Westerville request an effective date of January 1, 1988, and therefore request waiver of the Commission's notice requirements.

Copies of the filing were served upon the Public Utilities Commission of Ohio and the City of Westerville, Ohio.

Comment date: May 3, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. HL Power Company

[Docket No. ER88-345-000]

Take notice that on April 14, 1988, HL Power Company (HLPC) tendered for filing, pursuant to 18 CFR 35.1 and 35.12, proposed HL Power Company Initial Rate Schedule No. 1 and Rate Schedule No. 2, applicable to the sale of energy and capacity by HLPC to Pacific Gas and Electric Company (PG&E) from a 32 net NW geothermal/biomass fueled small power production facility to be constructed near Wendel in Lassen County, California (Facility). HLPC applied for Federal Energy Regulatory Commission (FERC) certification of the Facility's qualifying status under Section 201 of the Public Utility Regulatory Policies Act of 1978 (PURPA) on January 11, 1988 in Docket No. QF 88-189-000.

The proposed Initial Rate Schedule is set forth in that certain "As-Delivered Capacity and Energy Standard Offer No. 1 Power Purchase Agreement," dated March 22, 1985, between GeoProducts Corporation and PG&E (SO-1).[1] The SO-1 is an unmodified "standard offer" pre-approved by the California Public Utilities Commission (CPUC). It establishes that the rate for sales to PG&E shall be equal to PG&E's full short run avoided operating costs as approved by the CPUC.

The proposed Rate Schedule No. 2 is set forth in that certain "Long Term Energy and Capacity Standard Offer No. 4 Power Purchase Agreement," dated March 22, 1985, between GeoProducts Corporation and PG&E (SO-4).[2] The SO-4 is an unmodified "standard offer" pre-approved by the CPUC. It establishes that the rate for sales of energy and capacity to PG&E for the first ten years shall be at the state-forecast prices as set forth in the SO-4. Thereafter, rates for sales shall equal PG&E's full short run avoided operating costs.

HLPC requests waivers of, or pre-approval pursuant to the followng provisions of FERC's regulations: 18 CFR Parts 33, 41, 45, 46, 50, 101, and 141 and 18 CFR 35.3(b), 35.12(b)(2)(ii), and 35.15(b)(5).

Due to the fact that the proposed rate schedules are not based on the cots of the selling utility (HLPC) to produce the power, but rather on the avoided costs of the purchasing utility (PG&E), extensive and detailed reporting of HLPC costs are therefore not required to enable FERC to evaluate the justness and reasonableness of the proposed rates nor does HLPC possess significant market power, or serve direct customers such that the full weight of the protective provisions of the Federal Power Act must be imposed.[3]

Comment date: May 3, 1988, 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 N.E., 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

[1] The SO-1 and was assigned to GeoPower Corporation (GeoPower), a wholly-owned subsidiary of GeoProducts, pursuant to that certain Agreement of Transfer and Assignment of Assets, dated September 3, 1986 and, for financing purposes only, to Commercial Union Leasing Corporation (CULC), which assignments received PG&E's written consent on January 15, 1987. GeoPower subsequently assigned the SO-1 to HLPC pursuant to that certain Assignment Agreement dated as of March 1, 1988, which assignment was consented to by PG&E on April 7, 1988. (The CULC security interest was terminated on April 7, 1988).

[2] The SO-4 was assigned to GeoPower pursuant to that certain Agreement of Transfer and Assignment of Assets, dated September 3, 1986, and, for financing purposes only, to CULC, pursuant to that certain Assignment Agreement, dated as of March 1, 1988, which assignments received PG&E's written consent on September 10, 1986. Subsequently, GeoPower assigned the SO-4 to HLPC on March 23, 1988, which assignment received PG&E's consent on April 7, 1988. (The CULC security interest was terminated on April 7, 1988).

[3] See, *e.g. Orange and Rockland Utilities, Inc.*, 42 FERC ¶61,012 (1988), *St. Joe Minerals Corp.*, 23 FERC ¶61,208 (1983), *Wheelabrator-Frye, Inc.*, 19 FERC ¶61,266 (1982) and *Resource Recovery (Dade County), Inc.*, 20 FERC ¶61,138 (1982).

must file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-8882 Filed 4-21-88; 8:45 am]

BILLING CODE 6717-01-M

New Filing Location

April 18, 1988.

Effective April 25, 1988, all filings hand-delivered by anyone other than Commission Staff are to be submitted to the Secretary through the Public Reference Room (Room 1000). The purpose of this change is to restrict messenger traffic to the first floor. Commission Staff should continue to submit its filings to Room 3110. The staff of the Public Reference Room will time-stamp filings (and return stamped copies if requested). Anyone with courtesy copies of filings to be delivered to other Commission offices should leave them with the staff of the Public Reference Room for delivery. Further processing of filings will be done by the Dockets Branch. Filings will be subject to rejection for lack of applicable fees and proper number of copies.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-8881 Filed 4-21-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. F-88-MTFN-FFFFF; FRL-3368-5]

Municipal Solid Waste Task Force

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) today announces the formation of a Municipal Solid Waste Task Force (The "Task Force") in the Office of Solid Waste (OSW) whose prinicpal function is the development of a national strategy regarding the management of municipal solid waste. The Agency intends to develop and announce this national strategy during 1988 and is, at this time, seeking initial public input to its development.

DATES: The Agency is requesting that all information submitted in response to today's notice be submitted on or before May 13, 1988. Three public meetings will be held in Boston, Massachusetts on May 9, 1988, Seattle, Washington on May 11, 1988, and Dallas, Texas on May 13, 1988.

ADDRESSES: (1) *Public Meetings*—The public meetings will be held to receive public comments on the development of a national strategy regarding municipal solid waste management. Oral and written statements or information may be submitted at the public meetings. The Task Force is expecially interested in oral presentations that focus on two areas. The first topic of interest is identification of issues on which the Task Force should focus in developing a national strategy. Second, the Task Force is seeking comments on the appropriate roles for federal, state, and local government, industry, and the general public in managing the municipal solid waste problem. Oral presentations must be limited to a maximum of 10 minutes. In addition, time will be available at the end of the day for general comments from the public. The meetings will begin at 10:00 a.m. and will be held in the following locations:

May 9, 1988
Sheraton Needham Hotel
100 Cabot Street
Needham Heights, Massachusetts

May 11, 1988
Seattle Center
Lopez Room (Inside Center Grounds at NW Corner) 1st Avenue North and Republican Streets
Seattle, Washington

May 13, 1988
U.S. Environmental Protection Agency
12th Floor Conference Room
1445 Ross Avenue
Dallas, Texas

Those persons interested in speaking at the public meetings should call the RCRA Hotline at 1-800-424-9346 on or before May 5, 1988 to botain scheduling information.

(2) *Written Comments*—The public should send one or more copies of their comments and/or information in response to this notice to the following address: EPA RCRA Docket (WH-562), 401 M Street SW., Washington, DC 20406. Comments should be identified by regulatory docket reference code F-88-MTFN-FFFFF. The docket is open from 9:30 a.m. to 3:30 p.m. Monday through Friday, except for federal holidays. The public must make an appointment to reveiw docket materials and should call Michelle Lee at (202) 475-9327 for appointments. The public may copy at no cost a maximum of 50 pages of meterial from any one regulatory docket. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: Susie Goldring, Municipal Solid Waste Task Force, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-6261.

SUPPLEMENTARY INFORMATION: .

I. Authority

The authority for the activities discussed in this notice are found in the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 *et seq.* and in the Toxic Substances Control Act, as amended, 15 U.S.C. 2601 *et seq.*

II. Background

Many areas of the United States are today facing very serious difficulties in managing municipal solid waste. In some areas, particularly the large-population metropolitan areas, the problem has been described as reaching crisis proportions. The problem can be illustrated as follows:

- We as a nation relentlessly produce more and more muinicipal solid waste, about 150 million tons per year now, with about a 20% increase expected by the year 2000. Options for reducing the amount of solid waste needing disposal, such as source reduction and recycling, are only beginning to be seriously considered as important components of solid waste management in many areas of the United States.
- Nearly one-third of existing municipal solid waste landfills will be full in about the next 5-7 years. A few examples: in Connecticut all landfill capacity will be largely exhausted by 1990 and in Illinoois by 1993. New York State has had 18 landfills closed recently with no new ones opened. Los Angeles expects to run out of landfill capacity within about 5-6 years.
- Many existing municipal solid waste landfills are inadequately located, designed, operated, or maintained and are, therefore, less than fully protective of human health and the environment. Although closure or upgrading of these facilities is necessary, such closures contribute to the solid waste management dilemma in the sense that available, albeit substandard, disposal options are reduced.
- Largely in response to the need for enahnced measures for environmental protection, and because of the increased scarcity of available sites for many communities, costs of waste management are soaring. In some areas, disposal costs range up to and over $100 per ton, whereas only a few years ago costs were frequently less than $10 per ton.
- Incinerators, which have advantages such as greatly reducing waste volumes and the potential for

energy generation, are proving difficult to site due to concerns over air emissions. In addition, ash management and disposal is a significant problem area for incinerators.

Due to (1) the magnitude of municipal solid waste management problems facing this country, (2) the elements of commonality present in certain of these issues for many states and municipalities, and (3) the fact that some possible solutions are regional, interstate, or federal in nature, the Agency believes that a national strategy for the management of municipal solid waste is necessary.

III. Goals of the Task Force

The goals of EPA's Municipal Solid Waste Task Force are to develop a national strategy for effective management of municipal solid waste and to identify how the strategy can be implemented. In working towards these goals, the Task Force intends to accomplish the following:

(1) Identify current practices and programs regarding municipal solid waste management, including federal state, regional, municipal, and foreign programs. Identification of these programs will include legislative and regulatory programs at all levels of government, as well as actual generation, collection, transport, treatment, storage, and disposal practices.

(2) Identify the problems causing ineffective management of municipal solid waste.

(3) Identify and publicize successful programs for municipal solid waste management.

(4) Establish and maintain effective communication with all parties involved with management of municipal solid waste.

(5) Identify existing federal authorities regarding municipal solid waste.

(6) Identify incentives and barriers to source reduction, recycling, and other waste management options.

(7) Identify appropriate roles for federal, state, and local government, private industry, and the general public and actions for which each should be responsible.

(8) Identify ongoing research, as well as needed research, regarding municipal solid waste management.

(9) Issue a draft strategy report in July 1988 and a final strategy document in December 1988. Public meetings on the strategy report will be held in several locations nationally following both the draft and final issuances.

IV. Scope of the Municipal Solid Waste Strategy

In its work, EPA intends to develop a national strategy for addressing municipal solid waste. This strategy will build on work underway in the Agency and by others and will address the following areas:

(1) The role and feasibility of:

- Source Reduction
- Recycling
- Waste Treatment
- Incineration/Energy Recovery
- Landfilling

(2) The health and environmental impacts of all major aspects of and options for municipal solid waste management.

(3) Current and future capacity/capability issues.

(4) The need for and types of public education and information regarding municipal solid waste management.

(5) The following components of the municipal solid waste stream will be addressed, including volume, types, sources, current practices, recycling/reuse markets and value, scarcity of material, toxicity, energy value, impacts of waste management capacity, etc. The scope of assessment will depend on the particular component.

- Paper/Paper Products
- Plastics
- Food/Yard Wastes
- Tires
- Ferrous Metals
- Non-Ferrous Metals
- Glass
- Batteries (wet and dry)
- "White Goods"/Appliances
- Municipal Waste Combustion Ash
- Asbestos
- Municipal Sewage Sludge
- Used Oil
- Household Hazardous Waste
- Small Quantity Generator Hazardous Waste
- Infectious Waste

(6) Several other wastes will not be directly addressed by the Task Force, including construction and demolition waste, automobiles, and non-hazardous industrial sludge.

(7) The appropriate role for governmental procurement of recycled materials.

(8) The need for federal incentives for source reduction and recycling markets and programs.

(9) The need for and role of product and raw material substitution to increase waste recyclability or reduce the toxicity or volume of wastes.

V. Request for Information

The Municipal Solid Waste Task Force is interested in receiving comments and information pertaining to the goals and scope of the Task Force's work as identified above. The Task Force is particularly interested in receiving information on successful municipal waste management efforts and programs at the Federal, state, local, and foreign government levels in the private sector.

Date: April 18, 1988.

Jack W. McGraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 88-8855 Filed 4-21-88; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3363-7]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5075 or (202) 382-5074. Availability of Environmental Impact Statements Filed April 11, 1988 Through April 15, 1988 Pursuant to 40 CFR 1506.9.

EIS No. 880114, Final, BLM, WY, Sohare Creek Unit Exploratory Oil Well No. 1-35, Approval and Permits, Bridger-Teton National Forest, Teton County, WY, Due: May 23, 1988, Contact: Bill McMahan (307) 382-5350. Department of the Interior/Bureau of Land Management and the Department of Agriculture and Joint Lead Agencies on this project.

EIS No. 880115, Final, AFS, OR, Bull Run Blowdown Wind Damaged Trees Management Plan, Implementation, Mt. Hood National Forest, Clackamas, Hood River and Multnomah Counties, OR, Due: May 23, 1988, Contract: E. R. Hardman (503) 695-2276.

EIS No. 880116, Draft, BLM, AK, Beaver Creek Watershed, Placer Mining Management Plan, Approval and 404 Permit, Implementation, White Mountain National Recreation Area, Anchorage, AK, Due: June 20, 1988, Contact: Richard Dworsky (907) 271-3114.

EIS No. 880117, Draft, NPS, AK, Wrangell-St. Elias National Park and Preserve Wilderness Recommendations, Designation or Nondesignation AK, Due: July 18, 1988, Contact: Linda Nebel (907) 257-2654.

EIS No. 80118,Final, NPS, ID, MT, WY, Fishing Bridge Developed Area, Development Concept Plan, Implementation, Yellowstone National Park, Fremont County, ID, Park and Gallatin Counties, MT and Park and Teton Counties, WY, Due: May 23,

1988, Contact: Christine L. Turk (303) 969–2310.

EIS No. 880119, Final, UAF, GU, Uruno Beach (Urunao Beach) Cleanup Program, Implementation, Guam, Due: May 23, 1988, Contact: Bill Taylor (402) 294–5854.

Dated: April 19, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88–8879 Filed 4–21–88; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3368–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 4, 1988 through April 8, 1988 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Polciy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5075/76.

Summary of Rating Definitions

Environmental Impact of the Action
LO—Lack of Objections

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC—Environmental Concerns

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

EO—Environmental Objections

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EO—Environmental Unsatisfactory

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEO.

Adequacy of the Impact Statement
Category 1—Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonable available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2—Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category 3—Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

Final EISs

ERP No. F–AFS–D02003–VA. South Coeburn Field, Natural Gas Pipeline and Road Construction and Drilling Development, Approval, Jefferson National Forest, Clinch Ranger District, Wise and Scott Counties, VA.

Summary

Most of the concerns EPA raised on the draft have been satisfactorily addressed. However, some concern still remains regarding the impact to sensitive habitat from excessive run-off during major storm events.

Note: This review should have appeared in the FR Notice published on 4–15–88.

Dated: April 19, 1988.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 88–8880 Filed 4–21–88; 8:45 am]

BILLING CODE 6560–50–M

[ECAO–R–076 FRL–3368–6]

Draft Health Assessment Document for Methyl Isocyanate

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a workshop to be held by the Environmental Criteria and Assessment Office of EPA'S Office of Health and Environmental Assessment to facilitate preparation of an external review draft of a Health Assessment Document for Methyl Isocyanate. The conference site is the Ramada Inn, 1520 Blue Ridge Road, Raleigh, North Carolina.

DATES: The workshop will be held on May 2 and 3, 1988, from 8:30 a.m. to 4:30 p.m. Members of the public are invited to attend as observers.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Greenberg, Project Manager for Methyl Isocyanate, U.S. Environmental Protection Agency, Environmental Criteria and Assessment Office, MD–52, Research Triangle Park, NC 27711 (919) 541–4156 or (FTS 629–4156).

SUPPLEMENTARY INFORMATION: In the fall of 1987, EPA's Office of Air Quality Planning and Standards (OAQPS) requested that the Environmental Criteria and Assessment Office (ECAO), Office of Health and Environmental Assessment (OHEA), prepare a health assessment document for methyl isocyanate. The document will be used by EPA in the decision-making process to possibly regulate methyl isocyanate under the Clean Air Act, 42 U.S.C., 7401 et seq.

ECAO is now assembling a panel of scientifically and technically qualified persons to review the draft document at

the workshop. Copies of the workshop draft will be made available to the public at the meeting, and observers will have an opportunity to make brief oral statements. The draft document subsequently will be revised and released as an external review draft. Ample opportunity will be provided for public review and submission of written comments upon release of the first external review draft. The public comment period will be announced in a subsequent **Federal Register** notice.

Date: April 12, 1988.

Carl R. Gerber,

Acting Assistant Administrator for Research and Development.

[FR Doc. 88-8858 Filed 4-21-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-44022; FRL-3369-1]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces test data submissions received by EPA during January–March, 1988, from voluntary industry testing programs on certain chemical substances or groups of chemicals considered by EPA under section 4 of the Toxic Substances Control Act (TSCA).

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-B44, 401 M Street SW., Washington, DC 20460, Telephone: (202) 382-3790.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires the EPA to issue a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a). In the **Federal Register** of June 30, 1986 (51 FR 23705), EPA issued procedures for entering into Enforceable Consent Agreements (ECAs) under section 4 of TSCA. Those procedures provide that EPA will follow the procedures specified in section 4(d) in providing notice of test data received pursuant to ECAs. In addition, EPA from time to time receives industry submissions of test data developed voluntarily (*i.e.*, not under test rules or ECAs) on chemicals EPA has considered for testing under section 4. Although not required by section 4(d), EPA issues periodically notices of receipt of such test data.

I. Test Data Submissions

This notice announces test data submissions received during January–March, 1988, from voluntary industry testing programs.

The following table lists the chemicals by Chemical Abstracts Service Registry Number (CAS No.), date received, submitter, and study.

TABLE 1.—VOLUNTARY TEST DATA SUBMISSIONS UNDER TSCA SECTION 4, 2ND QUARTER (JANUARY–MARCH) FY '88

Chemical	CAS No.	Date received	Submitter	Study
Butylbenzylphthalate	85-68-7	Feb. 2, 1988	Monsanto Chemical Co	Acute toxicity to mysid shrimp (*Mysidopsis bahia*) under 96-h flow-through conditions.
Biphenyl	92-52-4	Feb. 10, 1988	Dow Chemical Co	Chronic toxicity to *Daphnia magna* Straus under 21-day flow-through conditions.
Octamethylcyclotetrasiloxane	556-67-2	Feb. 10, 1988	Dow Chemical Co	Chronic reproductive limit test to *D. magna*.
4-(1,1,3,3-tetramethylbutyl)phenol	140-66-9	Feb. 23, 1988	CMA [1]	Chronic toxicity to *D. magna* under flow-through conditions.
Butylbenzylphthalate	85-68-7	Mar. 10, 1988	Monsanto Chemical Co	Experimental freshwater microcosm biodegradability (Orig. date: Sept. 17, 1986; Rev. date: Jan. 28, 1988).

CMA[1] Chemical Manufacturers Association.

EPA has established a public record for this quarterly receipt of data notice (docket number OPTS-44022). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the OPTS Reading Room, NE-G004, 401 M Street SW., Washington, DC 20460.

Dated: April 15, 1988.

Joseph J. Merenda,

Director, Existing Chemical Assessment Division.

[FR Doc. 88-8856 Filed 4-21-88; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-44505; FRL-3368-9]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on bisphenol A (BPA), submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room EB-55, 401 M Street SW., Washington, DC 20460, (202), 554-1404.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after the data is received.

I. Test Data Submission

Test data for bisphenol A (BPA), CAS No. 80-05-7, was submitted by the Dow Chemical Company pursuant to a test rule at 40 CFR 799.940. It was received

by EPA on April 7, 1988. The submission describes a 13-week aerosol toxicity study with Fischer 344 rats. Inhalation toxicity testing is required by this test rule. BPA is used in the manufacture of polycarbonate resins, epoxy resins, and polysulfone and phenoxy resins.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the submission's completeness.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44505). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Room NE-G004, 401 M Street SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: April 15, 1988.

J. Merenda,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 88-8857 Filed 4-21-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Requirement Approval by Office of Management and Budget

April 14, 1988.

The following information collection requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513

OMB No.: 3060-0016
Title: Application for Authority to Construct or Make Changes in a Low Power TV, TV Translator or TV Booster Station
Form No.: FCC 346. A revised application form has been approved for use through 1/31/91. The May 1987 edition with a previous expiration date of 1/31/88 will remain in use until revised forms are available. At that time, a Public Notice will be issued containing information on availability and implementation

OMB No.: 3060-0017
Title: Application for a Low Power TV, TV Translator or TV Booster Station License
Form No.: FCC 347. A revised application form has been approved for use through 1/31/91. The June 1987 edition with an expiration date of 4/30/89 will remain in use until revised forms are available. At that time, a Public Notice will be issued containing information on availability and implementation

OMB No.: 3060-0405
Title: Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station
Form No.: FCC 349. A new application form has been approved for use through 1/31/91. A Public Notice will be issued containing information on availability and implementation

OMB No.: 3060-0404
Title: Application for an FM Translator or FM Booster Station License
Form No.: FCC 350. A new application form has been approved for use through 1/31/91. A Public Notice will be issued containing information on availability and implementation

OMB No.: 3060-0113
Title: Broadcast Equal Employment Opportunity Program Report
Form No.: FCC 396. A revised report form has been approved for use through 9/30/90. The January 1988 edition is currently being mailed out with renewal packages. All previous editions are obsolete

OMB No.: 3060-0057
Title: Application for Equipment Authorization
Form No.: FCC 731. A revised application form has been approved for use through 1/31/91. The March 1985 edition with a previous expiration date of 1/31/88 will remain in use until the revised March 1988 edition is available. At that time all previous editions will be obsolete

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-8845 Filed 4-21-88; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

April 14, 1988.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on this submission contact Terry Johnson, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (203) 395-4814.

OMB Number: None
Title: Sections 1.720-1.734, Formal Complaints Against Common Carriers
Action: Existing collection in use without an OMB control number
Respondents: Individuals or households, businesses or other for-profit (including small businesses), and non-profit institutions
Frequency of Response: On occasion
Estimated Annual Burden: 200 Responses, 2,000 Hours
Needs and Uses: Section 208 of the Communications Act, 47 U.S.C. 208, provides that any person may file a complaint with the Federal Communications Commission regarding acts or omissions of common carriers subject to the Communications Act. This section obligates the Commission to serve such complaints on the affected carrier for response or resolution. Section 208 also obligates the Commission to investigate unsatisfied complaints. Sections 1.720 through 1.734 of the Commission's rules (47 CFR 1.70-1.734) were promulgated to implement section 208.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-8846 Filed 4-21-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Center Banks Inc. et al.; Formations of; Acquisitions by; and Mergers of Banks Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a

written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 13, 1988.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Center Banks Incorporated,* Skaneateles, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Skaneateles Savings Bank, Skaneateles, New York, which operates a savings bank life insurance department.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Pikeville National Corporation,* Pikeville, Kentucky; to acquire 100 percent of the voting shares of The Exchange Bank of Kentucky, Mt. Sterling, Kentucky.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Liberty National Bancorp, Inc.,* Louisville Kentucky; to acquire 100 percent of the voting shares of Bank of Jessamine, Inc., Nicholasville, Kentucky.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Meader Insurance Agency, Inc.,* Waverly, Kansas; to acquire 24.6 percent of the voting shares of Coffey County Bank Shares, Inc., Burlington, Kansas, and thereby indirectly acquire The Strawn State Bank, New Strawn, Kansas.

2. *Woodland Holding Company,* Woodland Park, Colorado; to become a bank holding company by acquiring 80 percent of the voting shares of Mountain National Bank, Woodland Park, Colorado.

Board of Governors of the Federal Reserve System, April 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-8938 Filed 4-21-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies; O.T. Dorton

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they 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 indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 9, 1988.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *O.T. Dorton,* to acquire 4.0 percent; Betty M. Dorton, to acquire 1.7 percent; Flora B. Dorton, to acquire 4.4 percent; and D.H. Dorton Trust, to acquire 1.9 percent of the voting shares of Citizens National Corporation, Paintsville, Kentucky. All of the Applicants reside in Paintsville, Kentucky.

Board of Governors of the Federal Reserve System, April 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-8939 Filed 4-21-88; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies; Richard A. Fait

The notificant listed below has applied under the change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they 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 indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 11, 1988.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Richard A. Fait,* to acquire 47 percent of the voting shares of Investment Corporation of America, Sioux Falls, South Dakota, and thereby indirectly acquire The Peoples Bank, Conde, South Dakota.

Board of Governors of the Federal Reserve System, April 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-8940 Filed 4-21-88; 8:45 am]

BILLING CODE 6210-01-M

Great Bay Bankshares, Inc. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 12, 1988.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Great Bay Bankshares, Inc.*, Dover, New Hampshire; to engage *de novo* through its subsidiary, Constitution Trust Company, Dover, New Hampshire, in trust company functions pursuant to § 225.25(b)(3) of the Board's Regulation Y.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Frontier Group Incorporated*, La Palma, California; to engage *de novo* through its subsidiary, Frontier Services, Inc., La Palma, California, in originating and brokering real estate loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-8941 Filed 4-21-88; 8:45 am]

BILLING CODE 6210-01-M

NESB Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 13, 1988.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *NESB Corp.*, New London, Connecticut; to acquire 100 percent of the voting shares of OmniBank of Connecticut, Inc., Madison, Connecticut.

B. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *United National Bancorp*, Branchburg, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Newco National Bank, Plainfield, New Jersey (an interim bank); United National Bank, Plainfield, New Jersey; and The First National Bank of Blairstown, Blairstown, New Jersey.

2. *Vista Bancorp, Inc.*, Phillipsburg, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of The Phillipsburg National Bank & Trust Company, Phillipsburg, New Jersey.

C. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *NCNB Corporation*, Charlotte, North Carolina; to merge with USBancorp, Inc., St. Petersburg, Florida, and thereby indirectly acquire USBank, St. Petersburg, Florida.

D. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *BancSecurity Corporation*, Marshalltown, Iowa; to acquire 100 percent of the voting shares of Kellogg-Sully Bank & Trust, Kellogg, Iowa.

E. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *First Bank System, Inc.*, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Cottage Grove Bancorporation, Inc., Cottage Grove, Minnesota, and thereby indirectly acquire Minnesota National Bank—Cottage Grove, Cottage Grove, Minneapolis.

Board of Governors of the Federal Reserve System, April 19, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-8942 Filed 4-21-88; 8:45 am]

BVILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on April 1, 1988.

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-1238 for copies of package)

1. PRO Contracts—Solicitation of Statements of Interest—42 CFR 462.102 and 462.103—NEW—This notice is a solicitation of sources for the procurement of medical review services. The information is required for potential contractors to demonstrate that they meet the statutory requirements as peer review organizations. Respondents: Small businesses or organizations. Number of Respondents: 1; Frequency of Response: Occasionally; Estimated Annual Burden: 1 hour.

2. HMO/CMP Disenrollment Form—0938-0506—This form is completed by the Social Security field offices if medicare beneficiaries wish to disenroll from an HMO/CMP. Respondents: Individuals or households, Businesses or other for-profit. Number of Respondents: 12,000; Frequency of Response: Occasionally; Estimated Annual Burden: 396 hours.

OMB Desk Officer: Allison Herron.

Social Security Administration

(Call Reports Clearance Officer on 301-965-4149 for copies of package)

1. Transitional Employment Reinterview Project—NEW—This survey will collect information to determine the effectiveness of the transitional employment services in increasing employment and economic independence of SSI recipients with mental retardation. Respondents: Individuals or households. Businesses or other for-profit. Number of Respondents: 1,384; Frequency of Response: 1; Estimated Annual Burden: 664 hours.

2. Request for Waiver and Recovery Questionnaire—0960-0037—The SSA-632 is needed by the Social Security Administration to collect information which is used to determine whether a person who has been overpaid benefits has the ability to repay them, or if SSA can authorize a waiver of the overpayment. Respondents: Individuals or households. Number of Respondents: 500,000; Frequency of Response: Occasionally; Estimated Annual Burden: 333,333 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Public Health Services

(Call Reports Clearance Officer on 202–245–2100 for copies of package)

Centers for Disease Control

1. Family of HIV Seroprevalence Surveys—NEW—This study is designed to measure the level of HIV prevalence in the U.S. It consists of a family of both blinded and non-blinded serologic surveys among patients in TB clinics, STD clinics, family planning and other women's health clinics and drug abuse treatment clinics, as well as studies among HIV positive blood donors and transfusion recipients and their heterosexual partners. Responsents: Individuals or households. Number of Respondents: 42,393; Frequency of Response: One-time; Estimated Annual Burden: 11,495 hours.

Food and Drug Administration

1. Sponsored Compounds in Food-Producing Animals; Criteria and Procedures for Evaluating Safety of Carcinogenic Residues—0910–0228—Although the FD&C Act prohibits approval of food additives, new animal drugs, and color additives that have been shown to induce cancer in animals or humans, there are exceptions under specified conditions. Section 512(d)(1)(H) allows approval when such drugs will not adversely affect the animals and more importantly no residue of the drug will be found in the edible portions of the animal. 21 CFR 500, Subpart E addresses FDA's operational definition of no residue. Respondents: Businesses or other for-profit. Number of Respondents: 0; Frequency of Response: 0; Estimated Annual Burden: 1 hour.

2. Good Laboratory Practice Regulations for Nonclinical Laboratory Studies—21 CFR 58—0910–0119—The GLP regulations are intended to assure the quality and integrity of the safety data submitted to FDA in support of the approval of regulated products. The required information will help assure that only safe products are approved for marketing. Respondents: Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations. Number of Respondents: 600; Frequency of Response: Occasionally; Estimated Annual Burden: 1,754,900 hours.

3. Transmittal of Periodic Reports and Promotional Material for New Animal Drugs—0910–0019—These reporting and recordkeeping requirements are required of applicants/New Animal Drugs or Medicated Feeds. FDA uses this information to determine if approval should be withdrawn or suspended. FDA can withdraw or suspend approval if information indicates a product is unsafe or ineffective of if the applicant does not comply with these requirements. Respondents: Businesses or other for-profit, Small businesses or organizations. Number of Respondents: 1,500; Frequency of Response: Occasionally; Estimated Annual Burden: 17,275 hours.

National Institutes of Health

1. Basic Office of Cancer Communications (OCC) National Knowledge, Attitude and Behavior Survey (National KAB Survey)—NEW—The National KAB survey will be an on-going tracking system of the public's knowledge, attitudes and behavior as they relate to cancer and OCC programs. 2653 interviews will be completed each year, 50 per week, quarterly reporting of results will be used to tailor future mass communications. Respondents: Individuals or households. Number of Respondents: 3,763; Frequency of Response: Single-time; Estimated Annual Burden: 990 hours.

2. Avoidable Mortality from Cancers in Black Populations: Public Education to Increase Participation of Black Women in Cervical Screening—NEW—A telephone survey of 900 black women will be conducted pre-post a community based cervical cancer education program. The data will help guide NCI's National Cancer Prevention and Control program and provide needed information to assess an educational intervention in the black population. Respondents: Individuals or households. Number of Respondents: 8,953; Frequency of Response: Single-time; Estimated Annual Burden: 534 hours.

OMB Desk Officer: Shannah Koss-McCallum.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202–245–2100

HCFA: 301–594–1238

SSA: 301–965–4149

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503. Attn: (name of OMB Desk Officer).

Date: April 19, 1985.

James F. Trickett,

Deputy Assistant Secretary, Administrative and Management Services.

[FR Doc. 88–8894 Filed 4–21–88; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 88N–0148]

Drug Export; ENLON® (Edrophonium Chloride Injection, USP)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Anaquest has filed an application requesting approval for the export of the human drug ENLON® (edrophonium chloride injection, USP) to Canada and Switzwerland.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFN–310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Anaquest, 100 Mountain Ave., Murray

Hill, New Providence, NJ 07974, has filed an application requesting approval for the export of the drug ENLON® (edrophonium chloride injection, USP) to Canada and Switzerland. This drug is recommended as a reversal agent or antagonist of nondepolarizing muscle relaxants (neuromuscular blocking agents) such as tubocurarine, atracurium, vecuronium, metocurine or pancuronium, and as adjunctive therapy in the treatment of respiratory depression caused by curare overdosage. The application was received and filed in the Center for Drug Evaluation and Research on April 8, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by May 2, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: April 13, 1988.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 88-8834 Filed 4-21-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88E-0132]

Determination of Regulatory Review Period for Purposes of Patent Extension; Novantrone®

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Novantrone® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

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

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Novantrone® (mitoxantrone hydrochloride) which, in combination with other approved drugs, is indicated in the initial therapy of acute nonlymphocytic leukemia in adults. Subsequent to this approval, the Patent and Trademark Office received two patent term restoration applications for Novantrone® from American Cyanamid Co. (U.S. Patent Nos. 4,278,689 and 4,197,249) and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated March 7, 1988, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the active ingredient, mitoxantrone hydrochloride, represented the first permitted commercial marketing or use of that active ingredient. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period. A regulatory review period determination for the product under U.S. Patent No. 4,278,689 was published in the **Federal Register** on March 30, 1988 (53 FR 10291). This notice of regulatory review period determination pertains to the application for U.S. Patent No. 4,197,249 and is essentially identical to the previous notice of regulatory review period determination.

FDA has determined that the applicable regulatory review period for Novantrone® is 3,145 days. Of this time, 1,836 days occurred during the testing phase of the regulatory review period, while 1,309 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* May 16, 1979. The applicant claims April 16, 1979, as the date the investigational new drug application (IND) for the drug became effective. However, FDA records indicate that the IND was received on April 16, 1979, and pursuant to FDA regulations, became effective on May 16, 1979.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* May 24, 1984. The applicant claims that a new drug application for Novantrone® (NDA 19-297) was initially submitted on May 18, 1984. However, FDA did not receive the application until May 24, 1984.

3. *The date the application was approved:* December 23, 1987. FDA has verified the applicant's claim that NDA 19-297 was approved on December 23, 1987.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 21, 1988, submit to the

Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 19, 1988, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 14, 1988.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 88–8866 Filed 4–21–88; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation: Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meeting: San Francisco District Office, chaired by Ronald M. Johnson, District Director. The topic to be discussed is the new drug approval process.

DATE: Friday, May 6, 1988; 10 a.m. to 12 m.

ADDRESS: Clemens Room, Clark County Health Department, 625 Shadow Lane, Las Vegas, NV 89127.

FOR FURTHER INFORMATION CONTRACT: Janet McDonald, Consumer Affairs Officer, Food and Drug Administration, 50 United Nations Plaza, Rm. 524, San Francisco, CA 94102, 415–556–1457.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationship between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: April 15, 1988.

John M. Taylor,

Assoicate Commissioner for Regulatory Affairs.

[FR Doc. 88-8867 File 4-21-88; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

"Low Income Levels" for Health Careers Opportunity Program, Financial Assistance for Disadvantaged Health Professions Students, Nursing Special Project Grants, and Area Health Education Centers

This Notice updates the income levels that are used to define a "low income family" for the support of training for individuals from disadvantaged backgrounds as provided for under section 787, Health Careers Opportunity Program, and the program of Financial Assistance for Disadvantaged Health Professions Students, section 820, Nursing Special Project Grants, and section 781, Area Health Education Centers of the Public Health Service Act as amended.

Sections 57.1804(b)(2) and 57.1905(b)(2) of the progam regulations (42 CFR Part 57, Subparts S and T) require that the Secretary publish periodically in the **Federal Register** the low income levels which will be used for Public Health Service grants to institutions which provide training for individuals from disadvantaged backgrounds.

The Health Professions Training Assistance Act of 1985, enacted on October 22, 1985, amended section 787 to include stipends under subsections (a)(2)(F) and (b) to individuals from disadvantaged backgrounds and of exceptional financial need (as defined by regulations issued by the Secretary under section 758), who are students at schools of medicine, osteopathy or dentistry.

The income figures below were taken from low income levels, published by the U.S. Bureau of the Census, using an index adopted by a Federal Interagency committee for use in a variety of Federal Programs, then mutiplied by a factor of 1.3 for adaptation to health professions grant programs for which training for individuals from disadvantaged backgrounds is supported. The income figures have been updated to reflect increases in the Consumer Price Index through December 31, 1987.

Size of parents family [1]	Income level [2]
1	$7,600
2	9,900
3	11,800
4	15,100
5	17,800
6 or more	20,000

[1] Includes only dependents listed on Federal income tax forms.

[2] Rounded to $100. Adjusted gross income for calendar year 1987.

Dated: April 18, 1988.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 88–8868 Filed 4–21–88; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Announcement of Availability of Grants for General Family Planning Training Projects

AGENCY: Office of Family Planning, PHS, HHS.

ACTION: Notice.

SUMMARY: The Office of Population Affairs, Office of Family Planning requests applications for grants under the Family Planning Service Training Program authorized under section 1003 of the Public Health Service (PHS) Act [42 U.S.C. 300a–1(a)]. Funds are available to train family planning personnel in order to maintain the high level of performance of family planning service projects.

The Office of Family Planning (OFP) administers Title X of the Public Health Service Act which provides funds for a general training center in each of the ten DHHS regions. The regional training centers provide training to enable service grantees to improve the delivery of family planning services to persons from low-income families and other persons desiring such services.

ADDRESS: Application kits may be obtained from and applications must be submitted to: Grants Management Office, Office of Population Affairs, Room 736E, H.H.H. Building, 200 Independence Avenue SW., Washington, DC 20201.

DATE: Applications must be postmarked or received at the above address no later than close of business June 21, 1988. Private metered postmarks will not be acceptable as proof of timely mailing. Applications which are postmarked or delivered to the Grants Management Office later than June 21, 1988, will be judged late and will not be accepted for review. Applications which do not conform to the requirements of this

program announcement and/or do not meet the assurances for project requirements in 42 CFR Part 59, Subpart C will not be accepted for review. Applicants will be so notified, and the applications will be returned.

FOR FURTHER INFORMATION CONTACT: Grants Management Office at area code 202/245–0146 or Program Office at area code 202/245–0151. Staff are available to answer questions and provide limited technical assistance in the preparation of grant applications.

SUPPLEMENTARY INFORMATION: Title X of the Public Health Service Act, 42 U.S.C. 300 *et seq.*, authorizes the Secretary of Health and Human Services to award grants for projects to provide training for family planning personnel. (Catalog of Federal Domestic Assistance Number 13.260). This notice announces the availability of approximately $1,480,000 in funding for seven general training projects described below. Grants will be made to public and/or private nonprofit organizations to assist in the establishment and operation of regional training centers. The award of a grant will take into account the project's ability to meet DHHS requirements and the extent to which the project will provide high quality training to Title X grantees, delegate agencies and clinics in order to improve the delivery of services to family planning users. Applications are invited for the following seven grants:

One general training grant for Department of Health and Human Services (DHHS) Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont). A funding range of $150,000–$166,000 is under consideration for this grant.

One general training grant for DHHS Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia). A funding range of $247,000–$273,000 is under consideration for this grant.

One general training grant for DHHS Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee). A funding range of $282,000–$311,000 is under consideration for this grant.

One general training grant for DHHS Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin). A funding range of $260,000—$287,000 is under consideration for this grant.

One general training grant for DHHS Region VII (Iowa, Kansas, Missouri, and Nebraska). A funding range of $137,000—$151,000 is under consideration for this grant.

One general training grant for DHHS Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming). A funding range of $125,000—$139,000 is under consideration for this grant.

One general training grant for DHHS Region IX (Arizona, California, Hawaii, Nevada, American Samoa, Trust Territory of the Pacific Islands, Guam, Commonwealth of Northern Mariana Islands). A funding range of $208,000—$230,000 is under consideration for this grant.

Grants will be approved for project periods up to three years. Grants are funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of the grant is contingent upon satisfactory progress of the project, adequate stewardship of Federal funds, and availability of funds.

Statutory and Regulatory Background

Title X of the Public Health Service Act, enacted by Pub. L. 91–572, authorizes grants for projects to provide family planning services to persons from low-income families and others. Section 1001 of the Act (as amended by Pub. L. 94–63 and 95–613) authorizes grants "to assist in the establishment and operation of family planning projects which offer a broad range of acceptable and effective family planning methods, including natural family planning methods, infertility services, and services to adolescents." Section 1003 of the Act, as amended, authorizes the Secretary to make grants to entities and individuals to provide the training for personnel to carry out the family planning service programs.

Prospective applicants and grantees should refer to the regulations in their entirety. The regulations set out at 42 CFR, Part 59, Subpart C, govern grants for general family planning service training.

Role and Operation of the Training Program

The purpose of short-term training, continuing education, in-service education and staff development supported under the Title X General Family Planning training program is to improve or maintain at a high level the performance of family planning service providers.

Under the regulations, "training" means job-specific skill development. This may include traditional classroom or practical training, although development or use of self-paced, self-instructional or mediated training materials which utilize technological advancements in the learning field are also encouraged. Grantees may provide training services directly or indirectly through subcontractors or consultants.

Successful applicants will be required to work closely with a network of agencies including the Federal Central and Regional Office staff, Title X service delivery providers and regional training advisory committees. This involves review and implementation of National and regional training priorities, solicitation of advice from the regional training advisory committee, and consultation with Title X service delivery providers about training priorities, course content and curricula, and adjustments to reflect changing personnel needs or the results of training program self evaluations or post-training feedback from participants or Title X service grantees.

Proposals must focus at least fifty (50) percent of the training effort in the national training priority areas: (1) Clinic management, (2) counseling and client education, (3) family involvement, (4) management of infertility, including adoption, (5) natural family planning (NFP), (6) program management, (7) prevention of sexually transmitted diseases (STDs), including HIV infection and AIDS, (8) adolescent abstinence from premarital sexual activity, and (9) male involvement. (NFP includes various methods and techniques which teach fertility awareness. NFP does not include methods which combine fertility awareness with the use of another contraceptive method as a backup.)

Successful applicants will be responsible for the overall management of a training program within the geographic area for which the grant is made. This role includes:

- Developing an annual training plan, reflecting national and regional priorities and the training needs of local Title X service grantees;
- Developing criteria for selection of staff for training, including prerequisite qualifications. Such criteria should reflect a sensitivity to the unique needs of grantees for certain types of training, priority for rural areas or Health Manpower Shortage Areas (HMSAs), or other relevant factors;
- Developing a process to review training applications from Title X service grantee personnel. Training grantees will make the final decision about candidates' suitability for training, applying the criteria discussed above;
- Maintaining a balanced training program which uses available resources in the most efficient manner. This involves a balance among the various types of training areas, (e.g., administration, financial management, clinical services);

• Monitoring the balance, utility and efficiency of various training courses through trainee post-training evaluation, as well as the evaluation of training effects provided by trainee's supervisors;

• Sharing materials developed with other training programs so as to avoid unnecessary duplication of effort. All materials developed with Title X funds should be made available at cost to other Title X projects upon request;

• Facilitating trainee receipt of continuing education units where appropriate; and

• Planning an annual regional continuing education conference and attending at least one national training meeting annually.

Training grantees must receive approval of all training curricula before use, but submission with the application is not required. Reports on the progress of the training program may be requested of the grantee from time to time by the central office.

Application Requirements

Applications must be submitted on the forms supplied (PHS–5161–1) and in the manner prescribed in the application kits available from the Office of Grants Management. Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organizaiton the obligations imposed by the terms and conditions of the grant award. Applicants are required to submit an original application and two copies.

Accepted applications will be subjected to a competitive review process. The results of this review will assist the Deputy Assistant Secretary for Population Affairs in considering competing applications and in making the final funding decisions.

Any public or private nonprofit organization or agency is eligible to apply for a grant. It is not required that the entities applying for a grant be physically located in these regions at the time of application. However, as specified above, only entities proposing to serve Regions I, III, IV, V, VII, VIII, and IX will be eligible to apply under this announcement.

A copy of the legislation and regulations governing this program will be sent to applicants as part of the application kit package. Applicants should use the legislation, regulations and information included in this announcement to guide them in developing their applications. Applications should be limited to fifty (50) doubled-spaced pages, not including appendices providing curriculum vitae or statements of organizational capabilities. Awards will be made only to those applicants who have met all applicable requirements.

Section 1008 states that none of the funds appropriated under this title shall be used in programs where abortion is a method of family planning. In addition, the Department maintains an historical policy that grantees may not encourage or promote abortion as a method of family planning within the Title X program.

Part 700.4 of the PHS Grants Administration Manual requires each program office to make a determination as to whether the program is likely to receive a significant number of applications from advocacy organizations and develop criteria to determine the extent to which the organization's advocacy position may impact upon its performance as a grantee. As defined in the PHS Grants Manual, an advocacy organization is one which espouses a position or course of conduct that conflicts with the purposes of the grant program. In light of the specific abortion restriction of Section 1008, for the purposes of the Title X program, advocacy organizations are those which advocate abortion as a method of family planning.

For purposes of the Title X program, organizations will be determined to be advocacy organizations which use a significant amount of their resources to:

• Lobby for the passage of legislation to increase in any way the availability of abortion as a method of family planning;

• Provide speakers to promote the use of abortion as a method of family planning;

• Pay dues to any group that as a significant part of its activities advocates abortion as a method of family planning;

• Use legal action to make abortion available as a method of family planning; or,

• Develop or disseminate materials which advocate abortion as a method of family planning.

If your organization is presently engaged in any of the above activities, you are required to provide a detailed description of those activities in your application (including the amount of your organization's resources devoted to those activities) and how they relate to or are separate from the proposed Title X project. It must be emphasized that advocacy organizations are not precluded from applying for or receiving support under the Title X program. However, pursuant to Part 700 of the PHS Grants Administration Manual, the Office of Population Affairs must determine whether and to what extent advocacy is likely to impact on the performance of the Title X project. The Office of Population Affairs will use the following criteria for determining any such impact:

• The existence of separable accounting records;

• The absence of abortion advocacy from curriculum and/or educational materials of the proposed project;

• Selection methods which will insure that the selection of individual and organizational participants into the project's training programs will not be based on the individual's or organization's position on abortion; and

• The presence of institutional safeguards such as personnel policies, procedures, or instructions that are designed to insure that advocacy activities will not intrude into the Title X project.

Grant Award

Eligible competing grant applications will be reviewed and assessed against the following criteria:

1. The extent to which the proposed training program will improve or increase the delivery of services to Title X clients, particularly persons from low-income families. (5 points)

2. The extent to which the proposed training program has the potential to fulfill the training needs of the family planning service grantees in the areas to be served, which may include among other things:

a. Development of a capability within family planning service projects to provide pre- and in-service training to their own staffs;

b. Improvement of the family planning service delivery skills of family planning and health services personnel; and

c. Improvement in the utilization and career development of paraprofessional and paramedical manpower in family planning services. (20 points)

3. The extent to which the training program proposes appropriate strategies to improve the provision of family planning services in rural areas and HMSAs. (20 points)

4. The capacity of the applicant to make rapid and effective use of the training grant. (5 points)

5. The administrative and management capability and competence of the applicant. (20 points)

6. The competence of the project staff in relation to the services to be provided. (15 points)

7. The applicant's presentation of the project's objectives, the methods for achieving project objectives, the ability to involve providers and the regional

office, and the results or benefits expected. (15 points)

In making grant award decisions the Deputy Assistant Secretary for Population Affairs (DASPA) will take into consideration such factors as the following:

1. The project's objectives on achieving results in national training priority areas and probable effectiveness in furthering national goals.

2. The service provider's commitment to and involvement in the planning and implementation of the training project.

3. The usefulness to Title X service providers of the proposed training project and its potential for complementing existing training needs.

4. Where competing projects are of approximately equal quality and only one grant can be funded, priority will be given to applicants who will maintain or expand the diversity of experience and approaches of grantees within the Title X training program.

5. The reasonableness of the cost of the project to government and others.

6. The availability of funds.

Review Under Executive Order 12372

Applicants under this announcement are subject to the review requirements of Executive Order 12372, State Review of Applications for Federal Financial Assistance, as implemented by 45 CFR Part 100. As soon as possible, the applicant should discuss the project with the State Single Point of Contact (SPOC) for each State in the area to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those States not represented on the listing, further inquiries should be made by the applicant regarding the submission to the Grants Management Office, Office of Population Affairs, Room 736E H.H.H. Building, 200 Independence Avenue, SW. Washington, DC 20201. Such comments must be received by the Office of Population Affairs August 22, 1988, to be considered.

When final funding decisions have been made, each applicant will be notified by letter of the outcome of their application. The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purposes of the grant, and terms and conditions of the grant award.

Date: March 15, 1988.

Nabers Cabaniss,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 88-8957 Filed 4-21-88; 8:45 am]

BILLING CODE 4160-17-M

Announcement of Availability of Grants for Family Planning Nurse Practitioner Training Program

AGENCY: Office of Family Planning, PHS, HHS.

ACTION: Notice.

SUMMARY: The Office of Population Affairs, Office of Family Planning requests applications for grants under the Family Planning Service Training Program authorized under section 1003 of the Public Health Service (PHS) Act [42 U.S.C. 300a-1(a)]. Funds are available to train nurse practitioners in order to maintain the high level of performance of family planning service projects.

The Office of Family Planning (OFP) administers Title X of the Public Health Service Act which provides funds for nurse practitioner training programs. These programs provide skill-based knowledge for registered professional nurses employed in Title X clinics and will enable service grantees to improve the delivery of family planning services to persons from low-income families and other persons desiring such services.

ADDRESS: Application kits may be obtained from and applications must be submitted to: Grants Management Office, Office of Population Affairs, Room 736E, H.H.H. Building, 200 Independence Avenue SW. Washington, DC 20201.

DATE: Applications must be postmarked or received at the above address no later than close of business June 21, 1988. Private metered postmarks will not be acceptable as proof of timely mailing. Applications which are postmarked or delivered to the Grants Management Office later than June 21, 1988, will be judged late and will not be accepted for review. Applications which do not conform to the requirements of this program announcement or meet the assurances for project requirements in regulation 42 CFR Part 59, Subpart C will not be accepted for review. Applicants will be so notified, and the applications will be returned.

FOR FURTHER INFORMATION CONTACT: Grants Management Office at area code 202/245-0146 or Program Office at area code 202/245-0151. Staff are available to answer questions and provide limited technical assistance in the preparation of grant applications.

SUPPLEMENTARY INFORMATION: Title X of the Public Health Service Act, 42 U.S.C. 300 *et seq.*, authorizes the Secretary of Health and Human Services to award grants for projects to provide training for family planning service personnel. (Catalog of Federal Assistance Number 13.260). This notice announces the availability of approximately $950,000 in funding for five nurse practitioner training projects described below. Grants will be made to public and/or private nonprofit organizations to assist in the establishment and operation of nurse practitioner projects. The award of a grant will take into account the project's ability to meet DHHS requirements and the extent to which the project will provide high quality training to personnel to ensure the delivery of services to family planning users. Applications are invited for the following five grants:

One grant with a range of $185,000–$205,000 is under consideration to train nurse practitioners from the following regions:

Region I—(Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont);

Region II—(New Jersey, New York, Puerto Rico and the Virgin Islands);

Region III—(Delaware, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia).

One grant with a funding range of $164,000–$182,000 is under consideration to train nurse practitioners from the following region:

Region IV—(Alabama, Florida, Georgia, Kentucky, Mississippi, N. Carolina, S. Carolina and Tennessee).

One grant with a funding range of $127,000–$141,000 is under consideration to train nurse practitioners from the following region:

Region V—(Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin).

One grant with a funding range of $203,000–$225,000 is under consideration to train nurse practitioners from the following regions:

Region VI—(Arkansas, Louisiana, New Mexico, Oklahoma, Texas);

Region VII—(Iowa, Kansas, Missouri, Nebraska).

One grant with a funding range of $226,000–$251,000 is under consideration to train nurse practitioners from the following regions:

Region VIII—(Colorado, Montana, N. Dakota, S. Dakota, Utah, Wyoming);

Region IX—(Arizona, California, Hawaii, Nevada, American Samoa, Trust Territory of the Pacific Islands,

Guam, Commonwealth of Northern Mariana Islands);

Region X—(Alaska, Idaho, Oregon, Washington).

Grants will be approved for project periods of up to three years. Grants are funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of the grant is contingent upon satisfactory progress of the project, adequate stewardship of Federal funds, and availability of funds.

Statutory and Regulatory Background

Title X of the Public Health Service Act, enacted by Pub. L. 91–572, authorizes grants for projects to provide family planning services to persons from low-income families and others. Section 1001 of the Act (as amended by Pub. L. 94–63 and 95–613) authorizes grants "to assist in the establishment and operation of family planning projects which offer a broad range of acceptable and effective family planning methods, including natural family planning methods, infertility services, and services to adolescents." Section 1003 of the Act, as amended, authorizes the Secretary to make grants to entities and individuals to provide the training for personnel to carry out the family planning service programs.

Prospective applicants should refer to the regulations in their entirety. The regulations set out at 42 CFR Part 59, Subpart C, govern grants for family planning service training.

Role and Operation of the Training Program

The purpose of short-term training, continuing education, in-service education and staff development for Title X personnel is to improve or maintain at a high level the performance of family planning service providers.

Under the regulations, "training" means job-specific skill development. Continuing education activities that are innovative or non-traditional are encouraged. The development or use of self-paced, self-instructional or mediated training materials which utilize technological advancements in the learning field are also acceptable.

Nurse practitioner training programs are focused on the preparation of registered professional nurses. The nurse practitioner is an integral part of the family planning system and performs a critical role in the delivery of high quality services.

Successful applicants will be required to work closely with a network of agencies including the Federal Central and Regional Office staff, Title X service delivery providers and regional training advisory committees. This involves review and implementation of National and regional training priorities, solicitation of advice from the regional training advisory committee, and consultation with Title X service delivery providers about training priorities, course content and curriculum.

The nurse practitioner training curriculum must include content in the national training priority areas: (1) Clinic management, (2) counseling and client education, (3) family involvement, (4) management of infertility, including adoption, (5) natural family planning (NFP), (6) program management, (7) prevention of sexually transmitted diseases (STDs), including HIV infection and AIDS, (8) adolescent abstinence from premarital sexual activity, and (9) male involvement. [NFP includes various methods and techniques which teach fertility awareness. NFP does not include methods which combine fertility awareness with the use of another contraceptive method as a backup.]

Projects will be designed to prepare family planning, obstetricgynecologic or women's health care nurses to become nurse practitioners. The nurse practitioner graduate will have acquired special knowledge and skills in health promotion and maintenance, disease prevention, psychosocial and physical assessment, and management of health-illness needs in the primary care of women. This care is provided predominantly in an ambulatory setting. The nurse practitioner will provide such care with the physician as well as with other members of the healthcare team.

The design of the nurse practitioner training program including curriculum must be consistent with national and regional priority areas, accreditation requirements, State certification requirements, and State requirements for licensure or recognition of nurse practitioners.

Successful applicants will be responsible for the overall management of a nurse practitioner training program within the geographic area for which the grant is made. This role includes:

- Developing an annual nurse practitioner training plan, reflecting national and regional priorities and the training needs of local Title X service grantees;
- Developing and implementing a high quality curriculum for a certificate nurse practitioner program specific to the education and role of the nurse practitioner;
- Developing criteria for selection of staff for training, including prerequisite qualifications. Such criteria should reflect a sensitivity to the unique needs of grantees for certain types of training priority for rural areas or Health Manpower Shortage Areas (HMSAs), or other relevant factors;
- Developing a process to review nurse practitioner training applications from Title X service grantee personnel Training grantees will make the final decision about candidates' suitability for training, applying the criteria discussed above;
- Evaluating the total nurse practitioner educational program as an integral and ongoing process including curriculum, students, faculty and graduates;
- Maintaining data on nurse practitioner training characteristics sufficient to allow evaluation by credentialing bodies;
- Developing and implementing nurse practitioner training plans and continuing professional education programs which include measurable objectives;
- Monitoring the preceptorship phase of the nurse practitioner training program based upon written criteria;
- Sharing materials developed with other training programs so as to avoid unnecessary duplication of effort. All materials developed with Title X funds should be made available at cost to other Title X projects upon request;
- Facilitating nurse practitioner trainee receipt of continuing education units where appropriate; and
- Planning an annual continuing education conference and attending at least one national training meeting annually.

Reports on the progress of the nurse practitioner training program may be requested of the grantee from time to time by the Central Office.

Application Requirements

Applications must be submitted on the forms supplied (PHS–5161–1) and in the manner prescribed in the application kits available from the Office of Grants Management. Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. Applicants are required to submit an original application and two copies.

Accepted applications will be subjected to a competitive review process. The results of this review will assist the Deputy Assistant Secretary for Population Affairs in considering competing applications and in making the final funding decisions.

Any public or private nonprofit organization or agency is eligible to apply for a grant. It is not required that the entities applying for a grant be physically located in these regions at the time of application.

A copy of the legislation and regulations governing this program will be sent to applicants as part of the application kit package. Applicants should use the legislation, regulations and other information included in this announcement to guide them in developing their applications. Applications should be limited to fifty (50) doubled-spaced pages, not including appendices providing curriculum vitae, curriculum, or statements of organizational capabilities. Awards will be made only to those applicants who have met all applicable requirements.

Section 1008 states that none of the funds appropriated under this title shall be used in programs where abortion is a method of family planning. In addition, the Department maintains an historical policy that grantees may not encourage or promote abortion as a method of family planning within the Title X program.

Part 700.4 of the PHS Grants Administration Manual requires each program office to make a determination as to whether the program is likely to receive a significant number of applications from advocacy organizations and develop criteria to determine the extent to which the organization's advocacy position may impact upon its performance as a grantee. As defined in the PHS Grants Manual, an advocacy organization is one which espouses a position or course of conduct that conflicts with the purposes of the grant program. In light of the specific abortion restriction of Section 1008, for the purposes of the Title X program advocacy organizations are those which advocate abortion as a method of family planning.

For purposes of the Title X program, organizations will be determined to be advocacy organizations which use a significant amount of their resources to:

- Lobby for the passage of legislation to increase in any way the availability of abortion as a method of family planning;
- Provide speakers to promote the use of abortion as a method of family planning;
- Pay dues to any group that as a significant part of its activities advocates abortion as a method of family planning;
- Use legal action to make abortion available as a method of family planning; or,
- Develop or disseminate materials which advocate abortion as a method of family planning.

If your organization is presently engaged in any of the above activities, you are required to provide a detailed description of those activities in your application (including the amount of your organization's resources devoted to those activities) and how they relate to or are separate from the proposed Title X project. It must be emphasized that advocacy organizations are not precluded from applying for or receiving support under the Title X program. However, pursuant to Part 700 of the PHS Grants Administration Manual, the Office of Population Affairs must determine whether and to what extent advocacy is likely to impact on the performance of the Title X project. The Office of Population Affairs will use the following criteria for determining any such impact:

- The existence of separable accounting records;
- The absence of abortion advocacy from the curriculum and/or educational materials of the proposed project;
- Selection methods which will insure that the selection of individual and organizational participants into the project's training programs will not be based on the individual's or organization's position on abortion; and
- The presence of institutional safeguards such as personnel policies, procedures, or instructions that are designed to insure that advocacy activities will not intrude into the Title X project.

Grant Award

Eligible competing grant applications will be reviewed and assessed against the following criteria:

1. The extent to which the proposed nurse practitioner training program will improve or increase the delivery of services to Title X clients, particularly persons from low-income families. (5 points)

2. The extent to which the proposed nurse practitioner training program has the potential to fulfill the training needs of the family planning service grantees in the areas to be served, which may include among other things:

a. Development of a capability within family planning service projects to provide in-service training to their own staffs;

b. Improvement of the family planning service delivery skills of family planning and health services personnel; and

c. Improvement in the utilization and career development of paraprofessional and paramedical manpower in family planning services. (20 points)

3. The extent to which the nurse practitioner training program proposes appropriate strategies to recruit and train nurse practitioners to provide family planning services in rural areas and HMSAs. (20 points)

4. The capacity of the applicant to make rapid and effective use of the nurse practitioner training grant. (5 points)

5. The administrative and management capability and competence of the applicant. (20 points)

6. The competence of the project staff in relation to the services to be provided. (15 points)

7. The applicant's presentation of the project's objectives, the methods for achieving project objectives, the ability to involve providers and the regional office, and the results or benefits expected. (15 points)

In making grant award decisions the Deputy Assistant Secretary for Population Affairs (DASPA) will take into consideration such factors as the following:

1. The project's objectives on achieving results in national training priority areas and probable effectiveness in furthering national goals.

2. The service providers' commitment to and involvement in the planning and implementation of the training project.

3. The usefulness to Title X service providers of the proposed training project and its potential for complementing existing training needs.

4. Where competing projects are of approximately equal quality and only one grant can be funded, priority will be given to offerors who will maintain or expand the diversity of experience and approaches of grantees within the Title X training program.

5. The reasonableness of the cost of the project to government and others.

6. The availability of funds.

Review Under Executive Order 12372

Applicants under this announcement are subject to the review requirements of Executive Order 12372, State Review of Applications for Federal Financial Assistnce, as implemented by 45 CFR Part 100. As soon as possible, the applicant should discuss the project with the State Single Point of Contact (SPOC) for each State in the area to be served. The application kit contains the currently available listing of the SPOCs

which have elected to be informed of the submission of applications. For those States not represented on the listing, further inquiries should be made by the applicant regarding the submission to the relevant SPOC. The SPOCs comment(s) should be forwarded to the Grants Management Office, Office of Population Affairs, Room 736E H.H.H. Building, 200 Independence Avenue SW. Washington, DC 20201. Such comments must be received by the Office of Population Affairs, by August 22, 1988, to be considered.

When final funding decisions have been made, each applicant will be notified by letter of the outcome of their application. The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purposes of the grant, and terms and conditions of the grant award.

Dated: March 15, 1988.

Nabers Cabaniss,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 88-8958 Filed 4-21-88; 8:45 am]

BILLING CODE 4160-17-M

Health Education Assistance Loan Program; Maximum Interest Rates for Quarter Ending June 30, 1988

Section 727 of the Public Health Service Act (42 U.S.C. 294) authorizes the Secretary of Health and Human Services to establish a Federal program of student loan insurance for graduate students in health professions schools.

A. Section 60.13(a)(4) of the program's implementing regulations (42 CFR Part 60, previously 45 CFR Part 126) provides that the Secretary will announce the interest rate in effect on a quarterly basis.

The Secretary announces that for the period ending June 30, 1988, three interest rates are in effect for loans executed through the Health Education Assistance Loan (HEAL) program.

1. For loans made before January 27, 1981, the variable interest rate is 9½ percent. Using the regulatory formula (45 CFR 126.13(a) (2) and (3)) in effect prior to January 27, 1981, the Secretary would normally compute the variable rate for this quarter by finding the sum of the fixed annual rate (7 percent) and a variable component calculated by subtracting 3.50 percent from the average bond equivalent rate of 91-day U.S. Treasury bills for the preceding calendar quarter (5.93 percent), and rounding the result (9.43 percent) upward to the nearest ⅛ percent (9½ percent). However, the regulatory formula also provides that the annual rate of the variable interest rate for a 3-month period shall be reduced to the highest one-eighth of 1 percent which would result in an average annual rate not in excess of 12 percent for the 12-month period concluded by those 3 months. Because the average rate of the 4 quarters ending June 30, 1988, is not in excess of 12 percent, there is no necessity for reducing the interest rate. For the previous 3 quarters the variable interest at the annual rate was as follows: 9½ percent for the quarter ending September 30, 1987; 9⅞ percent for the quarter ending December 31, 1987; and 9¾ for the quarter ending March 31, 1988.

2. For variable rate loans executed during the period of January 27, 1981 through October 21, 1985, the interest rate is 9½ percent. Using the regulatory formula (42 CFR 60.13(a)(3)) in effect for that time period, the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (5.93 percent); adding 3.50 percent (9.43 percent); and rounding that figure to the next higher one-eighth of 1 percent (9½ percent).

3. For fixed rate loans executed during the period of April 1, 1988 through June 30, 1988, and for variable rate loans executed on or after October 22, 1985, the interest rate is 9 percent. The Health Professions Training Assistance Act of 1985 (Pub. L. 99-129), enacted October 22, 1985, amended the formula for calculating the interest rate by changing 3.5 percent to 3 percent. Using the regulatory formula (42 CFR 60.13(a) (2) and (3)) with the statutory change of 3 percent (42 CFR 60.13(a)(1)), the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury bills during the preceding quarter (5.93 percent); adding 3.0 percent (8.93 percent) and rounding that figure to the next higher one-eighth of 1 percent (9 percent).

(Catalog of Federal Domestic Assistance No. 13.108, Health Education Assistance Loans)

Dated: April 18, 1988.

David N. Sundwall,

Administrator, Assistant Surgeon General.

[FR Doc. 88-8869 Filed 4-21-88; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-08-4212-11; (N-43025)]

Classification Termination; Nevada

April 14, 1988.

AGENCY: Bureau of Land Mangement, Interior.

ACTION: Notice; Classification Termination, Nevada.

SUMMARY: This notice terminates Recreation and Public Purposes classification N-43025.

FOR FURTHER INFORMATION CONTACT: Ben Collins, District Manager, 4765 Vegas Drive, P.O. Box 26569, Las Vegas, NV 89126, (702) 388-6403.

EFFECTIVE DATE: April 14, 1988.

SUPPLEMENTARY INFORMATION: Pursuant to 43 CFR 2450.6, the Bureau of Land Management hereby terminates Recreation and Public Purposes classification N-43025 which involves the following described lands:

Mount Diablo Meridian, Nevada

T. 13 S., R. 71 E.,
Sec. 9, lots 1, 11, NE¼NW¼, SW¼NW¼, N½SE¼NW¼, SW¼SE¼NW¼, N½SE¼SE¼NW¼, SW¼SE¼ SE¼NW¼, W½E½NE¼SW¼, W½NE¼SW¼, NW¼SW¼.

The area described contains 248.01 acres located within the city limits of the City of Mesquite in Clark County, Nevada.

In 1986, in response to an application by the City of Mesquite, the lands were classified as suitable for disposal under the Recreation and Public Purposes Act (43 U.S.C. 869, 869-1 to 869-4). The classification provided for segregation of the lands against all forms of appropriation under the public land laws, including location under the mining laws, but not the Recreation and Public Purposes Act or the mineral leasing laws. Subsequently, Congress enacted Pub. L. 99-548 to sell all the public lands within the city limits of Mesquite to the City of Mesquite. The City of Mesquite has withdrawn its Recreation and Public Purposes application and the classification and segregation are, therefore, no longer appropriate and are hereby terminated. The land is not available for application or entry under the public land laws; it will be sold to the City of Mesquite under the authority of Pub. L. 99-548.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 88-8861 Filed 4-21-88; 8:45 am]

BILLING CODE 4310-HC-M

[ORO80 6310-12 GP8-121]

Salem District Advisory Council Meeting

ACTION: Notice of Salem District Advisory Council Meeting.

SUMMARY: Notice is hereby given in accordance with section 309 of the Federal Land Policy and Management Act of 1976 that a meeting of the Salem District Advisory Council will be held May 19, 1988, at 1:00 p.m. at the Bureau of Land Management, Salem District Office, 1717 Fabry Road SE., Salem, Oregon.

Agenda for the meeting will include:

1. Introduction of new members.
2. A review of the Advisory Council Charter.
3. Election of officers.
4. Work up a written report on the State Director's Guidance to Resource Management Planning.

The Meeting is open to the public. Anyone wishing to make an oral statement must notify the District Manager at the Salem District Office, 1717 Fabry Road SE, Salem, OR 97306 by May 16, 1988. Written comments will also be received for the concil's consideration. Summary minutes will be maintained in the District Office and will be available for public inspection and reproduced during regular business hours within 30 days following the meeting.

Dated: April 11, 1988.

Van W. Manning,

District Manager.

[FR Doc. 88-8891 Filed 4-21-88; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Outer Continental Shelf Central and Western Gulf of Mexico Oil and Gas Lease Sales 118 and 122

AGENCY: Minerals Management Service, Interior.

ACTION: Correction.

On Wednesday, March 30, 1988, at 53 FR 10299, the Notice of Availability of the Draft Environmental Impact Statement for the Central and Western Gulf of Mexico Outer Continental Shelf Oil and Gas Lease Sales 118 and 122 was published in the **Federal Register.**

The date given as the end of the period during which the Minerals Management Service will accept written statements from those unable to attend the public hearings is incorrectly stated as May 16, 1988. That date should be May 27, 1988, and also applies to those wishing to submit written comments concerning the contents of the draft Environmental Impact Statement.

John B. Rigg,

Associate Director for Offshore Minerals Management.

Date: April 18, 1988.

[FR Doc. 88-8852 Filed 4-21-88; 8:45 am]

BILLING CODE 4320-MR-M

National Park Service

Intention to Extend Concession Contract, Best's Studio, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965, (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to extend a concession contract with Best's Studio, Inc., authorizing it to continue to provide photographic and general art facilities and services for the public at Yosemite National Park, California for a period of three (3) years from October 1, 1986 through September 30, 1989.

This contract extension has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act, and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on September 30, 1986, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract as defined in 36 CFR, 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, Western Regional Office, 450 Golden Gate Avenue, San Francisco, California 94102, for information as to the requirements of the proposed contract.

Louis S. Albert,

Acting Regional Director, Western Region.

Date: April 4, 1988.

[FR Doc. 88-8875 Filed 4-21-88; 8:45 am]

BILLING CODE 4310-70-M

Intention to Negotiate Concession Contract; Charlestown Park Service

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract authorizing the operation of restaurant services and facilities at the Charlestown Navy Yard, Boston National Historical Park, Massachusetts, for a period of fifteen (15) years from the date the contract is signed. The Prospectus which describes this opportunity will be released to the public in the near future and sixty days will be allowed from the date of release for responses to be received.

This proposed contract requires a construction and improvement program. The construction and improvement program required was addressed in the General Management Plan/ Environmental Assessment, dated August 1980, as amended by the Revision, dated March 26, 1987, which established a Finding of No Significant Impact for the Charlestown Navy Yard.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal must be postmarked or hand delivered on or before the sixtieth (60th) day following release date shown on the cover of the Prospectus to be considered and evaluated.

Interested parties should contact the Superintendent, Boston National Historical Park for information as to the requirements of the proposed contract and for application materials.

Date: April 6, 1988.

Herbert S. Cables, Jr.,

Regional Director, North Atlantic Region.

[FR Doc. 88-8876 Filed 4-21-88; 8:45 am]

BILLING CODE 4310-70-M

Intention To Extend Concession Contract; Golf Course Specialists, Inc.

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to extend a concession contract with Golf Course Specialists, Inc. authorizing it to continue to provide facilities and services for the public at National Capital Parks—East, Washington, DC, for a period of two (2)

years from April 1, 1988, through March 31, 1990.

This contract extension has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on March 31, 1988, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the extension of the contract.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Regional Director, National Capital Region, Washington, DC, for information as to the requirements of the proposed contract.

Ronald N. Wrye,

Acting Regional Director, National Capital Region.

Date: March 21, 1988.

[FR Doc. 88-8895 Filed 4-21-88; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. A. Parent corporation and address of principal office: Browning-Ferris Industries, Inc., P.O. Box 3151, Houston, Texas 77253, Delaware
B. Wholly-owned subsidiaries which will participate in the operations, address of their respective offices, and states of incorporation:
   1. Action Disposal System, Inc., Minnesota
   2. American Sheds, Inc., California
   3. Ameride Corporation, California
   4. Atkinson Enterprises, Inc., Indiana
   5. Azusa Land Reclamation Co., Inc., California
   6. Beach Disposal, Inc., Florida
   7. BFI of Ponce, Inc., Puerto Rico
   8. BFI Acquisition, Inc., Delaware
   9. BFI Aviation Services, Inc., Delaware
   10. BFI Constructors, California
   11. BFI Energy Systems, Inc., Delaware
   12. BFI Energy Systems of, New Jersey
   13. BFI Energy Systems of Boston, Inc., Massachusetts
   14. BFI Energy Systems of Broward County, Inc., Delaware
   15. BFI Energy Systems of Delaware County, Inc., Delaware
   16. BFI Energy Systems of Essex County, Inc., New Jersey
   17. BFI Energy Systems of Fresno, Inc., California
   18. BFI Energy Systems of Hempstead, Inc., Delaware
   19. BFI Energy Systems of Lehigh Valley, Inc., Delaware
   20. BFI Energy Systems of Los Angeles, Inc., Delaware
   21. BFI Energy Systems of Lowell, Inc., Delaware
   22. BFI Energy Systems of Midstate Connecticut, Inc., Delaware
   23. BFI Energy Systems of Oyster Bay, Inc., Delaware
   24. BFI Energy Systems of Plymouth, Inc., Delaware
   25. BFI Energy Systems of Southeastern Connecticut, Inc., Delaware
   26. BFI Energy Systems of Texas, Inc., Delaware
   27. BFI Modern Landfill, Inc., Illinois
   28. BFI Hospital Waste Systems, Inc., Georgia
   29. BFI Medical Waste Systems of Arizona, Inc., Delaware
   30. BFI Medical Waste Systems of Minnesota, Inc., Minnesota
   31. BFI Medical Waste Systems of Oregon, Inc., Delaware
   32. BFI Medical Waste Systems of Utah, Inc., Delaware
   33. BFI Medical Waste Systems of Washington, Inc., Delaware
   34. BFI Medical Waste Systems (Steel), Inc., Delaware
   35. BFI Medical Waste Systems (South Central), Inc., Tennessee
   36. BFI Medical Waste Systems (Southeast), Inc., Delaware
   37. BFI Portable Services, Inc., Delaware
   38. BFI Recycling of New Jersey, Inc., New Jersey
   39. BFI Suburban Michigan, Inc., Michigan
   40. BFI Waste Systems, Inc., Texas
   41. BFI Waste Systems of Indiana, Inc., Indiana
   42. Bio-Medical Services Corp., Georgia
   43. Bio-Tech Services, Inc., Missouri
   44. Browning-Ferris, Inc., Delaware
   45. Browning-Ferris, Inc., Maryland
   46. Browning-Ferris Industries Chemical Services, Inc., Nevada
   47. Browning-Ferris Industries (DC), Inc., Delaware
   48. Browning-Ferris Industries Waste Control, Inc., Delaware
   49. Browning-Ferris Industries Waste Systems, Inc., New Jersey
   50. Browning-Ferris Industries, Inc., Massachusetts
   51. Browning-Ferris Industries of Alabama, Inc., Alabama
   52. Browning-Ferris Industries of Arkansas, Inc., Arkansas
   53. Browning-Ferris Industries of Arizona, Inc., Delaware
   54. Browning-Ferris Industries of California, Inc., California
   55. Browning-Ferris Industries of Central Jersey, Inc., Delaware
   56. Browning-Ferris Industries of Colorado, Inc., Colorado
   57. Browning-Ferris Industries of Connecticut, Inc., Delaware
   58. Browning-Ferris Industries of Eastern Pennsylvania, Inc., Pennsylvania
   59. Browning-Ferris Industries of Elizabeth, N.J., Inc., New Jersey
   60. Browning-Ferris Industries of Florida, Inc., Delaware
   61. Browning-Ferris Industries of Georgia, Inc., Georgia
   62. Browning-Ferris Industries of Hawaii, Inc., Delaware
   63. Browning-Ferris Industries of Idaho, Inc., Idaho
   64. Browning-Ferris Industries of Illinois, Inc., Delaware
   65. Browning-Ferris Industries of Indiana, Inc., Indiana
   66. Browning-Ferris Industries of Iowa, Inc., Iowa
   67. Browning-Ferris Industries of Kansas, Inc., Kansas
   68. Browning-Ferris Industries of Kansas City, Inc., Missouri
   69. Browning-Ferris Industries of Kentucky, Inc., Delaware
   70. Browning-Ferris Industries of Long Island, Inc., New York
   71. Browning-Ferris Industries of Louisiana, Inc., Louisiana
   72. Browning-Ferris Industries of Louisville, Inc., Indiana
   73. Browning-Ferris Industries of Michigan, Inc., Michigan
   74. Browning-Ferris Industries of Minnesota, Inc., Minnesota
   75. Browning-Ferris Industries of Mississippi, Inc., Mississippi
   76. Browning-Ferris Industries of Montana, Inc., Nevada
   77. Browning-Ferris Industries of Nebraska, Inc., Nebraska
   78. Browning-Ferris Industries of New Hampshire, Inc., New Hampshire
   79. Browning-Ferris Industries of New Jersey, Inc., New Jersey

80. Browning-Ferris Industries of New York, Inc., New York
81. Browning-Ferris Industries of North Jersey, Inc., New Jersey
82. Browning-Ferris Industries of Ohio, Inc., Delaware
83. Browning-Ferris Industries of Ohio and Michigan, Inc., Ohio
84. Browning-Ferris Industries of Oregon, Inc., Oregon
85. Browning-Ferris Industries of Oyster Bay, Inc., Delaware
86. Browning-Ferris Industries of Paterson, N.J., Inc., New Jersey
87. Browning-Ferris Industries of Pennsylvania, Inc., Delaware
88. Browning-Ferris Industries fof Philadelphia, Inc., Pennsylvania
89. Browning-Ferris Industries of Puerto Rico, Inc., Puerto Rico
90. Browning-Ferris Industries of Quincy, Illinois, Inc., Iowa
91. Browning-Ferris Industries of Rhode Island, Inc., Delaware
92. Browning-Ferris Industries of Rochester, Inc., Minnesota
93. Browning-Ferris Industries of South Atlantic, Inc., North Carolina
94. Browning-Ferris Industries of South Jersey, Inc., New Jersey
95. Browning-Ferris Industries of Southeastern Michigan, Inc., Michigan
96. Browning-Ferris Industries of Southern Illinois, Inc., Illinois
97. Browning-Ferris Industries of Springfield, Inc., Missouri
98. Browning-Ferris Industries of St. Louis, Inc., Delaware
99. Browning-Ferris Industries of Tennessee, Inc., Tennessee
100. Browning-Ferris Industries of Utah, Inc., Utah
101. Browning-Ferris Industries of Vermont, Inc., Vermont
102. Browning-Ferris Industries of Washington, Inc., Washington
103. Browning-Ferris Industries of West Virginia, Inc., Delaware
104. Browning-Ferris Industries of Western Jersey, Inc., New Jersey
105. Browning-Ferris Industries of Wisconsin, Inc., Wisconsin
106. Browning-Ferris Industries of Wyoming, Inc., Wyoming
107. Browning-Ferris Services, Inc., Delaware
108. Captiva Disposal, Inc., Florida
109. CECOS International, Inc., New York
110. CECOS Treatment Corporation, Connecticut
111. Community Transit Services, Inc., California
112. Dave Systems, Inc., California
113. Disposal Specialists, Inc., Vermont
114. Dooley Equipment Corporation, Massachusetts
115. Empire Sweeping Company, Ohio
116. Environmental Equipment Corp., Texas
117. E & E Hauling, Inc., Illinois
118. ESI, Inc., Pennsylvania
119. Franklintown East Realty, Inc., Pennsylvania
120. George Fenske Sanitary, Minnesota
121. Hall's Ferry Investments, Inc., Missouri
122. Heavy Equipment Leasing Services Co., Inc., New York
123. Health Management, Inc., 540 River Gate Road
124. Health Management of New Orleans, Inc., Louisiana
125. Highway 36 Land Development Company, Colorado
126. Homestead Land Corp., Pennsylvania
127. HL–NIW, Inc., New York
128. Indoco, Inc., Texas
129. International Disposal Corp., Delaware
130. International Disposal Corp., Texas
131. International Disposal Corp. of California, California
132. International Disposal Corp. of Indiana, Delaware
133. International Disposal Corp. of Kansas, Kansas
134. Isler's Refuse Service, Inc., Ohio
135. Jeffco Land Reclamation Company, Colorado
136. Jefferson Pike Landfill, Inc., Tennessee
137. Jeffco Land Reclamation, Inc., Missouri
138. Joe Ball Sanitation Service, Inc., New York
139. Karas Trucking Co., Inc., Ohio
140. LaGrange Disposal Co., Inc., Illinois
141. Land Reclamation, Inc., New York
142. Landfill, Inc., Colorado
143. Landfill, Inc., Missouri
144. Louis Kmito & Son, Inc., Massachusetts
145. Lyon Development Co., Michigan
146. Merrimack Valley Medical Services Company, Inc., Massachusetts
147. Mickey McGuire Sanitation, Inc., Kentucky
148. National Disposal Service of Nebraska, Inc., Nebraska
149. Newco Waste Systems, Inc., New York
150. Newco Waste Systems of New Jersey, Inc., New Jersey
151. Niagara Landfill, Inc., New York
152. Niagara Recycling, Inc., New York
153. Niagara Sanitation Company, Inc., New York
154. Norcal Trans, Inc., California
155. Northern Disposal, Inc., Massachusetts
156. Northwest Sweepers, Inc., Texas
157. Pine Bend Landfill, Inc., Minnesota
158. RHF, Inc., Texas
159. R.R.I.E.B.S., Inc., New York
160. RWCGP, Inc., Texas
161. Residential Service, Inc., Nebraska
162. Resource Recovery Corporation, Massachusetts
163. River City Refuse Removal, Inc., Wisconsin
164. Risk Services, Inc., Delaware
165. Rot's Disposal Services, Inc., Illinois
166. Sanibel Disposal, Inc., Florida
167. Springfield Relay Systems, Inc., Missouri
168. Super Bowl Portable Toilets, Inc., Colorado
169. The Trash Men, Inc., Missouri
170. Town and Country Waste Service, Inc., Wisconsin
171. Troy Area Landfill, Inc., Wisconsin
172. United Nottingham, Inc., California
173. Warner Hill Development Company, Ohio
174. Warner Hill Improvement Company, Ohio
175. Waste Disposal, Inc., Kansas
176. West Roxbury Crushed Stone Co., Massachusetts
177. Westowns Disposal Systems, Inc., Wyoming
178. Woodlake Sanitary Service, Inc., Minnesota

2. A. Parent corporation and address of principal office: Claude Gable Co. Inc., P.O. Box 7067, 322 Fraley Road, High Point, NC 27264.

B. Wholly-owned subsidiaries which will participate in the operations, and states of incorporation: Pickett Place Furniture Co. Inc. States of incorporation: NC.

3. A. Parent corporation and address of principal office: GoodMark Foods, Inc., 4909 Windy Hill Drive, Raleigh, NC 27609.

B. Wholly-owned subsidiary which will participate in the operation and State of incorporation: Fleetwood Snacks, Incorporated in the State of Delaware.

Noreta R. McGee,

Secretary.

[FR Doc. 88–8819 Filed 4–21–88; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-C-30091]

San Juan Air Services, Inc., dba Shuttle Express; Petition for Declaratory Order

AGENCY: Interstate Commerce Commission.

ACTION: Notice of filing of petition for declaratory order.

SUMMARY: San Juan Air Services, Inc., doing business as Shuttle Express (San Juan), has entered into an agreement with the Port of Seattle, in Washington State, the owner and operator of the Seattle-Tacoma International Airport (STIA), for the ground transportation by motor vehicle of passengers who have had or will have an immediate prior or subsequent movement by air to or from STIA. The operations, which are provided either on a through-ticket basis or pursuant to common arrangements between San Juan and every other airline serving STIA, are confined to a zone encompassed by a 25-mile radius of the airport and by the boundaries of the Seattle commercial zone. The Washington Utilities and Transportation Commission and King County, WA, have attempted to assert regulatory jurisdiction over these operations. San Juan seeks a declaratory order determining whether these operations are exempt from regulation pursuant to the statutory incidental-to-air exemption at 49 U.S.C. 10526(a)(8)(A), as implemented by our regulations at 49 CFR 1047.45. The Commission has instituted a declaratory order proceeding and invites comments on this issue.

DATES: Comments may be filed on or before May 23, 1988. San Juan may reply by June 13, 1988.

ADDRESSES: Send an original and, if possible, 10 copies of comments referring to No. MC-C-30091 to: Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

Send one copy of comments to petitioner's representative: Bruce A. Wolf, Kargianis, Austin & Erickson, 701 Fifth Avenue, Seattle, WA 98104-7010.

FOR FURTHER INFORMATION CONTACT:

Samuel S. Taylor, (202) 275-7181

or

Richard B. Felder, (202) 275-7691

[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 Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area) (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: April 14, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88-8854 Filed 4-21-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31256]

Ohio Central Railroad; Acquisition and Operation Exemption; Norfolk and Western Railway Co. and the Wheeling and Lake Erie Railroad Co.

Ohio Central Railroad (OCR), a noncarrier, has filed a notice of exemption to acquire and operate a line of railroad owned by Norfolk and Western Railway Company and The Wheeling and Lake Erie Railroad Company. The line, known as the Harmon Branch, extends from milepost CZ73.6 near Harmon, OH, to milepost CZ144.2 near Zanesville, OH, in Stark, Tuscarawas, Holmes, Coshocton, and Muskingum Counties, OH, a distance of 70.6 miles. The transaction was to be consummated on April 8, 1988. Any comments must be filed with the Commission and served on Kelvin J. Dowd, Esq., Slover & Loftus, 1224 Seventeenth Street NW., Washington, DC 20036.

OCR has certified that no properties qualifying for inclusion in the National Register of Historic Places will be affected by the transaction.

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

Decided: April 14, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee

Secretary.

[FR Doc. 88-8818 Filed 4-21-88; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31251]

Chicago West Pullman Corp.; Control Exemption

Chicago West Pullman Corporation (CWP), a noncarrier, and Chicago West Pullman Transportation Corp. (CWPT), a CWP noncarrier subsidiary, have filed a notice of exemption for the acquisition of control by CWPT from CWP of Chicago West Pullman & Southern Railway Company (CWPS, Manufacturers' Junction Railway Company (MJ), Newburgh & South Shore Railroad Company (NSR), and The Wisconsin & Calumet Railroad Company (WICT). The transaction would thus transfer control of CWPS, MJ, NSR, and WICT from CWP to CWPT.

This is a transaction within a corporate family of the type specifically exempted from prior approval under 49 CFR 1180.2d(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. The proposed transaction is intended to effect operating efficiencies.

To ensure that all employees who may be affected by the transaction are given the minimum protection afforded under section 10505(g)(2) and 11347, the labor conditions set forth in *New York Dock Ry.-Control-Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), will be imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Edward K. Wheeler, Wheeler & Wheeler, 1729 H. St. NW., Suite 200, Washington, DC 20006.

Decided: April 19, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-8994 Filed 4-21-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

United States Trustee Program; Certification, Ninth Circuit

The Attorney General, pursuant to section 303 of the Bankruptcy Judges, United States Trustees, and Family Farmer Act of 1986, Pub. L. No. 99-554, 100 Stat. 388 (1986), hereby certifies to

the United States Court of Appeals for the Ninth Circuit on this date that, in the region specified in paragraph 581(a)(9) of title 28, United States Code, composed of the federal judicial district for the State of Arizona, the amendments made by section 113 and subtitle A of title II of the Act and section 1930(a)(6) of title 28, United States Code, will apply 30 days after this date as to all cases commenced under chapters 7, 11, 12, or 13 of title 11, United States Code, on or after November 26, 1986. The amendments will also apply in cases commenced prior to November 26, 1986, one year after this certification, unless a final report and account of the administration of the estate required under section 704 of title 11, United States Code, has been filed, or a plan has been confirmed under section 1129, 1225, or 1325 of title 11.

These amendments implement the United States Trustee system in the region and impose quarterly fees in chapter 11 cases commenced on or after November 26, 1986 beginning on the thirtieth day after the date of this certification. The implementation of the United States Trustee system and the imposition of quarterly fees in those chapter 11 cases commenced prior to November 26, 1986, in which a plan has not been confirmed, will become effective one year after the date of this certification.

The United States Trustee, having been appointed pursuant to 28 U.S.C. 581(a), is responsible for implementing the amendments made by the Act in the region hereby certified.

Date: April 14, 1988.

Arnold I. Burns,

Acting Attorney General.

[FR Doc. 88-8860 Filed 4-21-88; 8:45 am]

BILLING CODE 4410-01-M

Information Collection(s) Under Review

Date: April 19, 1988.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The name and telephone number of the Department's Clearance Officer from whom a copy of the form (if any) and/or supporting documentation is available; (2) the office, board, division or bureau of the Department of Justice issuing the form or administering the collection; (3) the title of the form or collection; (4) the agency form number, if any; (5) how often the form must be filled out or the information is collected; (6) who will be asked or required to respond, as well as a brief abstract; (7) an estimate of the total number of respondents and the amount of estimated time it takes each respondent to respond; (8) an estimate of the total public burden hours associated with the collection; (9) an indication as to whether section 3504(h) of Public Law 96-511 applies; and, (10) the name and telephone number of the person or office responsible for the OMB review. Comments and/or questions regarding the item(s) contained in this notice should be directed to the OMB reviewer listed at the end of each entry AND to the Department of Justice's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer AND the Department of Justice's Clearance Officer of your intent as soon as possible.

The Department of Justice's Clearance Officer is Larry E. Miesse and can be reached on (202) 633-4312.

New Collection

(1) Larry E. Miesse, (202) 633-4312
(2) Drug Enforcement Administration, Department of Justice
(3) DEA/USMS/USSS Drugs of Abuse Chain of Custody Form
(4) No form number
(5) On occasion
(6) Individuals or households. Information is needed to document and control the chain of custody for drug testing an individual selected for a job vacancy prior to actual employment under E.O. 12564, in order to maintain a drug-free Federal workplace
(7) 1,200 annual responses, .083 hours per response
(8) 100 estimated public burden hours
(9) Not applicable under 3504(h)
(10) Sam Fairchild, (202) 395-7340.

(1) Larry E. Miesse, (202) 633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) National Legalization Survey
(4) No form number
(5) One time
(6) Individuals or households. Section 404, P.L. 99-603, mandates a report on legalized aliens to include demographic characteristics and general profiles
(7) 6,000 annual responses, 1 hour per response
(8) 6,000 estimated public burden hours
(9) Not applicable under 3504(h)
(10) Sam Fairchild, (202) 395-7340.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Larry E. Miesse, (202) 633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Application to Correct Certificate of Naturalization
(4) N-458
(5) On occasion
(6) Individuals or households. A naturalized person whose certificate contains a defect or error may apply to INS for a correction
(7) 2,400 annual reponses, .083 hours per response
(8) 199 estimated public burden hours
(9) Not applicable under 3504(h)
(10) Sam Fairchild, (202) 395-7340.

(1) Larry E. Miesse, (202) 633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Declaration of Intending Citizen
(4) I-772
(5) On occasion
(6) Individuals or households. This form is a prerequisite for certain specified groups of aliens to assert a claim of discrimination based on citizenship status
(7) 2,500,000 annual responses, .033 hours per response
(8) 82,500 estimated public burden hours
(9) Not applicable under 3504(h)
(10) Sam Fairchild, (202) 395-7340.

(1) Larry E. Miesse, (202) 633-4312
(2) Federal Bureau of Investigation, Department of Justice
(3) VICAP Crime Analysis Report
(4) FD-676
(5) Other—when a homicide occurs
(6) State or local governments. This form collects data regarding homicides for analysis by the FBI VICAP Staff. Law enforcement agencies reporting similar pattern crimes are provided with information to initiate multi-agency investigation to expedite the identification and apprehension of criminal offenders (e.g., serial murderers)
(7) 2,500 annual responses, 2 hours per response
(8) 5,000 annual public burden hours
(9) Not applicable under 3504(h)
(10) Sam Fairchild, (202) 395-7340.

Reinstatement of a Previously Approved Collection for Which Approval Has Expired

(1) Larry E. Miesse, (202) 633-4312

(2) Bureau of Justice Statistics, Department of Justice
(3) 1988 National Jail Census
(4) CJ-3
(5) Other-quinquennial
(6) State or local governments. The National Jail Census is needed to provide current information on inmate population and jail facilities throughout the Country
(7) 3,400 annual responses, .5 hours per response
(8) 1,700 public burden hours
(9) Not applicable under 3504(h)
(10) Sam Fairchild, (202) 395-7340.

(1) Larry E. Miesse, (202) 633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Application for a Special Certificate of Naturalization to Obtain Recognition as a Citizen of the United States by a Foreign State
(4) N-577
(5) On occasion
(6) Individuals or households. This form provides data used to determine elgibility for issuance of a special certificate to a naturalized citizen that can only be used for the purpose of obtaining recognition as a United States' citizen by a foreign state
(7) 400 annual responses, .25 hours per response
(8) 100 annual burden hours
(9) Not applicable under 3504(h)
(10) Sam Fairchild, (202) 395-7340.

(1) Larry E. Miesse, (202) 633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Supplementary Statement for Graduate Medical Trainees
(4) I-644
(5) Annually
(6) Individuals or households. This form is used by foreign exchange visitors who are seeking extension of stay in order to complete a program of graduate education/training
(7) 5,250 responses at, .083 hours per response
(8) 446 public burden hours
(9) Not applicable under 3504(h)
(10) Sam Fairchild, (202) 395-7340.

(1) Larry E. Miesse, (202) 633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Petition to Classify Orphan as an Immediate Relative (I-600) Application for Advance Processing of Orphan Petition (I-600A)
(4) I-600, I-600A
(5) On occasion
(6) Individuals or households. Forms used to determine eligible orphans and for advanced processing of such eligible persons.
(7) 17,000 annual responses, .5 public burden hours per response
(8) 8,500 public burden hours
(9) Not applicable under 3504(h)
(10) Sam Fairchild, (202) 395-7340.

(1) Larry E. Miesse, (202) 633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Application for Admission to Reapply for Admission into the United States After Deportation or Removal
(4) I-212
(5) On occasion
(6) Individuals or households. This form provides information to be used in determining eligibility for a waiver for an inadmissable alien who is applying for a visa to enter the United States
(7) 5,000 annual responses, .33 hours per response
(8) 1,650 annual public burden hours
(9) Not applicable under 3504(h)
(10) Sam Fairchild, (202) 395-7340.

(1) Larry E. Miesse, (202) 633-4312
(2) Immigration and Naturalization Service, Department of Justice
(3) Nonimmigrant Checkout Letter
(4) G-146
(5) On occasion
(6) Individuals or households. Used in making inquiry of persons in the United States or abroad concerning the whereabouts of aliens and/or departure information wanted by the INS, when initial investigation to locate the alien or verify his departure has been unsuccessful.
(7) 20,000 annual responses at .166 hours per response
(8) 3,320 public burden hours
(9) Not applicable under 3504(h)
(10) Sam Fairchild, (202) 395-7340.

Larry E. Miesse,
Clearance Officer, Department of Justice.
[FR Doc. 88-8853 Filed 4-21-88; 8:45 am]
BILLING CODE 4410-10-M

Drug Enforcement Administration

Harry Michael Clements, M.D.; Revocation of Registration

On February 18, 1988, the Administrator of the Drug Enforcement Administration (DEA) issued an Order to Show Cause to Harry Michael Clements, M.D., Pittsburgh, Pennsylvania, proposing to revoke his DEA Certificates of Registration AC5000372 and BC0196508. The Order to Show Cause alleged that Dr. Clements' continued registration with DEA was inconsistent with the public interest based upon his prescribing of controlled substances outside the course of professional practice, and not for a legitimate medical purpose. Additionally, citing his preliminary finding that Dr. Clements' continued registration posed an imminent danger to the public health and safety, the Administrator ordered the immediate suspension of DEA Certificates of Registration AC5000372 and BC0196508 during the pendency of proceedings.

The Order to Show Cause and Immediate Suspension of Registration was personally served on Dr. Clements on February 22, 1988. More that thirty days have passed since the service of the Order to Show Cause, and DEA has received no response. Therefore, the Administrator concludes that Dr. Clements has waived his opportunity for a hearing on the issues raised by the Order to Show Cause and, pursuant to 21 CFR 1301.54(d) and 1301.54(e), enters this final order without a hearing and based upon the investigative file.

The Administrator finds that in early 1985 agents from the Pennsylvania Bureau of Narcotics conducted an investigation of Dr. Clements' prescribing practices. The agents noted that Dr. Clements was writing a large number of prescriptions for the Schedule II narcotic drugs Percodan and Percocet. Several individuals who obtained these prescriptions were drug abusers and narcotic addicts known to local law enforcement agencies.

A survey indicated that one pharmacy in the Pittsburgh area filled prescriptions written by Dr. Clements, totalling 20,021 dosage units of Schedule II narcotic drugs, in December 1986. The majority of these prescriptions were for Percodan and Percocet. These prescriptions represented over 80% of all prescriptions for Schedule II narcotic controlled substances filled at the pharmacy during that month.

In May 1987, DEA agents interviewed an individual who had been seeing Dr. Clements at his office for about a year and a half. This individual stated that initially a physical examination was conducted by Dr. Clements, but after a time the individual would go to Dr. Clements' office two to three times a week, and on each occasion obtain a prescription for 24 tablets of Percodan or Percocet for $25. Sometimes the individual would pay $50 for a prescription of 48 tablets of Percodan or Percocet or two prescriptions of 24 tablets each of Percodan or Percocet, one of the prescriptions being postdated. Other individuals also indicated they received postdated prescriptions for Percodan or Percocet from Dr. Clements. A local pharmacist told DEA agents that he filled numerous postdated prescriptions for Percodan from Dr. Clements along with currently dated prescriptions written for the same patient.

In January 1988, a confidential informant, monitored by DEA agents, purchased six prescriptions, each for 48 tablets of Percocet, from Dr. Clements. Two prescriptions were in the name of the confidential informant, two in the name of the informant's friend, and two in the name of the informant's mother. The friend and mother were not present. One prescription for each individual was dated on the date of the informant's visit. The others were dated four days later. The confidential informant paid Dr. Clements $300 for the prescriptions. The confidential informant returned to Dr. Clements' office on four more occasions in January and February 1988. On each occasion the informant met briefly with Dr. Clements and purchased six Percocent prescriptions for $300. As before, two prescriptions were in the name of the informant's friend and two in the name of the informant's mother. One prescription for each individual was dated on the day of the visit, the other prescription was postdated.

Based upon the previously described activities of Dr. Clements, the Administrator concludes that the doctor was prescribing controlled substances, specifically Percocet, outside the scope of his professional practice and for other than a legitimate medical purpose. Dr. Clements' prescribing of unusually large quantities of narcotic controlled substances over a period of time to individuals without conducting a medical examination, his prescribing for individuals that he did not see in his office, his assessing of charges based upon the number of prescriptions issued and his postdating of prescriptions clearly support such a conclusion. Dr. Clements has demonstrated a total disregard for the law and regulations regarding prescribing of controlled substances. His continued registration with DEA is clearly inconsistent with the public interest, and he should not remain registered with DEA.

Having concluded that Dr. Clements' DEA Certificates of Registration must be revoked, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), orders that DEA Certificates of Registration AC5000372 and BC0196508, previously issued to Harry Michael Clements, M.D., be, they hereby are, revoked. Any outstanding applications for registration submitted by Dr. Clements are hereby denied. This order is effective April 22, 1988.

When the Order to Show Cause and Immediate Suspension of Registration was served on Dr. Clements, all controlled substances possessed by the doctor under the then-suspended registrations were placed under seal and removed for safekeeping. No disposition may be made of such until all appeals have been concluded or until the time for taking an appeal has elapsed. Accordingly, these controlled substances shall remain under seal until May 23, 1988, or until any appeal of this order has been concluded. At that time all such controlled substances shall be forfeited to the United States and shall be disposed of pursuant to 21 U.S.C. 881(e).

John C. Lawn,

Administrator.

Dated: April 19, 1988.

[FR Doc. 88-8948 Filed 4-21-88; 8:45 am]

BILLING CODE 4410-09-M

Robert Hozdish d/b/a A.J. Meyer Pharmacy; Revocation of Registration and Denial of Application

On September 30, 1987, the Administrator of the Drug Enforcement Administration (DEA) issued an Order to Show Cause to Robert Hozdish, d/b/a A.J. Meyer Pharmacy, of 16361 Mack Avenue, Detroit, Michigan 4824, proposing to revoke DEA Certificate of Registration AA6195172, and to deny the application executed on May 28, 1987, for renewal of that registration as a retail pharmacy under 21 U.S.C. 823(f). The statutory predicate for the proposed action was that Robert Hozdish, pharmacist and owner of the A.J. Meyer Pharmacy, was convicted of a controlled substance-related felony on February 12, 1987, in the United States District Court for the Eastern District of Michigan.

On October 29, 1987, Mr. Hozdish's attorney waived the opportunity for a hearing and submitted a written statement in response to the Order to Show Cause. Several documents were attached to the statement, including a plea agreement, transcripts from court proceedings, and a letter from an Assistant United States Attorney. Mr. Hozdish's attorney also forwarded a copy of the Consent Order entered by the Michigan Department of Licensing and Regulation, Board of Pharmacy. The Administrator finds that Robert Hozdish, d/b/a A.J. Meyer Pharmacy, has waived his opportunity for a hearing. 21 CFR 1301.54(c). Accordingly, the Administrator enters this final order based on the record as it appears, which includes all of the aforementioned documents submitted on behalf of Mr. Hozdish. 21 CFR 1301.54(c), 1301.54(d) and 1301.54(e).

The Administrator finds that the Federal Bureau of Investigation (FBI) conducted an investigation of a sham medical clinic where doctors issued prescriptions for Schedule II and III controlled substances for no legitimate medical purpose. The investigation revealed that Robert Hozdish filled several prescriptions issued by doctors employed by the medical clinic. On January 15, 1985, an FBI Agent interviewed Robert Hozdish concerning the prescriptions he had filled. Robert Hozdish stated that at least once a day for approximately one year he filled two or more prescriptions for individuals presenting prescriptions from the medical clinic. Robert Hozdish further stated that he charged these individuals more than the going rate and filled the prescriptions because it was "easy money."

As a result of the investigation, Robert Hozdish was charged with conspiracy to distribute controlled substances in violation of 21 U.S.C. 846 and 841(a)(1). On February 12, 1987, in the United States District Court for the Eastern District of Michigan, Robert Hozdish pled *nolo contendere* to count one of the superseding information charging him with conspiracy to distribute Percodan, Demerol and Desoxyn, in violation of 21 U.S.C. 846. This is a felony offense relating to controlled substances.

The Administrator also finds that an administrative complaint was filed with the Michigan Board of Pharmacy, Department of Licensing and Regulation, on May 26, 1987, charging Robert Hozdish with several violations of the Michigan Public Health Code. A Consent Order was entered by the Board of Pharmacy on November 18, 1987, suspending Robert Hozdish's pharmacist and controlled substances licenses for a period of six months and one day commencing on December 18, 1987.

Based on the foregoing, the Administrator concludes that there is a lawful basis for the revocation of the DEA registration of A.J. Meyer Pharmacy. DEA has consistently held that the registration of a corporate registrant may be revoked upon a finding that a natural person who is an owner, officer, or key employee, or who has some responsibility for the operation of the registrant's controlled substance business, has been convicted of a felony offense relating to controlled substances. See *Ozie T. Faison, d/b/a Smith Discount Drugs*, Docket No. 85-37, 51 FR 16403 (1986); *Spoon's Pharmacy*, Docket No. 84-42, 50 FR 46520 (1985); *Daniel Levine t/a Gladstone Pharmacy*, Docket No. 84-20, 50 FR 32651 (1985).

The Administrator concludes that based on the facts and circumstances in

this matter, the registration of A.J. Meyer Pharmacy should be revoked. Robert Hozdish has shown that he cannot be trusted to handle controlled substances. He ignored his professional obligations as a pharmacist when, in order to make some "easy money," he chose to fill prescriptions which were issued for no legitimate medical purpose. The Administrator has considered the various documents submitted by counsel for Robert Hozdish in mitigation and does not find the documentation to be persuasive.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AA6195172, previously issued to A.J. Meyer Pharmacy be, and it hereby is, revoked. The Administrator further orders that A.J. Meyer Pharmacy's application for renewal of its DEA Certificate of Registration, executed on May 28, 1987, be, and it hereby is, denied. This order is effective May 23, 1988.

Dated: April 18, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-8837 Filed 4-21-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

The Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub L. 92-463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: May 10, 1988, 9:30 a.m., Rm. S4215 A&B Frances Perkins, Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(1). The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

FOR FURTHER INFORMATION CONTACT: Fernand Lavallee, Executive Secretary, Labor Advisory Committee, *Phone:* (202) 523-6565.

Signed at Washington, DC, this 8th day of April 1988.

Eugene K. Lawson,

Deputy Under Secretary, International Affairs.

[FR Doc. 88-8915 Filed 4-21-88; 8:45 am]

BILLING CODE 4510-28-M

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Assistant Secretary for Policy
(Departmental Management)
National SAS Farmworker Survey
(Seasonal Agricultural Services)
Annually
Individual or households; Farms; Businesses or other for profit; 1,000 responses; 1,000 hours

The Immigration and Nationality Act (INA) as amended by Immigration Reform and Control Act Agricultural Services (SAS) agriculture and to analyze information about wages, working conditions and recruitment practices. This survey will gather data necessary to make these estimates and carry out these analyses.

Extension

Employment and Training Administration
Income and Eligibility Verification
1205-0238; No forms
On occasion
State or local governments; Federal agencies or employees
53 respondents; 38,722 burden hours; no forms

Final rules implementing the income and eligibility verification provisions in the Deficit Reduction Act. Rules apply to State Employment Security Agencies (SESAs) and require them to disclose and obtain certain information for verifying eligibility and benefit amounts.

Signed at Washington, DC, this 19th day of April 1988.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 88-8916 Filed 4-21-88; 8:45 am]

BILLING CODE 4510-30-M

Employment and Training Administration

[TA-W-20,411, Kingsford, MI and TA-W-20,411A, Marquette, MI]

Lake Shore, Inc.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 21, 1988 applicable to all workers of Lake Shore, Inc., Kingsford, Michigan. The Certification was published in the **Federal Register** on April 5, 1988 (53 FR 11148).

District 33 of the United Steelworkers of America (USW) requested that the Department include Lake Shore workers at Marquette, Michigan in its Certification.

Based on new information furnished to the Department by the company, the certification is amended to include the Marquette, Michigan plant of Lake Shore, Inc. The production at Marquette was integrated with that of Kingsford and workers were transferred between plants. The production and sales data submitted by Lake Shore, Inc., include both plants.

The intent of the Certification is to cover all workers at Lake Shore, Inc., who were affected by increased imports of articles like or directly competitive with cranes and material handling equipment produced at Kingsford, Michigan and Marquette, Michigan.

The amended notice applicable to TA-W-20,411 is hereby issued as follows:

All workers of Lake Shore, Inc., Kingsford, Michigan and Marquette, Michigan, who became totally or partially separated from employment on or after January 5, 1987 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 13th day of April, 1988.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 88-8926 Filed 4-21-88; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions.

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable to Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register,** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-exploratory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administraton, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume I

Georgia:
GA88-31 ..... pp. 276a-276b.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Georgia:
GA88-10 (Jan. 8, 1988)..... p. 235.
New York:
NY88-7 (Jan. 8, 1988)..... pp. 738-739.
Listing by Location (index)..... pp. xxii-xxv.
Listing by Decision (index)..... p. 1i.

Volume II

Iowa:
IA88–5 (Jan. 8, 1988) ..... p. 46.
Indiana:
IN88–4 (Jan. 8, 1988) ..... pp. 278–282.
Michigan:
MI88–1 (Jan. 8, 1988) ..... pp. 416–418.
MI88–7 (Jan. 8, 1988) ..... pp. 483, 485–489.

Volume III

Arizona:
AZ88–1 (Jan.8, 1988) ..... p. 10.
AZ88–2 (Jan. 8, 1988) ..... pp. 17–22.
Colorado:
CO88–1 (Jan. 8, 1988) ..... pp. 104–112b.
CO88–2 (Jan. 8, 1988) ..... p. 114.
CO88–4 (Jan. 8, 1988) ..... p. 120.
Nevada:
NV88–2 (Jan. 8, 1988) ..... pp. 260–263.
Oregon:
OR88–1 (Jan. 8, 1988) ..... pp. 302–316b.
Utah:
UT88–3 (Jan. 8, 1988) ..... p. 349.
Washington
WA88–1 (Jan. 8, 1988) ..... pp. 362–363.
WA88–2 (Jan. 8,1988) ..... p. 388.
WA88–3 (Jan. 8, 1988) ..... p. 398.
WA88–8 (Jan. 8, 1988) ..... p. 420.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 15th day of April 1988.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 88–8670 Filed 4–21–88; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M–88–63–C]

AMAX Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

AMAX Coal Company, P.O. Box 967, 251 N. Illinois Street, Indianapolis, Indiana 46206–0967 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Wabash Mine (I.D. No. 11–00877) located in Wabash County, Indiana. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that entries used as intake and return aircourses be separated from belt haulage entries, and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use air from belt haulage entries to ventilate active working places.

3. In support of this request, petitioner proposes to install an early warning fire detection system. Carbon monoxide sensors will be installed in all belt entries used as intake or return aircourses and at each belt drive and tailpiece located in intake aircourses. A warning signal will be activated when the CO level is 10 parts per million (ppm) above ambient air and an alarm will be activated at 15 ppm above ambient air. All persons will be evacuated at 15 ppm. The alarm and signal will be activated at an attended surface location where there is two-way communication. The CO system will be capable of identifying any activated sensor and for monitoring electrical continuity to detect any malfunctions.

4. If the CO monitoring system is deenergized or malfunctions the belt conveyor will continue to operate and qualified persons will patrol and monitor the belt conveyor using hand-held CO detecting devices.

5. Each CO sensor will be visually examined at least once during each coal-producing shift. Sensors will be calibrated in accordance with Fire Warning Device Plan. Each sensor will be capable of detecting CO in air at a level of 1 ppm throughout the operating range.

6. When an alarm is activated, a record will be made of the date, time, and CO concentration at the sensor producing the signal and the reason for its activation.

7. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regualtions and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 23, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: April 18, 1988.

[FR Doc. 88–8917 Filed 4–21–88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M–88–29–C]

Bethlehem Mines Corp.; Petition for Modification of Application of Mandatory Safety Standard

Bethlehem Mines Corporation, 7012 MacCorkle Avenue, SE., Charleston, West Virginia 25304 has filed a petition to modify the application of 30 CFR 77.216–3(a) (water, sediment, or slurry impoundments and impounding structures; inspection requirements; correction of hazards; program requirements) to its Mine 41, Impoundment and Refuse Disposal Facility (I.D. No. 46–01427), (1211WV30053–00) and (1211WV30053–02) located in Marion County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all water, sediment, or slurry impoundments be examined by a qualified person designated by the person owning, operating or controlling the impounding structure at intervals not exceeding seven days for appearance of structural weakness and other hazardous conditions.

2. As an alternate method, petitioner proposes to inspect the facility on a monthly basis. In support of this request, petitioner states that—

(a) The facility has been idle since 1982 and is presently on inactive status;

(b) No adverse conditions have been revealed in the structure;

(c) There are no significant seepages, erosion, or other problems that would indicate a structure/stability concern;

(d) The present storm storage capacity in the structure meets the requirement of the design plan;

(e) The inspections will increase when necessary due to weather conditions; and

(f) Petitioner is in the process of updating an emergency warning and evacuation plan, which will establish the communication network for relaying weather conditons and emergency situations to the proper individuals.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 23, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: April 18, 1988.

[FR Doc. 88-8918 Filed 4-21-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-4-C]

Cougar Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Cougar Coal Company, Inc., P.O. Box 301, Warfield, Kentucky 41267 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 1 (I.D. No. 15-16161) located in Johnson County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine ranges from 40 to 48 inches in height and the coal bed is very uneven with rolls and hills.

3. Petitioner states that the use of cabs or canopies on the mine's electric face equipment would result in a diminution of safety, because the cabs or canopies would hit and dislodge roof bolts, causing a roof fall. The cabs or canopies would also limit the equipment operator's visibility.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 23, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: April 18, 1988.

[FR Doc. 88-8919 Filed 4-21-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-23-C]

Emmanuel Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Emmanuel Coal Company, 3 Arnold Avenue, Prestonburg, Kentucky 41653, has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 3 (I.D. No. 15-16252) located in Martin County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the Stockton Coal Seam, and the average mining height is 48 inches.

3. Petitioner states that when canopies are lowered on the mine's electric face equipment to a height which allows clearance throughout the mine, the canopies limit the equipment operator's vision.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 23, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: April 18, 1988.

[FR Doc. 88-8920 Filed 4-21-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-48-C]

Freeman United Coal Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Freeman United Coal Mining Company, Route 37 North, West Frankfort, Illinois 62896 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Orient Mine No. 6. (I.D. No. 11-00599) located in Jefferson County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that barriers be established and maintained around oil and gas wells penetrating coal beds.

2. As an alternate method, petitioner proposes to clean out and plug oil and gas wells using specific techniques and specific procedures as outlined in the petition.

3. In addition, petitioner proposes to mine through the plugged oil or gas well. Prior to mining through, the petitioner would confer with the MSHA District Manager for approval of the specific mining procedures, and appropriate officials would be allowed to observe the process and all mining would be under the direct supervision of a certified official. In addition:

(a) Drivage sites would be installed; firefighting equipment, roof support and ventilated materials would be avaiable;

(b) The quantity of air would be not less than 9000 cubic feet per minute to ventilate the face;

(c) Equipment would be checked for permissibility and serviced prior to mining through the well. The working place would be free from accumulations of coal dust and coal spillages, and rock-dusted to within 20 feet of the face;

(d) Methane monitors would be calibrated prior to the shift and tests would be made during mining approximately every 10 minutes; and

(e) When the wellbore is intersected, all equipment would be deenergized and safety checks would be made before mining would continue in by the well a sufficient distance to permit adequate

ventilation around the area of the wellbore.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 23, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: April 18, 1988.

[FR Doc. 88-8921 Filed 4-21-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-253-C]

The Helen Mining Co.; Petition for Modification of Application of Mandatory Safety Standard (Amendment)

The Helen Mining Company, R.D. 2, Box 2110, Homer City, Pennsylvania 15748-0504, has filed an amendment to a petition for modification. On October 19, 1987, The Helen Mining Company, submitted a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Homer City Mine (I.D. No. 36-00926) located in Indiana County, Pennsylvania. On December 15, 1987, MSHA published notice of the petition in the **Federal Register** (52 FR 47646), allowing interested parties 30 days to submit comments. On April 7, 1988, petitioner submitted a request to amend the originally submitted petition for modification. The amendment is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return air-courses be examined in their entirety on a weekly basis.

2. Due to roof falls, the Old 1st South Return; South Mains Return; South Mains Parallel Return; No. 1 Panel South Mains Return; No. 2 Intake Shaft Intake Entry; and 2nd Left Return, cannot be safely traveled and to rehabilitate these areas would expose miners to hazardous conditions.

3. As an alternate method, petitioner proposes that—

(a) When an impassable roof falls occurs in an area of the mine, utilizing a single return aircourse, an evaluation will be conducted to ensure that an adequate quantity of air is passing over the fall;

(b) The inby and outby ends of the roof fall will be supported according to the approved roof control at the mine; and

(c) The mine examiner will conduct weekly examinations of the return aircourses by traveling the aircourse and examining the inby and outby ends of the roof fall to ensure proper flow and volume. Tests for methane will be conducted.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 23, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: April 18, 1988.

[FR Doc. 88-8922 Filed 4-21-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-303-C]

Kerr/McGee Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard (Amendment)

Kerr-McGee Coal Corporation, P.O. Box 727, Harrisburg, Illinois 62946 has filed an amendment to a petition for modification. On December 21, 1987, Kerr-McGee Coal Corporation submitted a petition to modify the application of 30 CFR 75.902 (low- and medium-voltage ground check monitor circuits) to its Galatia Mine 56-1, No. 5 Seam Bottom Area (I.D. No. 11-02752) located in Saline County, Illinois. On February 12, 1988, MSHA published notice of the petition in the **Federal Register** (53 FR 4241), allowing interested parties 30 days to submit comments. On March 29, 1988, petitioner submitted a request to amend the originally submitted petition for modification to include the No. 6 Seam fluids borehole area. The amendment is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that low- and medium-voltage resistance grounded systems include a fail-safe ground check circuit to monitor continuously the grounding circuit to assure continuity. The ground check circuit will cause the circuit breaker to open when either the ground or pilot check wire is broken.

2. As an alternate method, petitioner proposes to use 480-volt, three phase, power distribution without the need of the ground check circuit in the No. 5 Seam bottom area and the No. 6 Seam fluids borehole area. In support of this request petitioner states that—

(a) The No. 5 Seam bottom area is constructed with concrete floors with the roof and rib wire meshed and sealed with a nonhazardous pressure applied fibrous sealant, along with additional steel supports. The No. 6 Seam fluids borehold area is constructed as the No. 5 Seam bottom area, but without the additional steel supports;

(b) Galvanized rigid conduit will be used throughout both areas. The conduit will be supported by strut fastened to existing steel supports on the No. 5 Seam bottom area and to the roof in the No. 6 Seam fluids borehole area;

(c) All electrical panels, starters, boxes, will be of type NEMA 12;

(d) All stationary 480-volt, three phase equipment will be connected by galvanized rigid conduit;

(e) All equipment will be bonded to the grounding system through the conduit system and through a ground wire pulled in the conduit system;

(f) Power to the No. 5 Seam bottom area and No. 6 Seam Fluids borehole area wil be fed to NEMA 12 electrical panels from a mine duty power center by MSHA approved cables and protected at the power center by MSHA approved ground monitor, ground fault, under voltage release, thermal and magnetic overload protection; and

(g) The design and installation of this electrical system will conform to the 1987 National Electrical Code.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson

Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 23, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: April 18, 1988.

[FR Doc. 88-8923 Filed 4-21-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-22-C]

Larkk Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Larkk Mining Company, Box 964, Prestonburg, Kentucky 41653 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Mine No. 1 (I.D. No. 15-15054) and its Mine No. 2 (I.D. 15-16149) both located in Magoffin County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the Winiferde Coal Seam, and ranges from 44 to 46 inches in height.

3. Petitioner states that when canopies are lowered on the mine's electric face equipment to a height which allows clearance throughout the mine, the canopies limit the equipment operator's vision.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 23, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: April 12, 1988.

[FR Doc. 88-8924 Filed 4-21-88; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-88-24-C]

Mullins and Sons Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Mullins and Sons Coal Company, Inc., Box 4028, Kimper, Kentucky 41539 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 6 Mine (I.D. No. 15-11855) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The No. 6 Mine is located in the Pond Creek seam and ranges from 30 to 48 inches in height, with ascending and descending elevations. The height of the seam varies due to roof irregularities and rolls.

3. Petitioner states that the use of cabs or canopies on the mine's electric face equipment would result in a diminution of safety, because the cabs or canopies would hit and loosen roof support, impair the equipment operator's vision and seating position, resulting in cramped conditions, fatigue and reduced alertness and safety. The cabs and canopies could also disturb overhead electrical cables, causing electrical shocks.

4. Petitioner further states that, should the power go out while an operator's compartment is up against a rib, a canopy which is close to the machine frame would trap the operator inside. Should a mine fire exist, flooding, or other danger occur, the operator could not escape.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 23, 1988. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: April 18, 1988.

[FR Doc. 88-8925 Filed 4-21-88; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 88-26; Application No. D-7019]

Exemption for Certain Transactions Involving Alliance Capital Management Corp.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the direction of securities brokerage transactions by Alliance Capital Management Corporation (Alliance), on behalf of employee benefit plans for which it acts as investment manager and fiduciary (within the meaning of section 3(21) of the Act), to independent broker-dealers who have arrangements with an affiliate of Alliance, the Pershing Division (Pershing) of Donaldson, Lufkin and Jenrette Securities Corporation (DLJ Securities), to execute, clear and/or settle transactions for such independent broker-dealers.

FOR FURTHER INFORMATION CONTACT: Sandra Bollhoefer of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On November 6, 1987, notice was published in the **Federal Register** (52 FR 42740) of the pendency before the Department of Labor (the Department) of an application for exemption from the restrictions of section 406(b) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1986 (the Code) by reason of section 4975(c)(1) (E) and (F) of the Code. The notice set forth a summary of the facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC.

All interested persons were invited by the notice to submit written comments on the proposed exemption and to submit a written request that a hearing be held relating to the exemption. The applicant has represented that it has complied with the requirements of the notification to interested persons as set forth in the notice of pendency. No comments or requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted

solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption 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. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact that the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is the subject of an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the plans involved and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of those plans.

Accordingly, the restrictions of section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (E) and (F), shall not apply to the direction of securities transactions, initiated by Alliance Capital Management Corporation (Alliance), an affiliate of Donaldson, Lufkin and Jenrette Securities Corporation (DLJ Securities), on behalf of an employee benefit plan in Alliance's capacity as a fiduciary for such plan, to a securities broker or dealer (Pershing Correspondent), who is not an affiliate of DLJ Securities and who has a correspondent relationship with the Pershing Division (Pershing) of DLJ Securities on an omnibus account basis, and where such securities transactions are executed, cleared and/or settled by Pershing, provided that the conditions set forth below are met:

(a) There is no arrangement or understanding between Alliance and the Pershing Correspondents that all or part of the execution, clearance and settlement functions relating to such transactions will be directed to Pershing.

(b) Neither Alliance nor any affiliate of Alliance is a trustee or administrator of any of the plans or an employer of any employees covered by any of the plans.

(c) Prior to transmitting plan transactions to a Pershing Correspondent and on an annual basis thereafter, Alliance will disclose to an independent fiduciary of each plan whose assets are involved in the transaction information necessary to enable the fiduciaries to judge the appropriateness of transactions effected on behalf of their plans through Pershing Correspondents and to determine whether such activities should be discontinued. These disclosures will delineate: (1) The existence of the corespondent relationships and the nature of the affiliation between Alliance and Pershing; (2) the possibility that transactions may be directed to Pershing Correspondents and that part of the commissions paid to the correspondents may be retained by Pershing as a correspondent fee; and (3) the use of brokerage commissions to pay for investment research services.

(d) Alliance will furnish a report to an independent fiduciary of each plan at least once per year. Such report will be furnished within 45 days following the end of the period to which it relates and will contain the following information: (1) The total of all transaction-related charges incurred by the plan during the period covered by the report in connection with transactions to which this proposed exemption applies; (2) the total of all transaction-related charges incurred by the plan during the period covered by the report in connection with all other brokerage transactions; (3) rates for all transaction-related charges incurred by the plan during the period covered by the report for transactions to which this exemption applies; and (4) rates for all transaction-related charges incurred by the plan for all other brokerage transactions.

The availability of this exemption is subject to the express conditions that the material facts and representations contained in the paplication are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, DC, this 6th day of April, 1988.

Robert J. Doyle,

Acting Associate Director for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88–8931 Filed 4–21–88; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–7005] et al.]

Proposed Exemptions; Carpenters Pension Trust for Southern California et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public

Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Carpenters Pension Trust for Southern California (the Trust) Located in Los Angeles, California

[Application No. D–7005]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) 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 (1) to the past and continued leasing of office space in a building (the Building) owned by the Trust to DeCarlo & Connor (the Firm), a party in interest with respect to the Trust; (2) the past and continued leasing of certain office space in the Building by the Firm from the Trust which the Firm had been previously subleasing from the Los Angeles County District Council of Carpenters (the District Council); and (3) the proposed subsequent leasing of additional office space in the Building to the Firm; provided that each leasing transaction which has taken place or will take place was and will be on terms no less favorable to the Trust than an arm's-length transaction with an unrelated party.

Effective Date: If the proposed exemption is granted, the exemption will be effective January 1, 1986.

Summary of Facts and Representations

1. The Trust is a multiemployer, jointly-trusteed, defined benefit plan, headquartered at 520 S. Virgil Avenue, Los Angeles, California. The Trust has approximately 36,000 plan participants. As of December 31, 1986, the Trust had total assets of $859,931,381.

2. The Building is a four story office building located at 500 S. Virgil Avenue in Los Angeles, California. The Trust owns the Building as well as two adjoining buildings located at 520 S. Virgil Avenue and 2999 West Sixth Street. The applicant states that the value of these three properties is approximately $7,301,600. Tenants in these buildings include various service providers to the Trust, labor organizations and non-Trust-related commercial tenants.[1] Rental income for the properties in 1986 represented slightly less than 1% of the total income of the Trust.

Moran Management Corporation (Moran) was the property manager for the Building until mid-1986. The current property manager for the Building is the Charles Dunn Company. The Board of Trustees of the Trust (the Trustees) appoints the Owner-Representative Committee (the Committee) to oversee management of the Trust's real properties, including the Building.

3. The Firm is a professional corporation providing legal services to the Trust as the Trust's co-counsel. The Firm also employes persons on whose behalf contributions are made to the Trust. Prior to January 1, 1986, John DeCarlo (Mr. DeCarlo) and Patrick Connor (Mr. Connor) were employees of the District Council. The application states that the District Council leased Suite 320 in the Building on May 1, 1985 to provide space for its "in-house" lawyers, Mr. DeCarlo and Mr. Connor.[2] The decision to enter into the lease with the District Council was made by Moran. The lease was ratified by the Committee on November 26, 1985. The lease was a month-to-month lease with a monthly rent of $1,381 per month or $1.25 per square foot per month.

The applicant states that on January 1, 1986, when Messrs. DeCarlo and Connor formed the Firm and left the employ of the District Council, they remained in Suite 320. The applicant has provided a declaration from Mr. John Nemer (Mr. Nemer), an employee of Moran, concerning the circumstances which led to the Firm occupying the space previously occupied by the District Council without a new lease being entered into between the Firm and the Trust. Mr. Nemer states that he did not initiate any action to transfer the lease to the Firm or to create a new lease with the Firm because he was satisfied with the arrangement as long as the Trust received payment of the rent. Mr. Nemer did not approach the Committee concerning the change because the Trust was still receiving fair market rent, as established by an independent appraiser. In addition, no commissions were involved for the leasing of the space, and the Trust was not asked to incur any expense to improve the space. Mr. Nemer states that he was never pressured by any person affiliated with the District Council or the Firm to lease space to them or to otherwise transact with them on any basis different than the Trust would transact with unrelated lessees. Mr. Nemer represents that at all times from May 1, 1985 until the present, the terms and conditions of the lease have been equal to or better than the terms and conditions available in similar transactions by the Trust with unrelated parties.

The applicant proposes to lease Suite 320 (the Suite 320 Lease) to the Firm for a term of three years, beginning January 1, 1986, the date on which the Firm left the employ of the District Council and began leasing the space directly from the Trust. The applicant states that the Committee will approve the Suite 320 Lease on behalf of the Trust and will monitor the lease to safeguard the interests of the Trust, including maintaining the rent at fair market value and undertaking any action necessary to protect the Trust and its participants and beneficiaries.

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[1] Certain of the leases with service-providers to the Trust are covered by Prohibited Transaction Exemption 81–60, 46 FR 39248, July 31, 1981.

[2] The applicant represents that the lease of Suite 320 to the District Council satisfied the conditions necessary for relief under Prohibited Transaction Exemption (PTE) 76–1, 41 FR 12740 (March 26, 1976). In this proposed exemption, the Department expresses no opinion as to whether the lease satisfied the requirements of PTE 76–1.

5. The applicant represents that in early 1986, the Firm needed additional office space and wished to remain in the Building in order to be close to its two principal clients, the District Council and the Trust. As a result, the Firm began leasing Suite 370 (the Suite 370 Lease) from the Trust on March 15, 1986, on a month-to-month basis at a monthly rental of $1117.00 or approximately $1.25 per square foot of rentable space. The decision to lease Suite 370 to the Firm was made by Moran.

The Committee ratified the Suite 370 Lease on July 17, 1986. The applicant has provided delcarations from Trustees C.V. Holder, Robert B. Longway (Mr. Longway), John Ebert (Mr. Ebert), and James Wood, all of whom were members of the Committee and were present at the Committee's meeting which approved the Suite 370 Lease. The applicant has also provided declarations from Mr. Longway, Mr. Ebert, Curtis Conyers, Jr. (Mr. Conyers), and Walter J. Scott (Mr. Scott), the current Trustees who are members of the Committee, concerning the Committee's role in the ongoing monitoring of the Suite 370 Lease (together, the Delcarations).

The Declarations state that the decision to enter into the Suite 370 Lease was not influenced in any way by Mr. DeCarlo, Mr. Connor, or any of their personnel. The Declarations state further that the Firm did not advise the Trust with respect to the terms and conditions of the Suite 370 Lease and that no one from the Firm was present at the meeting on July 17, 1986 when the lease was approved.

6. The Committee's decision to lease Suite 370 to the Firm on a month-to-month basis was based on the recommendation of Mr. Nemer. In a separate declaration, Mr. Nemer states that he believed that a month-to-month lease was appropriate under the circumstances because the space involved had been vacant for 18 months and the rental market was weak from the landlord's perspective. Mr. Nemer states that Mr. DeCarlo was uncertain of the total amount of space that the Firm would need at that time. The applicant states further that month-to-month leases are not unusual in the Trust's buildings and has provided a list of other tenants who are currently leasing space on a month-to-month basis. The applicant has modified the Suite 370 Lease to provide for a three year term.

7. The application states that the Trust incurred expenses for leasehold improvements to Suite 370 to make the space usable by the average tenant. These improvements were approved by the Committee with the knowledge that the space involved had been vacant for some time and required reconfiguration. The space had been previously used as a conference room by another tenant in the Building. Mr. Nemer states that the improvements made were typical for offices in the Building and that the prices for the materials used were normal. The Declarations state that the fact that the Trust was going to lease Suite 370 to the Firm did not affect the degree of leasehold improvements provided by the Trust. The Suite 370 Lease provides that if the Firm vacates the space before the expiration of 60 months, the Firm will be liable for the balance of the unamortized costs of the improvements, unless the Firm relocates to another property owned by the Trust.

8. Suite 370 was appraised on April 1, 1986 by John J. Archer, ASA (Mr. Archer), an independent real estate appraiser in Pasadena, California, as having a fair market monthly rental value of $1.25 per squre foot or $1,117 per month. Mr. Archer states that consideration was given in the appraisal for improvements to Suite 370 to meet the needs of a new tenant. Mr. Archer states further that his appraisal of the rent was not influenced in any way by either Mr. DeCarlo, Mr. Connor, or any member of the firm.

9. Mr. Conyers, Mr. Ebert, Mr. Scott and Mr. Longway state in their Declarations that they will continue to monitor both the Suite 320 Lease and the Suite 370 Lease and ensure that the terms of the leases are equal to or better than the terms the Trust is offering new tenants for other space. Messrs. Conyers, Ebert, Scott and Longway state further that reappraisals of the fair market rent for the space will be made no less frequently than once every other year and that rental rates in the leases will be subject to annual adjustments. The Committee will also take whatever actions are necessary to enforce the terms of the leases and safeguard the interests of the Trust.

10. The application states that the total rental income received by the Trust from the Firm for 1986 totalled less than .02% of the Trust's total income for 1986.

11. The Trust also seeks exemptive relief which will permit it to continue to lease any additional space in the Building to the Firm to accommodate the future needs of the Firm. The applicant represents that such flexibility would be advantageous to the Trust because it would enable the Trust to deal responsively with the needs of the Firm, as a tenant, in the same manner as would any other landlord of similar properties in the area. The Trust also proposes to ensure that the Firm is not able to use its relationship with the Trust to its own advantage.

The applicant states that the Committee will, in considering further transactions with the Firm, obtain an analysis and a recommendation from their leasing agent, their property manager, and from an independent appraiser, that the terms of the proposed transaction: (1) Are equivalent to those terms which would be furnished by the Trust under its existing leases with unrelated parties; (2) are no less favorable to the Trust than the terms typically provided by other landlords in the area; and (3) are appropriate for and protective of the interests of the Trust as a landlord. In addition, the Committee will monitor the Firm's compliance with the terms and conditions of all lease obligations and will take appropriate action to protect the Trust's interests.

12. In summary, the applicant represents that the transactions satisfy the statutory criteria of section 408(a) of the Act because: (a) The Trust has received, and will continue to receive, the fair market rental value for the office space in the Building as established by an independent appraisal; (b) the decision to enter into the lease of office space to the Firm was made by an independent property manager and was ratified by the Committee, the members of which are independent fiduciaries with respect to the Trust; (c) the Committee determined that the leasing of office space to the Firm was in the best interest of the Trust; (d) the decision to enter into any future leases of additional office space to the Firm will be made by a professional property manager which is independent of the Firm and will be ratified by the Committee; (e) the Committee will monitor all such leases of office space to the Firm and will take whatever actions are necessary to safeguard the interests of the Trust; and (f) the transactions involve only a small percentage of the total assets of the Trust.

FOR FURTHER INFORMATION CONTACT: Mr. E. F. Williams of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Bell Atlantic Master Trust (the Trust) Located in Pittsburgh, Pennsylvania

[Application No. D-7067]

Proposed Exemption

(a) *General Exemption.* The restrictions of section 406(a) (1) (A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c) (1) (A) through (D) of the Code shall not apply to any transaction arising in connection with the acquisition, ownership, management,

development, leasing, financing, or sale of real property (including the acquisition, ownership or sale of any interest in a joint venture, partnership, trust, or separate account which invests primarily in real property) or the borrowing or lending of money in connection therewith, between a party in interest and the Trust, provided that the following conditions are satisfied:

(1) The decision to invest the assets of the Trust, directly or indirectly, in such transaction is made by Richard Ellis, Inc. (Ellis);

(2) Any such party in interest is not—

(i) Bell Atlantic, the sponsor of the Trust, any person directly or indirectly controlling, controlled by, or under common control with Bell Atlantic (Bell Atlantic Controlled Person), any officer, director, or highly-compensated (as defined in section 4975(e) (2)(H) of the Code) employee of Bell Atlantic or any Bell Atlantic Controlled Person; any corporation, partnership, trust or unincorporated enterprise in which Bell Atlantic, the Bell Atlantic Controlled Person, or any officer, director or highly compensated employee (as defined above) of Bell Atlantic or any Bell Atlantic Controlled Person owns a 5% or more interest; or any corporation, partnership, trust or unincorporated enterprise which owns a 5% or more interest in Bell Atlantic or any Bell Atlantic Controlled Person; or

(ii) Ellis, any person directly or indirectly controlling, controlled by or under common control with Ellis (Controlled Person); any officer, director, or highly compensated employee (as defined in section 4975(e) (2)(H) of the Code) of Ellis or any Controlled Person; any corporation, partnership, trust or unincorporated enterprise in which Ellis, any Controlled Person, or any officer, director or highly compensated employee (as defined above) of Ellis or any Controlled Person owns a 5% or more interest; or any corporation, partnership, trust or unincorporated enterprise which owns a 5% or more interest in Ellis or any Controlled Person; or

(iii) Any person who exercises discretionary authority, responsibility or control or who provides investment advice with respect to the investment of Trust assets involved in the particular transaction;

(iv) The term "interest", as applied in subsection (2) (i) and (ii) above means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation.

(B) The capital interest or the profits interest of the entity if the entity is a partnership, or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(v) A person is considered to own an interest held in any capacity if the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest or

(B) To dispose or to direct the disposition of such interest.

(3) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of Ellis, the terms of the transaction are at least as favorable to the Trust as the terms generally available in arm's-length transactions between unrelated parties.

(4) Ellis shall maintain for a period of six years from the date of each transaction mentioned above the records necessary to enable the persons described in subparagraph (5) of this section (a) to determine whether the conditions of this exemption have been met, except that (i) a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of Ellis, the records are lost or destroyed prior to the end of the six-year period, and (ii) no party in interest shall be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by subparagraph (5) below; and

(5)(i) Except as provided in subdivision (ii) of this subparagraph (5) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in subparagraph (4) of this section (a) are unconditionally available at the customary location for the maintenance and/or retention of such records, 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 which is funded, in whole or part, by the Trust with respect to which Bell Atlantic is a named fiduciary or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of any plan which is funded, in whole or part, by the Trust or any duly authorized representative of such participant or beneficiary.

(ii) None of the persons described in subdivisions (i) (B) and (C) of this subparagraph (5) shall be authorized to examine the trade secrets or commercial or financial information which is privileged, confidential or of a proprietary nature of either Bell Atlantic or Ellis.

(b) *Specific Exemption.* The restrictions of section 406(a)(1) (A) through (D) 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 furnishing of services, facilities and any goods incidental thereto by a place of public accommodation which is or may be considered an asset of the Trust to a party in interest with respect to the Trust if the services, facilities or incidental goods are furnished on a comparable basis to the general public, and if the requirements of subparagraphs (a) (4) and (5) of this exemption are met.

Effective Date: If this proposed exemption is granted, it will be effective February 21, 1986.

Summary of Facts and Representations

1. The Trust is a consolidated trust that funds benefits for the tax-qualified pension plans of Bell Atlantic and its affiliates. There are currently five such plans (collectively, the Plans): (1) Bell Atlantic Management Pension Plan, which has 37,604 participants; (2) Bell Atlantic Pension Plan, which has 68,566 participants; (3) Bell Atlantic Enterprises Retirement Plan, which has 738 participants; (4) Sorbus, Inc. Retirement Plan, which has 2,234 participants; and (5) Tri-Continental Lease Corporation Retirement Plan, which has 150 participants. Bell Atlantic is one of the regional holding companies created by the divestiture of AT&T. It is engaged in telecommunications through numerous subsidiaries.

2. The trustee of the Trust is Mellon Bank, N.A., in Pittsburgh, Pa. Each of the Plans provides that its named fiduciary is the Treasurer of Bell Atlantic, presently William Albertini, who reports on Trust matters directly to the finance committee of Bell Atlantic's Board of Directors on a quarterly basis. The finance committee reports on Trust matters to the Board of Directors on an annual basis.

3. In 1985, Bell Atlantic determined to allocate approximately 20% of the Trust's assets (or about $1.7 billion) to the building of a real estate portfolio consisting of commercial income-producing property. In January of 1987 the portion of Trust assets allocated to

the real estate portfolio was reduced to 15% of the Trust's assets (or about $1.3 billion). The Trust Agreement authorizes Bell Atlantic to direct the trustee to segregate assets of the Trust into one or more investment management accounts and to appoint real estate managers to manage and control the assets in these accounts. To date, eight real estate managers have been appointed, and it is contemplated that additional managers will be added. The exemption proposed herein applies only to transactions directed by one of the Trust's investment managers, Ellis.

4. Subject to general investment guidelines, each real estate manager is given complete discretion to acquire, manage and dispose of the real estate purchased through its investment account, or the real estate held by the joint venture, partnership, trust or separate account which it controls. In light of the size and complexity of both Bell Atlantic and the Trust, transactions with parties in interest may often occur with respect to Trust assets under the management and control of independent real estate managers. The number of potential parties in interest is large and in constant flux. To review lists of existing tenants before purchasing a building or acquiring an interest in a joint venture, partnership, trust or separate account which invests primarily in real property, and to screen all potential lessees or service providers for party in interest status prior to entering a typical lease in or services transaction would be expensive and time-consuming.

5. Bell Atlantic's role in the investment process is limited to the selection of the particular real estate manager which will either manage Trust assets directly or will manage Trust assets collectively with other assets through the joint venture, partnership, trust or separate account which it controls. In all cases the selection of a real estate manager and/or collective investment fund is made by the Treasurer of Bell Atlantic after consultation with the Bell Atlantic investment management division. After the real estate manager and/or collective investment fund is selected, Bell Atlantic retains no further discretion in the investment of Trust assets other than the right to terminate the real estate manager or to dispose of the Trust's interest in the collective investment fund.

6. On February 21, 1986, Bell Atlantic entered into a contract with Ellis to manage a real estate investment account. Ellis is a Delaware corporation registered as an investment adviser under the Investment Advisers Act of 1940. To the best knowledge of Bell Atlantic, Ellis does not own any stock in Bell Atlantic, or vice-versa, nor do the two companies have any common officers, directors or employees. Ellis is an affiliate of Richard Ellis, U.K. (Ellis U.K.), a British partnership founded in the 18th Century and headquartered in London. Several partners of Ellis U.K. together own approximately 50 percent of the stock of Ellis. To the best knowledge of Bell Atlantic, they do not own any stock in Bell Atlantic.

7. Ellis is an experienced, full service real estate investment adviser acquiring and managing properties throughout the world. It maintains seven offices in the United States, and through its affiliates 29 offices worldwide. It has been involved in real estate consulting and management in the United States for approximately 10 years; its worldwide affiliates have been in the field for approximately 35 years. It currently manages 60 properties worth just under $2.5 billion for both domestic and foreign institutional investors. Because many of these foreign institutional investors retain a veto power over the investment of assets, Ellis does not come within the definition of "qualified professional asset manager" contained in Prohibited Transaction Exemption 84–15 (PTE 84–14, 49 FR 9494, March 13, 1984), and the relief provided in PTE 84–14 is unavailable with respect to transactions enaged in by Ellis.

8. Under the terms of the contract with Ellis the trustee will contribute approximately $80–$100 million a year to Ellis' investment management account, to be "invested in interests in real property as soon as practicable." Subject to general investment guidelines, such as a prohibition on the purchase of residential or undeveloped property, Ellis is given complete discretion to acquire, manage and dispose of the assets in its account. Ellis identifies investments opportunities, determines whether a proposed investment should be made, and performs the management functions incident to the acquisition of the property. It inspects and appraises potential acquisitions, analyzes the current and prospective rent roll, negotiates the letter of intent and the contract of sale, reviews leases and service contracts, title, zoning, and construction matters, and performs the other due diligence tasks.

9. Once a property is acquired, Ellis is totally responsible for the management of the asset. On a yearly basis (sometimes more frequently), the current worth of each property is evaluated. Its fair market value is appraised, the current and projected cash flow is analyzed, and the project is evaluated vis-a-vis other types of real estate investments. Ellis prepares and provides to Bell Atlantic an annual operating budget for each property, as well as providing quarterly reports. Furthermore, Ellis is responsible for the upkeep of each property. Ellis hires the property managers for each building, and any transaction by a property manager involving the building, such as entering into a lease or contract, must be made in accordance with written guidelines established and administered by Ellis.

10. Ellis is also authorized to dispose of properties. It determines when a property should be sold and at what price, and implements its decisions. It generally does its own brokerage work, negotiates the letter of intent and contract of sale, and cooperates with the purchaser's due diligence efforts. In summary it is represented that Ellis exercises independent investment management authority over all aspects of the real estate holdings in its account, and performs an extensive set of tasks to ensure sound real estate investment and strong rates of return.

11. The fiduciaries or other parties in interest for which an exemption is requested are primarily those which loan money to any real estate projects in which Trust assets are committed, and those which are tenants in any such project. Various banks and financial institutions which may extend financing to the real estate projects will be parties in interest with respect to the Plans, by virtue of serving either as trustees, investment managers of portions of the Trust assets not involved in that particular project, or service providers with respect to the Plans. One or more of the tenants in the various projects in which Trust assets are invested may be fiduciaries or other parties in interest with respect to the Plans either by reason of providing services to the Plans or because of other relationships. Because of the size of the Trust and the number of parties in interest with respect to the Plans, it is possible that any building in which the Trust has an interest will have one or more parties in interest as tenants.

12. The applicant respresents that any covered transactions will be conducted on an arm's-length basis on terms not less favorable to the Trust than those available in arm's-length transactions with unrelated parties. The applicant represents that given the size and scope of the Trust and its investments, and the applicant's relationship to numerous

financial institutions, denial of the exemption would substantially inhibit the Trust from investing in many prime quality real estate projects of substantial size.

13. The Trust's contract with Ellis became effective February 21, 1986. While Bell Atlantic is unaware of any prohibited transaction which may have occurred with respect to Trust assets, it has requested that the relief proposed herein be made retroactive to February 21, 1986, in order to cover any inadvertent prohibited transactions which may have occurred after that date.

14. In summary, the applicant represents that the subject transactions meet the criteria of section 408(a) of the Act because: (1) All investments will be determined to be in the best interest of Plan participants and beneficiaries by Ellis, an independent real estate manager acting in its fiduciary capacity under the Plans, and will have been fully analyzed and approved without any participation by Bell Atlantic or any other party in interest; (2) Ellis is a qualified investment manager which has many years of experience in real estate acquisition and management, and which currently manages properties worth approximately $2.5 billion; (3) the Trust will be able to enter into transactions which, although prohibited, are necessary for the prudent conduct of the Trust's operation; and (4) all transactions will be conducted on an arm's-length basis on terms not less favorable to the Trust than those available in arm's-length basis on terms not less favorable to the Trust than those available in arm's-length transactions with unrelated parties.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Frank E. Irish, Inc. Profit Sharing Plan (the Plan) Located in Indianapolis, IN

[Application No. D–7151]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedure set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restricitons of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale, for $141,000, of an undivided one-half interest (the Interest) in certain improved real property (the Property) by the individually-directed account (the Account) in the Plan of Mr. John T. Irish (Mr. Irish) to Mr. Irish, a party in interest with respect to the Plan, provided the amount paid for the Interest is not less than fair market value at the time the transaction is consummated.

Summary of Facts and Representations

1. The Plan, which provides for participant-directed investments, is a defined contribution plan with 13 participants and total assets of $1,050,980 as of June 30, 1986. The trustees of the Plan (the Trustees) are Mr. Irish and his brother, Mr. Jack E. Irish. The Trustees also serve as officers, directors, principal shareholders and employees of Frank E. Irish, Inc. (the Employer) as well as participants in the Plan. For the Plan year ended June 30, 1986, Mr. Irish had an account balance in the Plan of $189,234. The Employer, a mechanical contractor, maintains its principal place of business at 625 East 11th Street, Indianapolis, Indiana.

2. On August 9, 1982, Mr. Irish directed the Trustees to invest a portion of his Account in a single family condominium costing $220,000. The Property is located at 1411 South Ocean Drive, Broward County, Fort Lauderdale, Florida. The sellers of the Property, Thomas J. and Gwendolyn G. Monroe, were unrelated parties. On March 8, 1983, the Account purchased an undivided one-half interest in the Property for the cash consideration of $110,000. Mr. Irish purchased the remaining one-half interest in the Property in his individual capacity by obtaining a mortgage loan in the original principal amount of $110,000 from South Florida Savings and Loan Association of Miami, Florida, an unrelated party.[1] As of October 1987, there was an outstanding principal balance on the loan of $108,069.

3. Since the time the Property has been jointly owned by the Account and Mr. Irish, it has been exclusively to unrelated parties. Between January 1985 and June 1987, the Account has received rental income totaling $19,962 and it has never paid any real estate taxes, expenses of other costs attributable to the Property. The Trustees have determined that it would be in the best interests of the Account to dispose of the Interest by selling it to Mr. Irish. Accordingly, an administrative exemption is requested from the Department.

4. The Account will sell the Interest to Mr. Irish for the cash amount of $141,000. This is one-half of the fair market value of the Property which was valued on November 24, 1987 at $282,000 in an updated appraisal report by Mr. Lyndell G. Goodwin (Mr. Goodwin), an independent real estate broker and appraiser from Fort Lauderdale, Florida. Mr. Goodwin initially determined that the subject property had a fair market value of $277,000 as of November 20, 1986. The Account will not pay any real estate fees or commissions in connection with the proposed sale.

5. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the sales price for the Interest is based on the fair market value of the Property as determined by an independent appraiser; (c) the Account will not be required to pay any real estate fees or commissions in connection therewith; and (d) the only account in the Plan that will affected by the proposed sale is that of Mr. Irish who desires that the transaction be consummated.

Notice to Interested Persons

Because Mr. J.T. Irish is the only participant in the Plan whose account will be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Therefore, all written comments and requests for a public hearing are due within 30 days from the date of publication in the **Federal Register** of the notice of proposed exemption.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

The NYNEX Master Pension Trust (the Trust) Located in New York New York

[Application Nos. D–7171 and D–7172]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

(a) *General Exemption.* The restrictions of section 406(a)(1) (A) through (D) of the Act and the sanctions resulting from the application of section

[1] In this proposed exemption, the Department expresses no opinion on whether the acquisiton and holding of the Property by the Account and Mr. Irish violated any provision of Part 4 of Title I of the Act.

4975 of the Code by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to any transaction arising in connection with the acquisition, ownership, management, development, leasing or sale of real property (including the acquisition, ownership or sale of any joint venture or partnership interest in such property) and the borrowing or lending of money in connection therewith, between a party in interest with respect to the Trust and the Trust, provided that the following conditions are satisfied:

(1) The decision to invest the assets of the Trust, directly or indirectly, in such transaction is made by the NYNEX Corporation (NYNEX) or the Treasurer of NYNEX as a fiduciary of the trust;

(2) Any such party in interest is not—

(i) NYNEX, any person directly or indirectly controlling, controlled by, or under common control with NYNEX, any officer, director or employee of NYNEX or any of its subsidiary or affiliated companies, or any partnership in which NYNEX is a 10 percent or more (directly or indirectly in capital or profits) partner, or

(ii) A person who exercises discretionary authority, responsibility or control or who provides investment advice with respect to the investment of Trust assets involved in the particular transaction;

(3) At the time the transaction is entered into and at the time of any subsequent renewal or modification thereof that requires the consent of the Treasurer of NYNEX or any person to whom such responsibility has been delegated, the terms of the transaction are at least as favorable to the Trust as the terms generally available in arm's-length transactions between unreleated parties;

(4) NYNEX shall maintain for a period of six years from the date of each transaction mentioned above the records necessary to enable the persons described in subparagraph (5) of this section (a) to determine whether the conditions of this exemption have been met, except that (i) a prohibited transaction will not be deemed to have occurred if due to circumstances beyond the control of NYNEX the records are lost or destroyed prior to the end of the six year period, and (ii) no party in interest shall be subject to the civil penalty which may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by subparagraph (5) below; and

(5)(i) Except as provided in subdivision (ii) of this subparagraph (5) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in subparagraph (4) of this section (a) are unconditionally available at NYNEX's headquarter's offices or, upon prior arrangement with NYNEX, at any other customary location for the maintenance and/or retention of such records, for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service.

(B) Any fiduciary of a plan which is funded, in whole or part, by the Trust, or any duly authorized employee or representative of such fiduciary.

(C) Any participant or beneficiary of any plan which is funded, in whole or part, by the Trust, or any duly authorized representative of such participant or beneficiary.

(ii) None of the persons described in subdivisions (i)(B) and (i)(C) of this subparagraph (5) shall be authorized to examine NYNEX's trade secrets or commercial or financial information which is privileged, confidential or of a proprietary nature.

(b) *Specific Exemption.* The restrictions of section 406(a)(1) (A) through (D) 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:

Transactions Involving Places of Public Accommodation. The furnishing of services, facilities and any goods incidental thereto by a place of public accommodation which is or may be considered an asset of the Trust to a party in interest with respect to the Trust if the services, facilities or incidental goods are furnished on a comparable basis to the general public, and if the requirements of subparagraphs (a) (4) and (5) of this proposed exemption are met.

Effective Date: If this proposed exemption is granted, it will be effective January 1, 1986.

Summary of Facts and Representations

1. The Trust is a trust used as a medium for the holding, investment and reinvestment of the assets of the NYNEX Pension Plan and the NYNEX Management Pension Plan (the Plans). As of January 1, 1984, the date of the divestiture of NYNEX and the other regional telephone holding companies (RHC) from the American Telephone & Telegraph Company, each RHC (such as NYNEX) became independently operative and established one or more pension trusts for the investment and maintenance of assets that were allocated by the former Bell System pension plans to comparable pension plans newly established by each RHC. The assets of the Bell System Pension Trust were divided and allocated among these new RHC trusts (such as the Trust), and other successor trusts. As of January 1, 1986, the Plans covered a total of approximately 83,016 active participants and 47,234 retirees. As of October 31, 1986, the fair market value of the Trust's assets was approximately $10.4 billion.

2. Pursuant to the terms of the Trust, NYNEX has reserved authority to direct Trust investments. Such authority has been delegated by NYNEX's Board of Directors to the Treasurer of NYNEX, who discharges this responsibility with the assistance of an experienced in-house investment management staff and, under certain circumstances, a number of independent consulting firms. Under this delegation of authority, a certain portion of the real estate portfolio of the Trust is directed in-house by the Treasurer of NYNEX (with the assistance of the experienced staff of the Investment Management Division of NYNEX and, under certain circumstances, with the advice of independent professional advisors and consultants).

3. The Investment Management Staff of NYNEX is comprised of 15 management employees, whose sole function is to assist in the administration and management of the assets of NYNEX's pension and profit sharing plans. More than 99% of the time and efforts of these management employees is devoted solely to the administration, management and monitoring of Trust assets.

4. The applicant requests an exemption to permit the Trust to engage in certain real property transactions which may otherwise be prohibited under the Act. The applicant represents that due to the size and complexity of the sponsor of the Trust, NYNEX, the normal operation of the Trust may involve party in interest transactions as described in the Act. The applicant has requested that the relief proposed herein be made retroactive to January 1, 1986. The applicant represents that, to the best of its knowledge, no prohibited transaction of the type described in this notice occurred. However, the applicant is seeking retroactive relief in order to protect the Trust against any possible inadvertent violation of the prohibited transaction rules during that period, in which the Trust did acquire certain interests in real estate.

5. The applicant represents that it is possible that the investment by the Trust in places of public accommodation may result in the use of such facilities by parties in interest. Therefore, such transactions involving these places of public accommodation may constitute prohibited transactions under the Act.

6. All transactions that are the subject of this exemption request will be subject to the discretion and control of the Treasurer of NYNEX. Potential real estate investments are generally brought to the attention of NYNEX by major real estate institutional investors, banks, trust companies, brokers or investment advisors seeking to form an investment joint venture, real property financing, or consortium. Such potential real estate investments are subjected to various evaluations and analyses, including, without limitation, whether the proposed investment satisfies the fiduciary responsibility provisions of the Act and the investment objectives of the Trust. Less than 10% of the proposed investments pass this initial screening state.

7. Those potential real estate investments that pass the initial screening are reviewed further to assure that the fundamental assumptions upon which the detailed analyses were performed are reasonable; that the investment satisfies the Trust's investment objectives (including, but not limited to, diversification, asset allocation and cash flow); and that, in general, the investment is prudent and in the best interests of the Trust and of the Plans' participants and beneficiaries. Additionally, potential real estate investments are scrutinized by a representative from NYNEX's Legal Department (occasionally in consultation with NYNEX's outside employee benefits counsel and other counsel) to provide any legal guidance that may be necessary.

8. To ensure sound real estate investments with appropriate rates of return, the Treasurer of NYNEX, with the assistance of the Investment Management Staff, has established rigorous standards and procedures. These standards include, without limitation, inspections and appraisals of the property under consideration, analyses of major existing and potential tenants and evaluations of such factors as size, location, actual and potential use, cash flow projections, financing, taxes, insurance, title requirements and compliance with zoning and other applicable laws. It is only after these analyses and reviews are completed that a recommendation is made to the Treasurer of NYNEX with respect to a proposed investment. Fewer than 5% of the investments initially reviewed by the Investment Management Staff are ultimately approved for investment by the Treasurer.

9. Approximately $25,366,000, or less than .24% of the total investment portfolio of the Trust, is currently invested or committed for specific investment in real estate and real property related investments, directed or supervised in-house by the Treasurer of NYNEX. Approximately $691,378,000, or less than 6.63% of the Trust's total investment portfolio, consists of real property investments.

10. The applicant represents that any covered transactions will be on terms not less favorable to the Trust than those available in arm's-length transactions between the Trust and unrelated parties. The applicant represents that given the size and scope of the Trust and its investments, and its relationship to numerous financial institutions, denial of the exemption would substantially inhibit the Trust from investing in many prime quality real estate projects of substantial size.

11. In summary, the applicant represents that the subject transactions meet the criteria for an exemption under section 408(a) of the Act because: (1) All investments will be subject to the discretion and control of the Investment Management Division, which has extensive experience in real property investments and makes complete analyses with respect to Trust investments; (2) the Trust will be able to enter into transactions which, although prohibited, are necessary for the prudent conduct of the Trust's operation; (3) all transactions will involve parties who are completely independent from NYNEX and will have no discretion, authority or control with respect to the exercise of NYNEX's fiduciary responsibility relating to the transactions; and (4) all transactions will be conducted on an arm's-length basis on terms not less favorable to the Trust than those available in arm's-length transactions with unrelated parties.

Notice to Interested Persons: Notice will be provided to interested persons within 30 days of the date of publication of this notice in the **Federal Register.** Comments and hearing requests are due within 60 days of the date of publication.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Boise Cascade Corporation U.S. Pension Trust (the Trust) Located in Boston, Massachusetts

[Application No. D-7189]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) effective October 29, 1987, the continued leasing by the Trust of certain timberland, exclusive of the standing timber and mineral rights, located in four countries in North and South Carolina (the Property) to Boise Cascade Corporation (Boise), the sponsor of the Trust, provided that the terms of the transaction are at least as favorable to the Trust as an arm's-length transaction with an unrelated party; and (2) the proposed sales of certain parcels of the Property by the Trust to Boise, provided that the Trust receives an amount which, on a cumulative basis after each such sale, is the higher of either (i) the original average purchase price per acre of the Property, or (ii) the fair market value of the Property, or parcels thereof, on the date of sale.

Effective Date: If the proposed exemption is granted, the exemption will be effective October 29, 1987.

Summary of Facts and Representations

1. The Trust is a consolidated trust that funds benefits for the tax-qualified U.S. pension plans of Boise and its affiliates (collectively, the Plans). The Plans are all defined benefit plans which, as of December 31, 1986, had 37,142 participants and total assets of approximately $575,935,000. The trustee of the Trust is State Street Bank and Trust Company, headquartered in Boston, Massachusetts (the Trustee). The Trustee is a directed trustee.

2. In the Fall of 1982, the Retirement Funds Investment Committee for the Plans (the Committee), the members of which are all officers or directors of Boise, began investigating and discussing an investment by the Trust in Company-owned timberland. The applicant explains, in a statement prepared by George J. Harad (Mr. Harad), who is an officer of Boise and a member of the Committee, that Company-owned timberland was

considered specifically because of the readily available knowledge about such timberland and the likelihood that Boise would provide terms that would be more favorable than those obtainable from unrelated timber owners. The applicant states that all parties were aware that in the absence of a statutory or administrative exemption the transaction would be prohibited under the Act. Therefore, Boise and the Committee reviewed the requirements for a statutory exemption under section 408(e) of the Act, for transactions involving "qualifying employer real property" (QERP). These requirements were communicated to the Committee by Boise's in-house legal staff, which had consulted with Boise's outside tax counsel.[1]

Boise and the Committee considered all of the avialable Company-owned timberland in light of the requirements for QERP, as defined in section 407(d)(4) of the Act. The Property is situated in approximately 80 non-contiguous parcels, located primarily in the southeastern portion of North Carolina and the northeastern portion of South Carolina. The Committee determined that the Property was geographically dispersed both in the physical sense and the economic sense, and that the Property was suitable or adaptable for other uses. The Committee's decision was based on the opinions of Boise's own forestry experts as well as independent consultants and appraisers familiar with timberland. Boise's senior forester selected the Property for the Committee's consideration because it was believed that the Property would satisfy the statutory requirements of geographic dispersion and alternative use. The Committee also discussed these requirements with William F. Milliken (Mr. Milliken), an independent forestry consultant in Columbia, South Carolina, who personally inspected the Property in late December 1982.

Thus, the applicant represents that the Committee's conclusion that the Property was QERP was based on the advice of internal and independent counsel, Boise's expert foresters, Mr. Harad's own investigation and analysis, and the confirmation of an independent expert, Mr. Milliken. Based on all the information available, the Committee determined that the transaction would satisfy the requirements for an exemption under section 408(e) of the Act. The Trust entered into the transaction on December 29, 1982.

3. The Property was appraised by Mr. Milliken as having a fair market value of $15,589,000 as of December 29, 1982. The Trust purchased the Property from Boise for its fair market value, in accordance with Mr. Milliken's appraisal. The Trust's investment in the Property represented approximately 4.7% of the Trust's total assets of $333,541,000 as of December 31, 1982.

4. Immediately following the sale, the Property was leased by the Trust to Boise pursuant to the terms of two separate leases, one for the parcels of the Property located in North Carolina and one for the parcels of the Property located in South Carolina (together, the Leases). The Leases established a maximum term of 30 years with a rental rate providing for a fixed 14% return per year, based on the purchase price of the Property.

5. The Leases provided the Trust and Boise with certain put and call options (the Options). Boise has exercised certain of its call options on the Property, pursuant to the terms of the Leases. The Leases required that Boise submit the names of several independent appraisers to the Trustee. The Trustee then would choose the appraisers who appraised the selected parcels. In each case, Boise paid the Trust the fair market value of the parcels involved, as determined by the independent appraiser. The applicant states that the Trust has realized substantial profits from the transactions completed to date. The applicant states further that no transactions have occurred pursuant to the Options since December 10, 1986.

6. NCNB National Bank of North Carolina and the South Carolina National Bank are ancillary trustees (the Ancillary Trustees) of the Trust. The Leases refer to the Ancillary Trustees as the actual owners of the Property. The applicant states that since the Trustee could not own the Property in North and South Carolina, the transactions were structured so that title to the Property was conveyed to the Ancillary Trustees. The Ancillary Trustees were completely controlled by the Trustee, which was subject to the investment directions of the Committee.

The Trust document entered into between Boise and the Trustee authorizes Boise to designate an independent investment manager for all or part of the Trust. Pursuant to that provision, an independent fiduciary agreement (the Agreement) was entered into between Boise and the First National Bank of Atlanta (FNBA) on October 29, 1987. As a result of the Agreement, FNBA has exclusive authority with respect to the disposition, management and control of the Property for the Trust for the continuation of the transactions. The Trustee has accepted the Agreement and will follow all instructions from FNBA. The Agreement provides that the conveyance of title to the Ancillary Trustees does not affect FNBA's ability to make all decisions with respect to the Property.

7. Certain amendments were made to the Leases (the Amendments), effective as of the date of the Agreement. The Amendments specifically provide that FNBA shall establish the fair market rental value of the Property prior to January 1, 1988, and that every fifth year thereafter FNBA shall notify Boise of its determination of the fair market rental value of the Property subject to the Leases. The rental payments to be made by Boise shall be the greatest of either (i) the rental originally specified in the Leases, (ii) the latest fair market rental value determined by FNBA, or (iii) the highest fair market rental value paid during any year under the terms of the Lease.

The Amendments provide further that FNBA, on behalf of the Trust, shall have the right to require Boise to purchase up to 10% of the total acres of the Property during each of the first ten years of the Leases. Boise is also entitled to reacquire as much as 10% of the Property annually under the Leases. The Options are cumulative. As a result, FNBA may require Boise to purchase all of the Property, or Boise can reacquire all the Property, after ten years.

The Amendments require that the fair market value of the Property, or any parcels thereof, involved in the repurchase shall be determined by appraisers selected by FNBA and that any appraisers selected shall be qualified, independent appraisers experienced in appraising real property, including timer and timberlands, in the area where the Property is located. The Amendments require further that if the purchase of any of the Property by Boise would result in the Trust receiving less than the average original purchase price per acre for the Property, then the purchase price for the Property to be acquired shall be increased by an amount necessary so that, when combined with all previous transactions,

[1] In this proposed exemption, the Department is expressing no opinion as to whether the Property consititutes QERP. QERP is defined in section 407(d)(4) to mean parcels of employer real property which meet the conditions set forth in section 407(d)(4) (A), (B), and (D). These conditions are: a substantial number of the parcels are dispersed geographically; each parcel of real property and the improvements thereon are suitable (or adaptable without excessive cost) for more than one use; and the acquisition and retention of such property comply with the fiduciary responsibility provisions of Part 4, Subtitle B, of Title I of the Act (other than section 404(a)(1)(B) to the extent it requires diversification, and section 407(a)).

the amount received by the Trust is not less than the average original purchase price per acre.

In addition, Boise shall have a right of first refusal to purchase any interest in the Property subject to the Lease, prior to the sale of such interest by the Trust to a third party. The Amendments provide that before any interest in the Propoerty is sold, FNBA shall notify Boise in writing of the bona fide third party offer and shall provide Boise with the opportunity to purchase the interest in question on the same terms and conditions as offered by the third party. The Amendments provide that Boise shall have 90 days in which to determine whether to purchase the Property that is the subject of the third party offer.

Finally, the Amendments provide that FNBA shall have the discretion to choose which parcels of the Property it wishes to sell back to Boise under its put option. The Amendments state that Boiser shall not be deemed to be in breach of its obligations under the Leases to maintain a specified amount of timber on all of the Property owned by the Trust if such a breach occurs as a result of the Trust's exercise of its right to require Boise to purchase any part of the Property under its call option or by Boise's exercise of its right of first refusal.

8. Boise and the Committee engaged FNBA to independently review and consider the Leases and the Amendments to determine whether the transactions are appropriate for and in the best interest of the Trust. FNBA has extensive experience in real estate matters involving timerland property, including the sale and lease of such property. FNBA has particular experience with respect to timerland in the southeastern United States. FNBA represents that it understands and acknowledges its duties, responsibilities and liabilities as a fiduciary under the Act on behalf of the Trust. Pursuant to the Agreement, FNBA has reviewed the terms of the Leases, as amended by the Amendments, and finds that such terms are no less favorable to the Trust than the terms that would exist in similar transactions between unrelated parties.

FNBA also has examined the Leases in light of the overall investment portfolio of the Trust, and has determined that the transactions are consistent with the investment objectives and policies of the Trust, the liquidity requirements of the Trust, and the diversification of the Trust's assets. In this regard, FNBA states that the value of the Property subject to the Leases constitutes less than 5% of the total value of the Trust's assets based on the most recent valuation of all Trust assets for the plan ending December 31, 1986. FNBA states further that this percentage is appropriate for the type of investment which the Property represents for the Trust. FNBA represents that the continuation of the Leases, as amended, is in the best interests of the participants and beneficiaries of the Trust.

9. FNBA will monitor the continuation of the transactions on behalf of the Trust for the duration of the Leases to ensure compliance with all provisions of the Leases, as amended, and to take any action which may be necessary to safeguard the interests of the Trust. FNBA states that it has the authority, as the investment manager for the Property, to render all significant decisions with respect to the Property. Such decisions shall include the exercise of put options by the Trust, all rental adjustments on the Property, the possible sale of interests in the Property to a third party or to Boise under its right of first refusal, and the selection of appraisers to determine the fair market values and fair market rental values of the Property subject to the Leases and the Amendments.

In addition, FNBA will ensure that the Trust is made "whole" with respect to the past rental payments under the Leases by requiring Boise to pay to the Trust the excess, if any, of the fair market rental value of the Property for the period January 1, 1983 to January 1, 1988 over the amount actually paid during such period, together with interest on that amount at an appropriate rate as determined by FNBA. FNBA will also ensure that the Trust is made "whole" with respect to the past purchases of parcels of the Property by Boise by requiring Boise to pay to the Trust the excess, if any, of the fair market value of such parcels of the Property determined as of the date of the purchase, on a cumulative basis, over the amount actually paid for the parcels, together with interest on that amount at an appropriate rate as determined by FNBA. FNBA, in making its determinations with respect to the fair market value and fair market rental value of the Property, is authorized to rely on such independent appraisals as it may deem appropriate.

10. In summary, the applicant represents that the transactions satisfy the statutory criteria of section 408(a) of the Act because: (a) As a result of the Agreement, the interests of the Trust under the Leases are represented by FNBA, a qualified, independent fiduciary, which has determined that the continuation of the transactions is in the best interests and protective of the Trust and its participants and beneficiaries; (b) the Trust will receive for the Property the greatest of either (i) the rent originally set under the Leases, (ii) the latest fair market rental value for the Property, as determined by a qualified, independent appraiser chosen by FNBA in its sole discretion, or (iii) the highest fair market rental value paid during any year under the Lease, with appropriate rental adjustments every five years throughout the duration of the Leases; (c) the Trust will receive on the sales of any parcels of the Property, an amount which, on a cumulative basis after each such sale, is the greater of eitehr (i) the original average purchase price per acre of the Property, or (ii) the fair market value of the Property, or parcels thereof, on the date of sale, as established by a qualified, independent appraiser chosen by FNBA, in its sole discretion; and (d) FNBA will monitor the performance of Boise's obligation under the Leases and will have the authority to take all actions necessary to enforce and safeguard the interests of the Trust and to ensure Boise's compliance with the terms and conditions of the Leases.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Wake Surgical Consultants, Inc. Money Purchase Pension Plan and Trust (the Plan) Located in Raleigh, North Carolina

[Application No. D–7316]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale of an 18.3% interest (the Interest) in a joint venture, Beechnut Development Co. (Beechnut) by Dr. John P. Goodson (Dr. Goodson) to his individual account in the Plan for $167,500 in cash, provided such amount is not greater than the fair market value of the Interest on the date of the sale.

Summary of Facts and Representations

1. Wake Surgical Consultants, Inc. (the Employer) is a professional corporation engaged in the practice of surgical medicine. The Plan is a money purchase pension plan with 10 participants. The Plan is administered

by a committee of employees and directors of the Employer. Pursuant to the provisions of the Plan, each participant has the right to direct the investments under the Plan for his/her own account. In such instances, the investments are earmarked for the account of the participant directing such investments.

2. Dr. Goodson, who is an employee, director and stockholder of the Employer and a member of the Plan's administrative committee, has an individually directed account (the Account) in the Plan. As of August 13, 1987, Dr. Goodson had a total of approximately $670,000 in the Account.

3. Dr. Goodson currently has approximately an 18.3% interest in Beechnut, which is a joint venture involved in the development of real property. The remaining interests in Beechnut are owned by parties unrelated to the Employer and the Plan. Beechnut owns certain undeveloped real estate (the Property) in Cary, North Carolina, which it will either develop or sell to another developer.

4. Dr. Goodson now wishes to sell his Interest in Beechnut to the Account. Dr. Goodson believes this would be an excellent investment opportunity for the Account. The Property is located in a rapidly growing area where tracts the size of the Property are being subdivided for new residential housing. The applicant represents that this has resulted in substantial appreciation in recent years, and that he believes that the rate of appreciation will remain steady if not increase.

5. The Property has been appraised by Mr. Audie Barefoot, Jr., an independent realtor in Cary, North Carolina, as having a fair market value of $1,300,000 as of November 17, 1987. The total equity interests in Beechnut total $911,647. Mr. Thomas McKnight, an independent certified public accountant in Raleigh, North Carolina, has represented that Dr. Goodson's Interest in Beechnut was valued at $167,500 as of November 17, 1987. The Account will pay Dr. Goodson $167,500 to acquire his 18.3% Interest in Beechnut. The Account will pay no fees in connection with the transaction.

6. In summary, the applicant represents that the proposed transaction meets the criteria of section 408(a) of the Act because: (1) The transaction involves no more than 25% of the Account's assets; (2) the sale is to be for a price established by independent appraisal and valuation; (3) Dr. Goodson is the only Plan participant to be affected by the transaction; and (4) Dr. Goodson has determined that the proposed transaction is appropriate for and in the best interests of the Account, and he desires that the transaction be consummated by the Account.

Notice to Interested Persons: Because Dr. Goodson is the only participant in the Plan affected by the transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Therefore, comments and requests for a public hearing are due 30 days after the date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Radiology and Imaging Services, Inc. Profit Sharing Plan and Trust (the Plan) Located in Akron, Ohio

[Application No. D–7382]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 306(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale for cash of certain real property (then Real Property) by the individual account in the Plan belonging to Richard D. Patterson, M.D. (Dr. Patterson) to Dr. Patterson, a participant in and party in interest with respect to the Plan, provided that the sale price be no less than the greater of the fair market value of the Real Property on the date of sale as established by an independent qualified appraiser, or the total outlay by Dr. Patterson's individual account in the Plan in connection with its acquisition and holding of the Real Property to the date of sale to Dr. Patterson.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with individually directed separate accounts. As of November 30, 1986, the Plan had ten participants. As of the same date, the value of Dr. Patterson's account was $628,236. Dr. Patterson is one of four trustees of the Plan, and is an officer, director, and 11% shareholder in Radiology and Imaging Services, Inc., the Plan sponsor.

2. On December 23, 1983, Dr. Patterson directed the Plan custodian to buy for his account in the Plan the Real Property, a parcel of undeveloped land located in Harbor Springs, Michigan, from an unrelated third party, for the cash consideration of $102,000. The applicant represents that neither Dr. Patterson nor any other person or entity has used or currently uses the Real Property, and that no party in interest with respect to the Plan owns any property adjacent to the Real Property. During the time the Real Property has been held by Dr. Patterson's account, the Real Property has incurred $5,052.64 in expenses, consisting in $4,252.64 in real estate taxes and $800 in dues to the Windmere Property Owners' Association.

3. On February 12, 1987, Robert F. Antilla, an independent and qualified licensed appraiser of real property practicing in Harbor Springs, Michigan, estimated the fair market value of the Real Property to be $127,500.

4. The applicant represents that the Real Property is currently yielding no income to Dr. Patterson's account in the Plan, and that the fair market value of the Real Property has increased only 8% per year over the past three years.

5. Accordingly, the applicant proposes that Dr. Patterson's individual account in the Plan sell the Real Property to Dr. Patterson for the greater of the fair market value of the Real Property on the date of sale as established by an independent and qualified appraiser or the total outlay by Dr. Patterson's individual account in the Plan in connection with its acquisition and holding of the Real Property to the date of sale, including, but not limited to, the original price paid by Dr. Patterson's individual account in the Plan, property taxes, dues, fees, and insurance. The applicant represents that no commission will be charged with respect to the sale, and that Dr. Patterson will pay all transfer and sales costs and expenses in connection with the sale.

6. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a) of the Act because: (a) The Real Property will be sold for the greater of its fair market value on the date of sale as determined by qualified and independent appraiser or for the total outlay by Dr. Patterson's individual account in the Plan in connection with its acquisition and holding of the Real Property to the date of sale; (b) the sale represents a one-time transaction for cash which can be easily verified;

(c) the sale will not require the payment of any commissions, fees, or taxes by the Plan; (d) the Plan will not suffer any loss in connection with its purchase and holding of the Real Property; and (e) Dr. Patterson, the

participant whose individual account in the Plan is affected by this proposed exemption, has determined that the proposed transaction would be in the interest of his individual account in the Plan, in his own interest, and in that of his beneficiaries.

Notice to Interested Persons: Because Dr. Patterson is the only person in the Plan to be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days from the date of publication of this proposed exemption in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Joseph L. Roberts III of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Upper Peninsula Building and Construction Industry Investment Plan (the Program) Located in Escanaba, MI

[Application No. D–7388]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the proposed participation by employee pension plans (the Plans) in construction loans through the Program where such loans are already committed to parties in interest with respect to such Plans, by certain lending institutions, provided that the terms of the loans are not less favorable to the Plans than those terms available in transaction with unrelated parties; and provided that the terms and conditions, as described herein are complied with during the operation of the Program.

Summary of Facts and Representations

1. The Plans are pension plans that are co-sponsored by local building and construction industry unions [1] associated with the Upper Peninsula Construction Labor-Management Council and local assocations affiliated with the Upper Peninsula Division of the Associated General Contractors Association and/or other employer associations representing building and construction industry employes in Michigan's Upper Peninsula area. The Plans are in the process of establishing the Upper Peninsula Building and Construction Industry Foundation (the Foundation). The following Plans will be part of the Foundation and participate in the Program: Upper Peninsula Plumbers and Pipefitters Pension Fund; State of Michigan Laborers' District Council Pension Plan and Trust; Michigan Carpenters Pension Plan and Trust; Operating Engineers Local No. 324 Pension Plan and Trust; Michigan Upper Peninsula IBEW Pension Plan; and Local 783 of the International Association of Bridge, Structural and Ornamental Iron Workers Pension Fund. The jurisdiction covered by the Plans is the State of Michigan.

2. The Foundation will provide a procedure and system whereby the Plans may invest in construction loans. The Foundation is to be administered by a Board of Trustees (the Trustees). Every Plan participating in the Foundation will name two trustees (one union trustee and one management trustee) to serve on its Board. The Trustees are required and directed by the Foundation Agreement to establish and administer the Program.

3. The Trustees are developing a package of documents for the operation and administration fo the Program. The Trustees are also contacting every bank, savings and loan association and insurance company, as defined in Part B of Prohibited Transaction Exemption 76–1 (PTE 76–1, 41 FR 12740, at 12743, March 6, 1976), in the jurisdiction covered by the Foundation, and requesting that such entities allow the Foundation to participate in all construction loans of $200,000 or more in which such lending institutions have made a legally enforceable commitment.[2]

4. All institutions agreeing to participate with the Foundation will agree to: (a) Notify the Trustees (or Administrative Manager) of the Foundation of all applications for construction loans which have been approved by the institution and consented to be submitted by the borrower; and (b) supply the Trustees with any requested data and information concerning the loans. The applicants represent that all lending institutions will affirmatively recommend that borrowers consent to the submission of the loan documents to the Program. In this regard, the applicants represent that the borrower refusal rate will probably constitute 10 percent to 20 percent of all transactions. Upon receipt of this information from the institutions, the Foundation will notify the trustees or other designated representatives of every participating Plan of all information received by them. The trustees of the participating Plans will then determine whether they intend to participate in a specific construction loan and, if so, the amount of their participation.

5. The Foundation will accumulate the responses received from all of the participating Plans and will then advise the lending institution of the Foundation's desire to participate in a loan and, if so, the amount of the participation. The amount of the participation will be the amount of the aggregate participation by the individual Plans. Each said loan will be deemed and construed to constitute a separate and distinct legal transaction and will be documented as a separate trust. The Foundtion will maintain its books and records of account accordingly.

6. Each participating Plan will, within 30 days of its determination and notification of its intention to participate in a specific construction loan, forward the amount of its participation to the lead lending institution. The lead lending institution will keep all such advances productively invested until advances are required to be made to the borrower. The earnings on such advances will be a part of the advance and any excess will be remitted by the institution to the participating Plans.

7. The Foundation will keep proper books and records to account for all advances from participating Plans and all returns of principal and/or interest from the lending institution making the loan. All returns of principal and/or interest by the lending institution for participation in any construction loan will be returned to the trustees of the participating Plan(s) within five days after receipt. Periodically, the Foundation will report to the trustees of the participating Plans and to the affiliated local unions and management associations on its operations. No Foundation Trustee will receive any compensation for his services to the Foundation or the Program. The Foundation may incur reasonable expenses for necessary professional services to implement and operate the Program and may obtain from the lead mortgage lenders and/or the participating Plans reimbursement for

[1] All of the local unions are local affiliates of international unions affiliated with the AFL-CIO Building and Construction Trades Department.

[2] Part B of PTE 76–1 provides, in general, exemptive relief from section 406(a) of the Act for construction loans made by a multiple employer plan to a participating employer if, among other requirements, the decision to make the loans is made on behalf of the plan by a bank, savings and loan association or insurance company as described in that exemption.

reasonable expenses actually incurred. No part of the principal or income of any investement will be received or retained by the Foundtion or its Trustees.

8. Because some construction loans may be made to parties in interest with respect to the participating Plans, such as contributing employers, the applicants seek an exemption from section 406(a) of the Act for the transactions. The applicants represent that the Progrma documents will provide that a trustee of any Plan which has an interest in the employer entity involved in a construction project to be financed by a commitment must: (a) Abstain himself from voting on a participation determination; (b) absent himself from that portion of the Plan trustees' meeting when the issue of the purchase of such participation is under discussion and consideration; and (c) represent on the record that he has not attempted to exert any influence on any trustee regarding the participation. The applicants further represent that, because the Program documents will provide that independent plan trustees or other fiduciaries will have sole and exclusive authority with regard to a plan's decision to participate in a loan, no relief from section 406(b) of the Act for Program transaction is requested.[3]

9. The applicants represent that lending institutions will have made a formal and legally binding commitment to make the construction loan before the opportunity for participation by the Plans is distributed through the Program. The applicants represent that the Foundation will receive from all cooperating lending institutions all qualified loan commitments for consideration whether or not such commitments are for local or non-local developers or construction projects or union-built or non-union built construction projects. The applicants further represent that the Foundation will not participate in a loan unless it is at or above the prevailing market rate of interest and value for comparable loans.[4] In no event will participating Plans either individually, or in the aggregate, acquire more than a 50 percent participation in any one loan.

10. The applicants represent that participating Plans will initially invest together with a lending institution and will not be purchasing participation interests from such lending institution. In addition, the applicants represent that the participating Plans will receive their pro rata share of the points charged by the lending institution to the extent such points represent a return on the loan and not compensation and/or reimbursement to the lending institution for actual expenses incurred and/or services rendered in servicing the construction loan. A Plan's pro rata share will be the ratio of the amount of the Plan's funding participation to the total amount of the loan. To the extent the above transactions, or any other transactions between the Plans and the lending institutions, constitute violations of section 406 of the Act, the Department is not proposing relief for such transactions.

11. The applicants represent that, in the event of a default by a borrower, the lead lending institution will have responsibility to enforce the rights of all of the lenders, including participation interest holders, under the loan. The applicants further represent that all of the loans subject to the Program will remain in the portfolio of the lead lending institution and thus not be transferred to other lenders.

12. The applicants represent that before a loan is made, the Foundation will receive from the lead lender a written commitment for permanent financing from a person other than a Plan which is a member of the Foundation to enable full repayment of the loan upon completion of construction. In addition, the Foundation will not accept loan participations by any Plan which would, as to any individual loan participation, exceed 10 percent of the assets of the Plan, or in the aggregate with all other construction loan participations, exceed 25 percent of the assets of the Plan. Further, the Foundation will maintain or cause to be maintained for a period of six years from the date of each loan participation such records as are necessary to enable the Department, the Internal Revenue Service, the Plans' participants and beneficiaries, any employer of Plan participants and beneficiaries, or any employee organization whose members are covered by the Plans to determine whether all conditions of the exemption have been met.

13. In summary, the applicants represent that the proposed transactions satisfy the statutory criteria of section 408(a) of the Act because: (a) The trustees of each participating Plan will have sole and exclusive authority to cause the Plan to participate in a loan; (b) the lending institutions will have made a legally enforceable commitment to make a construction loan before the Plans consider participation in a loan; and (c) no more than 10 percent of the assets of any participating plan may be invested in any individual loan participation and no more than 25 percent of a plan's assets may be invested in construction loans in the aggregate.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons within 30 days of the date of publication of the notice of pendency in the **Federal Register**. Such notice will include a copy of the notice of proposed exemption as published in the **Federal Register** and a statement informing interested persons of their right to comment with respect thereto. Comments to the Department are due within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department,

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[3] In this exemption, the Department expresses no opinion as to whether transactions involving construction loans to parties in interest will involve transactions as described in section 406(b) of the Act. As well, the Department is not expressing an opinion as to whether the structure, maintenance, and operation of the Program, including the participation with the lending institutions in construction loans to non-parties in interest, will violate provisions of Part 4 of Title I of the Act. The Department notes, as stated in the preamble to Part B of PTE 76-1, *supra* at 12743, that a loan made to a non-party in interest may give rise to a prohibited transaction if, for example, the loan is made in the context of an arrangement for a specific participating employer to furnish a portion of the construction and such employer has a controlling influence over the plan's decision to make the loan.

[4] The Department notes that to the extent the fiduciaries of the participating Plans restrict their consideration of investment opportunities for non-economic reasons, such conduct may involve certain violations of Part 4 of Title I of the Act which violations, if present, would not be provided relief by this exemption.

In this regard, section 404(a)(1) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries. To act prudently, a plan fiduciary must consider, among other factors, the availability, riskiness, and potential return of alternative investments for his plan. Because construction loans are investments which would be selected, if at all, in preference to alternative investments, a loan would not be prudent if it provided a plan with less return, in comparison to risk, than comparable investments available to the plan, or if it involved a greater risk to the security of plan assets than other investments offering a similar return.

The Department has construed the requirements that a fiduciary act solely in the interest of, and for the exclusive purpose of providing benefits to, participants and beneficiaries as prohibiting a fiduciary from subordinating the interests of participants and beneficiaries in their retirement income to unrelated objectives. Thus, in deciding whether and to what extent to invest in construction loans, a fiduciary must ordinarily consider only factors relating to the interest of plan participants and beneficiaries in their retirement income. For example, a decision to make a loan may not be influenced by a desire to stimulate the construction industry and generate employment, unless the loan, when judged solely on the basis of its economic value to the plan, would be equal or superior to alternative investments available to the plan. (See Advisory Opinion 81-12A, January 13, 1981.)

telephone (202) 523–8881. (This is not a toll-free number.)

Saiter, Cameron and Snowden, Orthopaedic Associates, P.A. Profit Sharing Plan and Trust (the Plan) Located in Pensacola, Florida

[Application No. D–7429]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale for cash by the individual account in the Plan belonging to Joseph T. Saiter, Jr., M.D. (Dr. Saiter) of certain real property to Dr. Saiter, a participant in and party in interest with respect to the Plan, provided that the sale price be no less than the fair market value of the real property on the date of sale as established by an independent qualified appraiser.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with individually directed separate accounts. The Plan is sponsored by Saiter, Cameron & Snowden, Orthopaedic Associates, P.A., a professional association in the practice of medicine in Pensacola, Florida. As of September 1, 1987, the Plan had twelve participants. As of August 31, 1987, Dr. Saiter's account balance was $453,974.

2. On October 23, 1986, the Plan trustees purchased a vacant waterfront lot in the Deer Point subdivision in Gulf Breeze, Florida (the Real Property), from an unrelated third party, on behalf of Dr. Saiter's individual account in the Plan, for $145,000. The applicant represents that neither Dr. Saiter nor any other person or entity has used or currently uses the Real Property, and that no party in interest with respect to the Plan owns any property adjacent to the Real Property.

3. On August 10, 1987, Mr. Eugene Presley, M.A.I., an independent and qualified appraiser with M. Eugene Presley and Associates, of Pensacola, Florida, estimated the fair market value of the Real Property to be $129,000.

4. The applicant represents that Dr. Saiter directed the trustees of the Plan to purchase the Real Property on behalf of his individual account in the Plan with the expectation of substantial continuing appreciation in the value of the Real Property. However, as evidenced by the August 10, 1987 appraisal, the value of the Real Property has suffered a substantial decline.

5. Accordingly, the applicant proposes that Dr. Saiter's individual account in the Plan sell the Real Property to Dr. Saiter for the fair market value of the Real Property on the date of sale as established by an independent and qualified appraiser. The applicant represents that neither the Plan nor Dr. Saiter's individual account in the Plan will pay any transfer and sales costs and expenses in connection with the sale.

6. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a) of the Act because: (a) The Real Property will be sold for its fair market value on the date of sale as determined by a qualified and independent appraiser; (b) the sale represents a one-time transaction for cash which can be easily verified; (c) the sale will not require the payment of any commissions, fees, or taxes by the Plan or by Dr. Saiter's individual account in the Plan; (d) Dr. Saiter, the participant whose individual account in the Plan is affected by the proposed transaction, has determined that the proposed transaction would be in the interest of his individual account in the Plan, in his own interest, and in that of his beneficiaries.

Notice to Interested Persons: Because Dr. Saiter is the only person in the Plan to be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested peresons. Comments and requests for a public hearing are due 30 days from the date of publication of this proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Joseph L. Roberts III of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Williams, Taylor & Schmits Profit Sharing Plan and Williams, Taylor & Schmits Target Benefit Plan (the Plans) Located in Indianapolis, Indiana

[Application Nos. D–7449 and D–7450]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed lease (the Lease) by the individual accounts in the Plans of Jerry Williams (Mr. Williams) of a copier (the Copier) to Williams, Taylor & Schmits Professional Corporation, the Plans' sponsor (the Plans' Sponsor) and party in interest with respect to the Plans, and to the sale (the Sale) of the Copier to the Plans' Sponsor at the end of a five year period, provided that the Lease and Sale be for no less than fair market value at the time of each transaction.

Summary of Facts and Representations

1. The Plans are a profit sharing plan and a target benefit plan sponsored by Williams, Taylor & Schmits, P.C., the Plans' Sponsor, a professional corporation engaged in the practice of law in Indianapolis, Indiana. Mr. Williams is a trustee of the Plans. As of July 31, 1987, each plan had the same five participants. Individual accounts in the Plans are established and maintained by the Plans' administrator on behalf of each participant. The assets of the Plans are held by the trustees pursuant to a combined trust agreement which establishes a single trust (the Trust) covering both Plans and which provides for the aggregate investment of the combined Plans' assets. Participants may elect to self-direct the investment of their accounts. As of December 31, 1987, the portion of the Trust attributable to Mr. Williams' individual accounts in the Plans was $51,698.

2. The Trust proposes to purchase for $9,500 in cash a Savin copier, Model No. 7065, from Hoosier Photo Supplies, Inc., of Indianapolis, Indiana, an unrelated third party. The Trust will make this purchase at Mr. Williams' direction on behalf of Mr. Williams' separate accounts in the Plans. The proposed transaction involves less than 25% of Mr. Williams' accounts' balance.

3. The Trust proposes to lease the Copier to the Plans' Sponsor for use in its normal business operations for a five year period at $210 per month. All repairs and maintenance on the Copier will be paid for by the Plans' Sponsor. At the end of the five year period the Plans' Sponsor will have the option to purchase the Copier for cash from the Trust at its fair market value at that time as established by an independent and qualified appraiser. If the Plan's Sponsor does not purchase the Copier at the end of the lease, it will be sold to an unrelated third party. The terms and conditions of the Lease will be those commonly used by commercial leasing

companies and will provide for an arm's-length transaction between the Trust and the Plans' Sponsor. On October 29, 1987, Bob Harshman, of Ambassador Financial Services of Indianapolis, Indiana, a qualified and unrelated third party, stated that his firm would lease the same equipment to the Plans' Sponsor under the same terms as proposed herein.

4. In summary, the applicant represents that the proposed transactions will satisfy the criteria of section 408(a) of the Act because: (a) The Trust will receive the fair market value rental under the Lease for the Copier as established by a qualified and independent person; (b) the proposed transactions involve less than 25% of the assets in Mr. Williams' accounts in the Plans; and (c) Mr. Williams, the only participant whose accounts in the Plans are affected by the proposed transactions, has determined that the proposed transactions would be in the interest of his individual accounts in the Plans, and he desires that the transactions be consummated.

Notice to Interested Persons: Because Mr. Williams is the only person in the Plans to be affected by the proposed transactions, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days from the date of publication of this proposed exemption in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Joseph L. Roberts III of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

The AT&T Management Pension Plan (the Management Plan) and the AT&T Pension Plan (the Pension Plan; Together, the Plans) Located in New York, New York

[Application Nos. D-7463 and D-7464]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code, shall not apply to the acquisition by AT&T Communications, Inc. (AT&T) of an easement across certain real property in Oconee County, Georgia, owned by the First National Bank of Atlanta Collective Timberland Trust-II for Qualified Employee Benefit Trusts (the Timberland Trust), provided the cash amount paid is not less than the fair market value of the easement on the day of the acquisition.

Summary of Facts and Representations

1. AT&T's primary business activity is the owning and operating of long-distance telephone systems. The Plans are both defined benefit plans sponsored by AT&T. The Management Plan currently has approximately 149,305 participants, and the Pension Plan has approximately 257,285 participants. The Plans currently have assets with a total value of approximately $30.8 billion.

2. The Plans are funded in part through the AT&T Master Pension Trust (the Master Trust), the relevant assets of which are held by State Street Bank and Trust Company (State Street) as trustee. State Street has entered into an investment management agreement with the First National Bank of Atlanta (the Bank). The Bank serves as trustee of the Timberland Trust, and State Street has invested certain assets of the Plans in the Timberland Trust.

3. AT&T proposes to acquire an easement across a parcel of real property currently owned by the Timberland Trust and located in Oconee County, Georgia. The easement will be required so that AT&T can construct an underground Lightguide fiber optic telephone cable system in Oconee County, Georgia. The route that the cable will take across the property will require an easement of 1,900 feet in length and 20 feet wide. The total easement area will consist of 0.87 acre.

4. Mr. Earl D. Barrs, a consulting forester and real estate broker with Knapp-Barrs & Associates, Inc. of Macon, Georgia, has appraised the easement and associated timberland as having a fair market value of $1,645.75 as of December 7, 1987. AT&T proposes to pay this amount to the Timberland Trust in cash for the easement. Since the Timberland Trust currently has assets of approximately $28.8 million, the easement represents a very small fraction of the assets of the Timberland Trust, and of the assets of the Plans.

5. The Bank has represented that it has reviewed the proposed transaction on behalf of the Timberland Trust, and has determined that the proposed transaction is in the best interests of the participants and beneficiaries of the plans that have invested in the Timberland Trust. The Bank represents that the acquisition involves a de minimis amount of the assets of the Timberland Trust and of each plan that has invested in the Trust. Moreover, the Bank represents that the acquisition of the easement by AT&T will not diminish in any way the overall value of the land involved.

6. In summary, the applicants represent that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (1) The transaction represents a very small percentage of the assets of the Plans; (2) the value of the easement and the related timberland has been determined by a qualified, independent expert; and (3) the Bank, the independent trustee of the Timberland Trust, has determined that the proposed transaction is appropriate for the Timberland Trust and in the best interests of the participants and beneficiaries of the Plans.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

F-M Insulation Pension Plan (the Pension Plan) F-M Insulation Profit Sharing Plan (the Profit Sharing Plan) Located in Fargo, North Dakota

[Application Nos. D-7468 and D-7469]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(b)(2) of the Act and shall not apply to the proposed cash rule of 38.354 shares in Sunbelt Commercial Associates, a limited partnership, and of 26.250 shares in Sunbelt Federal Way, another limited partnership, from the terminating Profit Sharing Plan to the continuing Pension Plan, which has the same trustees as the Profit Sharing Plan, provided the sales price of such shares (the Shares) equals their fair market value on the date of the sale as determined by an independent appraiser.

Summary of Facts and Representations

1. The Pension Plan is a defined benefit plan covering nine participants as of August 31, 1986 and having total assets of approximately $910,517 as of December 31, 1986. The Profit Sharing Plan covered the same participants as of August 31, 1986. A notice of intent to terminate the Profit Sharing Plan effective August 31, 1986 was filed October 27, 1986.

Accordingly, all assets of the Profit Sharing Plan except the Shares have

been distributed to the participants of the Profit Sharing Plan. It is represented that F–M Insulation Company (the Employer), the sponsor of both the Pension Plan and the Profit Sharing Plan (the Plans), intends to continue the Pension Plan. Mr. Gordon Hvidsten, President of the Employer, is the trustee (the Trustee) and Churchill Management Corporation (the Advisor) is investment manager/advisor of both Plans. The applicants represent that the Plans are not parties in interest with respect to each other.

2. Dakota First Trust Co. (Dakota), of Fargo, North Dakota, has agreed to serve as independent fiduciary on behalf of the Pension Plan with respect to the proposed transaction. Dakota represents that it is an independent trust company with $825 million in assets, that it works with over 400 qualified pension plans, and that it qualifies as an investment manager within the meaning of section 3(38) of the Act. Dakota acknowledges its duties, responsibilities, and liabilities under the Act in serving as a fiduciary with respect to the Pension Plan. Dakota further represents that it is a wholly owned subsidiary of a holding company, Dakota Bankshares, which also owns Dakota Bank and Trust (the Bank), which has checking, deposit and lending relationship dealings with the Employer, accounting for less than one percent of the Bank's total gross income for its most recent fiscal year. Dakota states that it does not hold checking accounts, savings accounts, or certificates of deposit for the Pension Plan and that it has not lent money to the Pension Plan trustees or their affiliates. At the Employer's request, Dakota has accepted responsibility for the proposed purchase to ensure that it takes place in accordance with acceptable fiduciary requirements and the requirements of this proposed exemption.

3. From August 1981 to December 1984, the Profit Sharing Plan purchased 38,354 Sunbelt Commercial Associates shares, representing 3.75% of the limited partnership interests in this partnership and costing the Profit Sharing Plan $38,334.68, and 26.250 Sunbelt Federal Way shares, representing 1.67% of the limited partnership interests in that partnership and costing the Profit Sharing Plan $26,250.00, at a total cost to the Profit Sharing Plan of $64,600. The applicants represent that the Profit Sharing Plan has incurred no further costs with respect to the Shares since these purchases and that the Shares have appreciated to a market value of $74,914 as of December 31, 1986. Over the same period, the Pension Plan purchased 117.104 shares of Sunbelt Commercial Association and Sunbelt Federal Way (the Partnerships) at a total cost of $117,100. According to the applicants, these shares had appreciated to a market value of $128,227 as December 31, 1986. The applicants represent that neither the general nor the limited partners of the Partnership are parties in interest with respect to either of the Plans.

4. The assets of each of the Partnerships consist of a single parcel of improved real property and some cash. (Sunbelt Federal Way owns a silo warehouse showroom, and Sunbelt Commercial Associates owns a silo store.) Independent appraisals have been made of the real properties owned by the Partnerships. The appraisal of the real property owned by Sunbelt Federal Way was made by E. Bates McKee and Keith M. Riely, MAI, of Shorett and Riley, Seattle Washington. The appraisal of the real property owned by Sunbelt Commercial Associates was made by Timothy M. Glass, R.M., and Duane J. Blevins, of Green County Appraisal Service, Tulsa, Oklahoma. All of the appraisers represent that they have no interest in the Plans. Considering these real property appraisals and the income and expenses from said real properties, the Advisor has determined that the value of the Shares as of December 31, 1986 was $74,914 (i.e.: $48,258 for the Profit Sharing Plan's shares in Sunbelt Commercial Associates + $26,656 for the Profit Sharing Plan's shares in Sunbelt Federal Way). Dakota represents that $74,914 is the fair market value of the Shares as of December 31, 1986.

5. The terminating Profit Sharing Plan has not attempted to sell the Shares because the Trustee and the Advisor consider them to be a good investment and would like to retain the Shares for the Pension Plan. Accordingly, they wish to sell the Shares to the Pension Plan.

6. It is proposed that the Profit Sharing Plan sell the Shares to the Pension Plan for cash at fair market value as of the date of the sale. The fair market value of the Shares as of the date of the sale will be determined by Shorett & Riley (see preceding paragraph), an independent appraiser. The applicants represent that the Shares will be reappraised if, and after, the proposed exemption is granted and that the proposed sale will take place on the date of the reappraisal. No commissions or transfer fees will be incurred on the proposed transaction. As the proposed transaction would enable the terminating Profit Sharing Plan to complete the distribution of its assets to all its participants, the Trustee states that this transaction would be in the best interests of the Profit Sharing Plan participants. If the proposed sale is effected, the Pension Plan would own 7.5% of Sunbelt Commercial Associates and 6.7% of Sunbelt Federal Way and approximately 22% of the Pension Plan's assets would be invested in the Partnerships.

7. Dakota has expressed the opinion that the proposed purchase of the Shares by the Pension Plan would be in the best interests of the Pension Plan and its participants for the following reasons: (a) According to Dakota, it appears that the return from income and appreciation of the Partnerships' assets has been reasonable and that improved future returns may be expected in view of the improving economic environment for the Partnerships' holdings; (b) Dakota represents that the purchase of the Shares by the Pension Plan would enable the former Profit Sharing Plan participants, all of whom are Pension Plan participants, to benefit from the improving returns from the Shares; (c) Dakota has reviewed the terms of the proposed transaction and agrees with the determination of the fair market value of the Shares as of December 31, 1986, and believes that the fair market value of the Shares as of the date of the sale will be close to the value appraised as of December 31, 1986; (d) Dakota states that the terms of the proposed purchase are similar to the terms of similar transactions between unrelated parties in that the Plans are proposing to transfer the Shares at market value established by independent appraisal; (e) Dakota represents that the Pension Plan would have several options in liquidating the Shares if the Partnerships were not liquidated before the Pension Plan wished to liquidate the Shares, and that these options include selling the Shares to other limited partners in the Partnerships or to an unrelated third party or distributing the Shares to Pension Plan participants at the election of the participant; and (f) Dakota has examined the Pension Plan's investment portfolio and has found that the proposed purchase of the Shares will not negatively affect the Pension Plan's liquidity requirements or the diversification of the Pension Plan's assets, and the proposed purchase is not inconsistent with the investment objectives of the Pension Plan.

8. In summary, the applicants represent that the proposed transaction satisfies the exemption criteria set forth in section 408(a) of the Act because (a) the proposed transfer wil be a one-time cash transaction, (b) the proposed transfer price will equal the fair market

value of the Shares on the date of the sale as determined by an independent appraiser, (c) no commissions or transfer fees will be charged to the Plan, (d) the proposed transfer will facilitate the distribution of assets from the temrinating Profit Sharing Plan to its participants, all of whom also participate in the Pension Plan, (e) Dakota, an independent fiduciary for the Pension Plan, has determined that the proposed transfer will be in the best interests of the Pension Plan and its participants and will monitor the transfer to safeguard said interests, and (f) the Trustee has determined that the proposed transfer will be in the best interests of the Profit Sharing Plan and its participants.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Freund of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 19th day of April 1988.

Robert J. Doyle,

Acting Associate Director, Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88-8930 Filed 4-21-88; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 88-27; Exemption Application No. D-6798 et al.]

Grant of Individual Exemptions; Getter Trucking, Inc. et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Getter Trucking, Inc. Profit Sharing Plan (the Plan) Located in Billings, Montana

[Prohibited Transaction Exemption 88-27; Exemption Application No. D-6798]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the lease of certain real property by the Plan to the Getter Trucking, Inc., provided that the terms of the lease are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 22, 1988 at 53 FR 5225.

EFFECTIVE DATE: The exemption will be effective on June 1, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 525-8881. (This is not a toll-free number.)

People's Bank (People's) Located in Bridgeport, Connecticut

[Prohibited Transaction Exemption 88-28; Exemption Application No. D-7187]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from

the application of section 4975 of the Code, by reason of section 7975(c)(1)(A) through (D) of the Code, shall not apply to the sale by People's of its subsidiary's stock to the Keogh plans (the Keoghs) for which People's serves as custodian, as part of an initial issue of such stock, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the sale by People's of its subsidiary's stock to the individual retirement accounts (the IRAs) for which People's serves as custodian, as part of an initial issue of such stock, provided the Keoghs and the IRAs pay no more than the fair market value of the stock on the date of the sale.[1]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 26, 1988 at 53 FR 2106.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Brooks, Lyon and Brooks, D.O.'s, P.C. Employees Pension Plan (the Plan) Located in Ann Arbor, Michigan

[Prohibited Transaction Exemption 88–29; Exemption Application No. D–7252]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash purchase from the Plan of certain real property by Brooks, Lyon and Brooks, a partnership which is a party in interest with respect to the Plan; provided that the terms of such transaction are not less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 22, 1988 at 53 FR 5228.

[1] Because the IRAs do not meet the conditions described in 29 CFR 2510.3–2(d), there is no jurisdiction with respect to the IRAs under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Bezzerides Company Profit Sharing Plan (the Plan) Located in Benicia, CA

[Prohibited Transaction Exemption 88–30; Exemption Application No. D–7272]

Exemption

The restriction of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed loan of $82,000 by the Plan to Bezco Enterprises, a party in interest with respect to the Plan, provided that the terms of the transaction are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 22, 1988, at 53 FR 5229.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Knoxville Anesthesia Group, P.C. Money Purchase Plan (the Plan) Located in Knoxville Exemption 88–31; Exemption Application No. D–7310]

Exemption

The restriction of section 406(a), 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, Shall not apply to the sale of an art print from the individual account in the Plan of Robert Harris, M.D. to Robert Harris, M.D., a party in interest with respect to the Plan, provided the Plan receives no less than fair market value for the print at the time of sale and provided further that the Plan experiences no loss in connection with the acquisition and holding of the print.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 26, 1988, at 53 FR 2108.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

SPNB Real Estate Debt Fund for Accounts Described in Section 401(a) of the Internal Revenue Code (the Fund) Located in Los Angeles, California

[Prohibited Transaction Exemption 88–32; Exemption Application No. D–7410]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale by the Fund to Security Pacific Investment Managers, Inc. of four real estate loans (the Problem Loans) made by the Fund, for an amount equal to the unpaid principal balance of each loan plus accrued interest, penalties and/or late changes, if any, provided such amount is not less than the fair market value of each of the Problem Loans at the time of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 22, 1988 at 53 FR 5232.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an

administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 19th day of April, 1988.

Robert J. Doyle

Acting Associate Director for Regulations and Interpretations Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 88-8932 Filed 4-21-88; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted by May 23, 1988.

ADDRESSES: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Mr. Murray Welsh, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202 682-5401).

FOR FURTHER INFORMATION CONTACT: Mr. Murray Welsh, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202 682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests a review of the reinstatement of a previously approved collection. This entry is issued by the Endowment and contains the following information:

(1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Music Professional Training/ Music Recording/Centers for New Music Resources Application Guidelines FY 1989:

Frequency of Collection: One-time

Respondents: State or local governments; Non-profit institutions

Use: Guideline instructions and applications elicit relevant information from non-profit organizations and state or local arts agencies that apply for funding under specific Program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.

Estimated Number of Respondents: 250

Estimated Hours for Respondents to Provide Information: 11,800

Murray R. Welsh,

Director, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 88-8909 Filed 4-21-88; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Committee Management; Renewal; Alan T. Waterman Award Committee

The Director of the National Science Foundation has determined that the renewal of the Alan T. Waterman Award Committee for an additional 2 years is necessary and in the public interest. This determination follows consultation with the Committee Management Secretariat, General Services Administation.

M. Rebecca Winkler,

Committee Management Officer.

April 19, 1988.

[FR Doc. 88-8862 Filed 4-21-88; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Babcock and Wilcox Reactor Plants; Meeting

The ACRS Subcommittee on Babcock and Wilcox Reactor Plants will hold a meeting on May 3-4, 1988, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, May 3, 1988—8:30 a.m. until the conclusion of business

Wednesday, May 4, 1988—8:30 a.m. until the conclusion of business

The Subcommittee will continue its review of the long-term safety review of B&W reactors.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634-1414) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: April 18, 1988.

Thomas G. McCreless,

Assistant Executive Director for Technical Activities.

[FR Doc. 88-8885 Filed 4-21-88; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Waste Management; Meeting

The ACRS Subcommittee on Waste Management will hold a meeting on

April 28, 1988, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, April 28, 1988—8:30 a.m. until the conclusion of business

The Subcommittee will receive a briefing from the NRC Staff on their comments on DOE's Consultive Draft of the Site Characterization Plan (SCP) for the Yucca Mountain site. The DOE staff will address these comments and provide information as to how the points raised will be disposed of before submission of the SCP.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Owen S. Merrill (telephone 202/634–1413) between 7:15 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: April 18, 1988.

Thomas G. McCreless,

Assistant Executive Director for Technical Activities.

[FR Doc. 88–8886 Filed 4–21–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Waste Management; Meeting

The ACRS Subcommittee on Waste Management will hold a meeting on May 4, 1988, Room 1167, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, May 4, 1988—8:30 a.m. until the conclusion of business

The Subcommittee will receive a briefing from the NRC Staff on the questions of Below Regulatory Concern (BRC) and de minimis materials. Other agencies, such as EPA, are expected to attend and provide background information.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcomittee will then hear presentations by and hold discussions with representatives of the NRC Staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Owen S. Merrill (telephone 202/634–1413) between 7:15 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: April 18, 1988.

Thomas G. McCreless,

Assistant Executive Director for Technical Activities.

[FR Doc. 88–8887 Filed 4–21–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–341]

Detroit Edison Co. and Wolverine Power Supply Cooperative, Inc. (Fermi-2); Exemption

I

Detroit Edison Company (DECo) and the Wolverine Power Supply Cooperative, Incorporated (the licensees) are the holders of Facility Operating License No. NPF–43 which authorizes the operation of the Fermi-2 facility at steady-state power levels not in excess of 3292 megawatts thermal. The license provides, among other things, that it is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a boiling water reactor (BWR) located at the licensees' site in Monroe County, Michigan.

II

10 CFR Part 50, Appendix J, Section III.D.3, states: Type C tests. Type C tests shall be performed during each reactor shutdown for refueling but in no case at intervals greater than 2 years.

The tests would become due at Fermi-2 for the isolation valves which are the subject of this Exemption on April 28, 1988. The tests necessary to meet this section of Appendix J to 10 CFR Part 50 are required by Technical Specification 4.6.1.2.b of the Fermi-2 Technical Specifications.

III

By letter dated February 22, 1988, the licensees requested an exemption from section III.D.3 of Appendix J to 10 CFR Part 50 for certain Residual Heat Removal (RHR) shutdown cooling isolation valves. The licensees requested that the initial 24-month testing interval for three RHR shutdown cooling inboard isolation valves (E11–F009, E11–F408, E11–F608) be extended on a one-time basis until the first refueling outage which should be no later than the end of 1989.

The licensees have indicated that performing the leak testing on these three valves will require one or both of the following plant conditions:

(a) Reactor vessel head removal;

(b) Both RHR shutdown cooling loops rendered inoperable.

The licensees have currently scheduled the next reactor head removal operation to occur during the first refueling outage. To render both loops of RHR shutdown cooling inoperable, the licensees would either be required to remove the drywell and reactor heads and flood the vessel, or wait until decay

heat is reduced such that the reactor could be cooled by alternate means. No planned outages of this duration will occur until the first refueling outage.

The first refueling outage is scheduled at the end of 1989. Reactor head removal and a reactor coolant boundary leakage test will be required during this outage. Performance of the leak tests for the containment isolation valves during this outage would bring the test schedule into alignment with the fuel cycle. Thus, the licensees indicated that the time to perform the required testing has been accounted for in planning the first refueling outage.

The two-year testing intervals for containment isolation valves are intended to be often enough to prevent significant deterioration from occurring and long enough to permit LLRTs to be performed during plant outages. This provides assurance that the overall containment leakage limits will not exceed the value assumed in the accident analysis, even when accounting for possible degradation of the leakage barriers between leakage tests.

The licensees have stated that the three RHR shutdown cooling valves, which are the subject of this one-time exemption to the Appendix J testing interval, were all tested successfully on August 27, 1984, during pre-operational testing, resulting in a combined penetration leakage of 0.35 scfh, on May 28, 1985, resulting in a combined penetration leakage of 1.59 scfh, and on April 28, 1986, resulting in a combined leakage of 1.68 scfh. The total of the Type C leakage rates for these valves in the last test is not a significant portion (0.94%) of the allowable leakage limit (0.6La). These valves have not been refurbished since they were first tested and the values reported represent all the leak test data on these valves.

The RHR shutdown cooling inboard isolation valves are normally closed at power operation and any deterioration in the overall integrity of these valves is expected to be a gradual process. The licensees stated that the RHR system is monitored for leakage per the Fermi-2 Leakage Reduction Program. This program is required by plant Technical Specification 6.8.5 and requires measuring and recording any leakage from the system and its components during operation in various operating modes. Considering this and the small number of valves (three) involved, there is nothing found in the information which would indicate that the one-time interval extension of about 18 to 20 months for these RHR shutdown cooling inboard isolation valves would have a sudden detrimental effect on the overall leak rates of the valves involved.

In support of the requirements of 10 CFR 50.12 for demonstration that special circumstances exist with respect to the requested exemption, the licensees have stated that pursuant to 10 CFR 50 12(a)(2), (ii) and (iv), the following special circumstances exist:

Section 50.12(a)(2)(ii)—Application of the 10 CFR Part 50, Appendix J requirements in this situation for testing within two years would not serve the underlying purpose of the regulation, which is to ensure testing after two years in an operating environment. Since Fermi 2 did not exceed 5% power until September 1986 and 50% power until December 1987, none of the valves in question will have been exposed to a significant operating pressure environment. The core average exposure through February 22, 1988 was only 112 EFPD. This is compared to approximately 335 EFPD remaining in the cycle. The requested extension of time does not conflict with the intent of the rule and defers the testing requirement intended by 10 CFR 50, Appendix J to the first refueling outage.

Section 50.12(a)(2)(iv)—The requested exemption would result in benefit to the public health and safety that compensates for any decrease in safety that may result from the granting of the exemption. The increased benefit would be from not having to remove both loops of RHR from operation in order to perform the testing from which Detroit Edison is asking to be exempted. Removal of both RHR loops necessitates reliance solely on alternate means of reactor core cooling (decay heat removal).

The Commission's staff has reviewed the licensees' description of the special circumstances relative to this exemption request and has determined that special circumstances as required 10 CFR 50.12 fo exist.

Furthermore, the Commission's regulations in 10 CFR 50.12(a)(2)(v) state that special circumstances exist when the exemption would provide only temporary relief form the applicable regulation and that the applicant or licensee has made good faith efforts to comply with the regulation. The requested exemption is a one-time schedular exemption to delay LLRTs for three RHR shutdown cooling inboard isolation valves until the first refueling outage. The licensees will complete LLRTs of all other containment isolation valves involving several hundred valves. However, due to plant constraints it is not possible to complete testing on these remaining three valves during the LLRT outage without significantly extending the outage for the sole purpose of conducting these LLRTs. The staff has determined that the licensees have demonstrated a good faith effort to comply with the Appendix J requirement to conduct LLRTs on containment isolation valves.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the requested exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defensed and security. Further, the Commission finds that special circumstances are present in that the requested exemption is temporary in nature and the licensees have made a good faith effort to comply with the regulation. Therefore, the Commission hereby grants the following Exemption from the requirements of section III.D.3 of Appendix J to 10 CFR Part 50:

The two-year limit on the Type C testing interval for the three valves (E11–F009, E11–F408 and E11–F608) is extended on a one-time basis until prior to startup from the first refueling outage for Fermi-2 which should be no later than the end of 1989.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this Exemption will have no significant impact on the environment (53 FR 12616).

For further details with respect to this action, see DECo's request dated February 22, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555 and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

This Exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director Division of Reactor Projects—III, IV, V & Special Projects.

Dated at Rockville, Maryland, this 15th day of April 1988.

[FR Doc. 88–8863 Filed 4–21–88; 8:45 am]

BILLING CODE 7590–01–M

PANAMA CANAL COMMISSION

Agency Information Requests Submitted to the Office of Management and Budget for Clearance

AGENCY: Panama Canal Commission.

ACTION: Notice of information collection requests; revision.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1980 (Pub. L. 96–511), as amended, the Panama Canal

Commission (PCC) hereby gives notice that it has submitted to the Office of Management and Budget (OMB) a proposal (SF–83, Request for OMB Review) to extend a currently approved collection of information contained in Subchapter C (Shipping and Navigation) of Chapter I, Title 35, Code of Federal Regulations (CFR) and a request for approval to extend the expiration date of a currently approved collection of information designated Personnel Administration Forms.

ADDRESS: Comments may be sent to Sam Fairchild, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a complete copy of the information collection request or related information, contact Barbara Fuller, Office of the Secretary, Panama Canal Commission, telephone (202) 634–6441.

SUPPLEMENTARY INFORMATION:

• Subchapter C (Shipping and Navigation) of Chapter I, 35 CFR.

On December 24, 1981, OMB approved an information collection proposal submitted by the Panama Canal Commission in conjunction with a revision of its navigation regulations (35 CFR Chapter I, Subchapter C), and assigned it the control number 3207–0001. The forms required by those regulations, which make up the collection of information are used to collect, from vessels arriving in the Panama Canal waters, information required for assuring that the vessels are in compliance with Panama Canal Commission shipping and navigation regulations. The information collected will be used for economic analyses, traffic forecasting, identification, billing, safety and sanitation purposes.

It is estimated that the burden (which varies widely, depending upon the nature of each vessel's operations) for cargo vessels ranges from one and one-half hours to three and one-half hours and for passenger vessels, the range would be from approximately two hours to thirteen hours. The utilization of computer generated crew and passenger lists should reduce by eight to ten hours the time requried of a vessel like the QUEEN ELIZABETH 2. (The smallest "passenger" vessels carry about 13 passengers and the largest, the QUEEN ELIZABETH 2, is capable of accomodating about 1,879.) The estimated total hours of annual burden is 28,400. It would be very difficult to provide a meaningful estimate of the total burden for each vessel since some transit frequently, while others may transit only once or infrequently.

Unchanged forms which are part of the information collection request of Subchapter C, Chapter I of Title 35, Code of Federal Regulations are: PCC Form No. 4502, Ship Data Bank—SHIP ADD; PCC Form No. 4398, Ship's Information and Quarantine Declaration; PCC Form No. 1509, Crew List for Incoming Vessels; PCC Form No. 20, Passenger List.

Forms which have been modified are:

PCC Form No. 4401–48, Admeasurement Data Book (for large ships) is being revised by rearranging the items to make it easier to understand and the information easier to track. No new information is being requested and the Paperwork Reduction Act statement has been added.

PCC Form No. 4470, Bilge Keel Information, was revised to indicate that the form is required from vessels with a Tropical Fresh Water Draft of 35 feet 6 inches or greater, the same information as indicated in Title 35 Code of Federal Regulations, Chapter I, Subchapter C. The information requested on this form is needed for every transit, but is collected only once. The Paperwork Reduction Act statement has been added.

PCC Form No. 4541 was assigned to the unnumbered Ammunition and Explosives Report and a Paperwork Reduction Act Statement was added. There is no new information added to the form.

PCC Form No. 4363, Cargo Declaration was updated to include "Round-the-World" in the Voyage Type section.

PCC Form No. 4400, The Panama Canal Tonnage Certificate, was revised to show the correct legal reference to be the Code of Federal Regulations (CFR) rather than the Articles in the Rules of Admeasurement of 1938 which were rewritten in 1976 and renumbered the same as the CFR. The PCC maintains blank printed copies of the Tonage Certificate to make them available to measurement authorities of foreign countries that may request blank sample certificates, but the actual Tonnage Certificate (issued by PCC) required by vessels that transit the Canal, is generated by computer and the information corresponds in substance and form to the (prescribed) sample certificate.

The Panama Canal Commission proposed an amendment effective October 13, 1987 (52 FR 37952) to 35 CFR 103.8 concerning preferences in the transit schedule and order of transiting vessels in the Panama Canal. These changes take into account the agency's experience with the Panama Canal Transit Booking System and the needs of Canal users by revising the tie-breaking procedures, relaxing the arrival time for restricted vessels and changing the cancellation provisions of the present rules. Accordingly, the existing forms known as "Request for Transit Booking," PCC Form No. 4623, and "Transit Booking Cancellation," PCC Form No. 4633, have been modified to meet these requirements. No new information is being required.

PCC Form No. 4401–16, Admeasurement Data Book (for yachts and small craft) will be revised primarily for clarification more than anything else. Pages 1–4 will be identical to the Admeasurement Data Book for large ships. The Paperwork Reduction Act Statement will be added.

It is proposed to add PCC Form No. 4611, Vessel Requirement Facilities Report to this collection of information.

The document, List of Electronic Equipment (unnumbered), was deleted from this collection of information.

• Personnel Administration Forms.

On January 20, 1982, OMB approved an information collection proposal submitted by the Panama Canal Commission and assigned it the control number 3207–0005. It is proposed to continue using this information collection with minor revisions to the forms. Ten (10) forms no longer needed by the Central Examining Office are dleted from this collection of information, thirteen (13) forms have been revised, one initially submitted, but not translated into Spanish is now being included and the addition of two forms in the English and Spanish language are proposed. The changes are as follows:

Abolished:

11a Check list for Bookbinder, Bindery and Finish Worker, and Papercutter Operator

11b Check list for Hand Compositor, Linotype Operator, Monotype Casting Machine Operator

563 Supplementary Qualifications Form for Graduate Nurse, Examinations

584 Supplemental Experience Statement for Panama Canal Guide, Positions

590–C (English) Supplemental Application for Carpenter, Cabinetmaker, Joiner, Modelmaker, Patternmaker, Millman, Machine, Woodworker, Packer and Crater, Boatbuilder (Wood), Shipwright, Wharfbuilder, and Related Jobs

590–C (Spanish) Solicitud Adicional para Carpintero, Ebanista, Modelista, Plantillero, Aserrado, Operario de Maquina de Ebanisteria, Embalador y

Empacador, Constructor de Botes (Madera), Constructor de Buques, Constructor de Muelles, y Trabajos Relacionados
590–N Supplemental Application for Operating Engineer Jobs
590–Q Supplemental Application for Custodial Service Superintendent of Building, Engineman-Janitor (Operator), Pumping, Sewage Disposal or Filter Plant, Watertender, Fireman, and Related Jobs
590–SW Supplemental Application for Shipwright
660 Supplemental Qualifications Statement for Game Warden

Revised:

445–A Registration Information for Apprentice Examinations (Rev. 2–87)
445–B Inscripcion para los Examenes de Aprendiz Especializado (Spanish translation of Form 445–A) (rev. 2–87)
497 (English) Confidential Qualifications Inquiry (Rev. 1–88)
497 (Spanish) Consulta Confidencial Sobre Aptitudes (Rev. 1–88)
500 (English) Supplemental Qualification Statement (Rev. 7–87)
500 (Spanish) Declaration Suplementaria de Experiencia (Rev. 7–86)
513 Application Record Card (Rev. 2–87)
523 Inquiry as to Availability (Rev. 7–86)
523–A Disponibilidad para Empleo
528 Request for Change/Action-Solicitud de Cambio/Accion (Rev. 10–87)
536 Solicitud de Empleo (Rev. 10–87)
536–A Hoja de Continuacion al Formulario 536 (Spanish translation of SF–171–A) (Rev. 10–87)
540 List of College Courses-To Accompany Application for Federal Employment (Rev. 11–87)
574 Supplemental Qualifications Statement-Equal Opportunity Specialist NM–5/12 (Rev. 9–86)

Translated:

590–M (Spanish) Solicitud Suplementaria para Cocinero (Rev. 6–85)

Added:

590–T (English) Supplemental Application for Tool and Cutter Grinder, Toolmaker, Toolroom Mechanic and Related Jobs
590–T (Spanish) Solicitud Adicional para Amolador de Herramientas y Cortadoras, Fabricante de Herramientas, Mecanico de Cuarto de Herramientas y Trabajos afines
590–U (English) Supplemental Application for Electrical Equipment Repairer, Electrical Equipment Worker and Related Jobs
590–U (Spanish) Solicitud Adicional para Reparador de Equipo Electrico, Trabajador de Equipo Electrico y Trabajos afines.

The remainder of the forms in this information collection remain unchanged.

The Forms which are included in this collection of information are needed to determine the qualifications, suitability and availability of applicants for Federal employment in the Canal area so that U.S. Government agencies can be supplied with eligibles to fill vacant positions. The information is used by Central Examining Office employees performing examining duties; by subject matter experts on rating panels; and by agency officials making selections to fill vacancies.

The total time required for applicants for employment to respond to the information collection is estimated to be four (4) hours to complete a full application and one-half hour to complete forms which update an application already on file. In some cases certain positions may require an additional response time averaging one and one half (1½) hours for the completion of a supplemental statement to measure specific knowledge, skills and abilities. There are approximately 8,431 respondents who complete application forms annually, of which 5,109 complete full applications and 3,322 complete forms to update an application already on file. The total burden required annually for persons to respond to this collection of information is estimated at 22,097 hours.

Date: April 19, 1988.

Fernando Manfredo, Jr.,

Deputy Administrator Senior Official for Information Resources Management.

[FR Doc. 88–8927 Filed 4–21–88; 8:45 am]

BILLING CODE 3640–04–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–25601; File No. SR–NASD–88–11]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Proposed Rule Change for Permanent Approval of the Order Confirmation Transaction Service and a Modification in Usage Procedures

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1943 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that April 1, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD hereby files a proposed rule change, pursuant to section 19(b)(1) of the Act and Rule 19b–4 thereunder, to obtain the Commission's approval of the Order Confirmation Transaction service ("OCT") on a permanent basis and approval of a modification in established procedures for use of the OCT.

The OCT is a National Association of Securities Dealers Automated Quotation ("NASDAQ") system enhancement that provides an alternative medium for retail firm's to contact market makers, and for market makers to contact one another, in order to negotiate trades and confirm executions when market conditions impede performance of these routine functions by telephone. The access terms and operational procedures for use of the OCT were fully described in the NASD's original rule filing on this matter, File No. SR–NASD–87–54.[1] In addition to permanent status for the OCT, the instant filing proposes a modification that would allow OCT participants to enter/accept partial executions of individual orders. Presently, to consummate an execution via the OCT, a market maker must accept an order in its entirety. The proposed modification would not, however, alter a market maker's obligation to honor his current bid (offer) up to the displayed size. The allowance of entry and acceptance of partial executions is intended to facilitate usage of the OCT respecting orders that significantly exceed a market maker's displayed size.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of

[1] Previously, the Commission granted approval of the OCT for three months. *See* Securities Exchange Act Release No. 25263 (January 11, 1988) approving File No. SR–NASD–87–54 on a temporary basis. On March 17, 1988, the NASD submitted File No. SR–NASD–88–10 to obtain a one-month extension of that interim approval, and such extension was approved on March 28, 1988. *See* Securities Exchange Act Release No. 25523 (March 28, 1988).

and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purposes of this filing are twofold: (1) To obtain permanent approval of the OCT and (2) to implement a change in OCT procedures that will enable the entry and acceptance of partial executions on orders entered through the OCT.

Permanent Status

The OCT was designed to supplement communications facilities available to support the continuous, orderly operation of the NASDAQ market during difficult or unusual market conditions like those experienced in October of 1987. Essentially, the OCT has increased communications capacity by enabling eligible firms to enter electronic messages through NASDAQ Level 2/3 authorized terminals or NASDAQ Workstations™, in lieu of telephonic communication, to negotiate and confirm executions. Because the OCT relies upon the NASDAQ communications network and because the greatest use of OCT would likely occur during periods of high volume, the Commission staff had expressed some concern about the capacity of the NASDAQ system to accommodate a sudden surge in OCT traffic. Additionally, the Commission staff questioned the NASD's ability to monitor OCT messages to identify possible instances of market makers' failing to honor quoted markets. Given these factors, the Commission granted temporary approval of the OCT pending receipt of additional information on these issues. The NASD believes that the following information responds fully to the Commission's concerns and that permanent status is now appropriate for the OCT.

System Capacity

The OCT function operates on TANDEM processors totally separate from the 1100 NASDAQ System. It is connected to the traders through the NASDAQ network and terminals. However, that network on a daily basis processes more than 1 million transactions. Since initial implementation, average daily traffic of OCT's has been approximately 100 entries. Even if this number were to be increased by two orders of magnitude to 10,000 per day, a number which has been experienced in SOES under heavy traffic conditions, it would still be a small percentage of the total traffic handled on the network and would not degrade NASDAQ services. In any case, traffic on the NASDAQ network is monitored on a daily basis and adjustments made as necessary.

Surveillance Procedures

During the trading day, the NASD monitors OCT usage by means of an automated exception system that generates on-line alerts in hardcopy form. An alert occurs whenever an order entered through the OCT is rejected or expires.[2] Each alert is promptly reviewed to ascertain whether the preferenced market failed to honor his quoted market in the subject security.[3] The assigned analysts conduct this review by retrieving the inside quotes along with those of the affected market maker as of the time the OCT order was entered. To facilitate prompt reviews, the interrogation device is located beside the printer that generates OCT alerts. If this review indicates possible backing away, an analyst promptly contacts the market by telephone to seek an explanation and/or verification of corrective action. To date, this monitoring process has not identified any instance of a market maker failing to honor the quoted market. Most often, the OCT alerts consist of orders that were declined (or allowed to expire) because they exceeded the market maker's displayed size or were priced away from the displayed quotes. Since implementation of the OCT, the volume of alerts has remained low with a range of ten to twenty-five per day out of the total orders entered. More recently, the volume of alerts has trended downward as member firms have gained experience in using the OCT.

The NASD submits that the foregoing procedures are adequate to assure proper handling of orders entered through the OCT. Moreover, the proposed modification to accommodate partial executions of larger orders should reduce the number of alerts attributable to the "size" factor.

Partial Execution Feature

To provide greater flexibility to firms electing to use the OCT, the NASD has developed a technical enhancement to permit partial executions in accord with parameters specified by the initiating firm. For example, an order entry firm could transmit an order via the OCT to buy 5,000 shares of ABCD at 10½ (the inside offer) from a designated market maker displaying an offer of 500 shares of ABCD at 10½. Using the proposed enhancement, the initiating firm could stipulate (at the time of entry) that it will accept a minimum of 2,000 shares of ABCD at 10½. Upon receipt of the order, the designated market maker can decide whether to confirm an execution within the specified size range, *i.e.*, 2,000–5,000 shares.[4] Alternatively, the market maker could respond with a counter offer, *e.g.*, to sell 5,000 shares of ABCD at 10⅝. The order entry firm would then have the option to reject or accept the counter offer.

In essence, the partial execution feature provides greater flexibility in negotiating execution terms through the OCT. This added flexibility is achieved by an interchange of electronic messages that more closely approximates the negotiation of executions via telephone. In particular, the partial execution feature will facilitate use of the OCT to consummate transactions that would not be eligible for execution through the NASD's Small Order Execution System ("SOES"). As such, the proposed enhancement advances the central concept underlying the OCT, namely, to provide a supplemental communications medium for use when market conditions render telephonic communication infeasible.

The NASD believes that sections 11A and 15A of the Act provide the statutory bases for permanent approval of the OCT as well as the partial execution feature. Specifically, subsections (A)–(D) of section 11A(a)(1) articulate the broad findings and policy goals which the Congress intended to guide the operational enhancement of the nation's securities markets. In this context, the Congress underscored the importance of applying new data processing and communications techniques to assure (1): more efficient and effective market

[2] The firm receiving an OCT message has two minutes to respond. If the receiving firm does not respond within that period, the order is automatically cancelled, and a cancellation message is sent to the initiating firm.

[3] The hardcopy alert contains the following data: identity of initiating firm; date; branch and registered representative identifiers; buy/sell indication, size, price, and security identifier; identity of receiving firm; time and reason for alert (*i.e.*, rejected or expired order).

[4] If the market maker in this example attempted to enter an acceptance for less than 2,000 shares, the system would automatically reject that message. However, if the order entry firm had specified all-or-none as to the buy order for 5,000 shares of ABCD at 10½, the market maker could respond with a counter offer for a lesser size or higher price.

operations; (2) economically efficient execution of securities transactions; (3) broad availability of information with respect to quotations for and transactions in securities; and (4) the optimal execution of investors' orders. The design and operational features of the OCT, including the partial execution enhancement, comport fully with these Congressional directives.

The instant proposal is also supported by subsection (b)(6) of section 15A under the Act. Among other things, that provision requires that the NASD's rulemaking initiatives be designed to: (1) promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) protect investors and the public interest. As fully described in File No. SR–NASD–87–54, the OCT augments the communications and order handling capacities of NASDAQ market makers. Although usage of the OCT is voluntary, the NASD views it as a vital, auxiliary communications system that will enable member firms to conduct business with one another when telephonic communications are unavailable or unfeasible due to unusual conditions. This communications capability will be enhanced by virtue of the partial execution feature previously described. The back-up capability embodied in the OCT promotes continuity in NASDAQ market operations in order to service all classes of investors. This result is fully consistent with the above-cited portions of Section 15A(b)(6) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

Commission approval of the OCT on a permanent basis will not result in the imposition of any competitive burden. This conclusion is supported by several factors. First, the OCT is an enhancement of the facilities that support market making in NASDAQ securities by member firms. This type of enhancement does not alter the established terms of access respecting vendors' receipt of NASDAQ market information for re-distribution to diverse groups of end-users. Second, the OCT enhancement does not pose a competitive burden upon NASDAQ market makers and other eligible members. By design, the OCT is an auxiliary mechanism that eligible firms may employ to conduct business when telephonic communication is not feasible. Accordingly, the OCT has been structured to accommodate conveyance of the same basic elements of information which firms communicate in negotiating and executing tranactions via the telephone. Third, the OCT enhancement does not impose more stringent market making obligations on participating firms. Rather, it provides an alternative, voluntary mechanism which market makers and order-entry firms can use to conduct their routine business. In this regard, the flexibility provided by the partial execution feature should increase the efficiency and utility of the OCT especially under difficult market conditions. Fourth, firms voluntarily electing to use the OCT must have clearing arrangements through a registered national clearing entity. The NASD asserts that this requirement does not constitute an undue limitation on voluntary use of the service. Moreover, the NASD believes that the potential benefits to the industry and public investors from voluntary participation in the OCT materially outweigh the clearing requirements minimal impact upon ineligible firms during periods of unusual market activity.

Based on the foregoing, it is believed that no competitive burden will result from the Commission's approval of this filing.

C. Self-Regulatory Organization's Statement on Comments On the Proposed Rule Change Received From Members, Participants, or Others

The NASD did not solicit comments from the membership prior to submission of this or the earlier Rule 19b–4 filings dealing with the OCT. After the Commission's temporary approval of OCT on January 11, 1988, the NASD issued Notice-to-Members 88–6 (January 15, 1988) which announced implementation of the OCT and outlined usage procedures. Shortly thereafter, one member firm submitted a comment letter regarding the OCT.[5] The commentator expressed concerns regarding best execution, all-or-none treatment of OCT orders, potential price manipulation, and lack of information on the procedures for scanning orders previously entered through the OCT during the trading day.

The concerns expressed in this comment letter were given active consideration in the course of NASD's monitoring of OCT usage prior to submission of this rule filing. The stated concerns about inferior execution of retail orders and potential price manipulation by entry of large orders outside the prevailing market have not been substantiated by the NASD's specialized surveillance of the OCT or by other routine surveillance procedures. Similarly, the Association has received no complaint from an order entry firm respecting the possibility of interior executions being accorded to orders consummated via the OCT. The commentator's suggestion for a partial execution feature is addressed elsewhere in this filing. Finally, the need for additional guidance on use of the OCT has been addressed by telephonic communications with member firms and the issuance of a procedural guide.

The tenor of the commentator's observations suggests a misperception of the OCT as an automated execution system for inter-dealer trades that would be comparable to the SOES for agency orders. In fact, the commentator opined that opening SOES to proprietary orders would obviate the need for the OCT. The NASD wishes to reiterate that the central purpose of OCT is to provide an auxiliary communications medium not an automated execution system. Although firms can elect to use the OCT under varying market conditions, its functional parameters require the affirmative acceptance of an order to produce a locked-in trade. In this respect, the operation of the OCT differs markedly from SOES.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it funds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to

[5] Letter dated January 25, 1988 from Elroy Krumholz, Executive Vice President of Wechsler & Krumholz, Inc., to John T. Wall, Executive Vice President, Member and Market Services, National Association of Securities Dealers, Inc. A copy of this letter is attached.

the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-88-11 and should be submitted by May 9, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: April 19, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-8897 Filed 4-21-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

April 18, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Finevest Foods Inc.
Common Stock, $.01 Par Value (File No. 7-3237)
Wedgestone Financial, Inc.
Shares of Beneficial Interest, $1.00 Par Value (File No. 7-3238)
Zenith Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-3239)
Weingarten Realty Investors
Common Stock, $.03 Par Value (File No. 7-3240)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 9, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-8848 Filed 4-21-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

April 18, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Affiliated Publications, Inc.
Common Stock, $0.01 Par Value (File No. 7-3234)
Kennametal, Inc.
Capital Stock, $1.25 Par Value (File No. 7-3235)
MGM/UA Communications Co.
Common Stock, $1.00 Par Value (File No. 7-3236)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 9, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-8849 Filed 4-21-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25595; File No. SR-NASD-88-8]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") submitted on February 25, 1988, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to add section 68 to the NASD Uniform Practice Code, requiring NASD member firms that are participants in a registered clearing agency for purposes of clearing over-the-counter transactions to subscribe to and reconcile all eligible transactions through the NASD's Trade Acceptance and Reconciliation Service ("TARS").

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 25437, March 9, 1988) and by publication in the **Federal Register** (53 FR 8832, March 17, 1988). One letter of comment was received with respect to the proposed rule change, strongly supporting its approval.[1]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: April 18, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-8951 Filed 4-21-88; 8:45 am]

BILLING CODE 8010-01-M

[1] Letter from Herbert I. Levitt, Spear, Leeds & Kellogg, to Jonathan G. Katz, Secretary, SEC, March 25, 1988.

[Release No. 34-25599; File No. SR-NYSE-88-02]

Self-Regulatory Organization; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), on February 25, 1988, submitted to the Securities and Exchange Commission ("SEC" or "Commission") a proposal to prohibit certain index arbitrage-related stock transactions after the Dow Jones Industrial Average ("DJIA") moves 50 or more points from the previous day's close. In a March 2, 1988 letter, the NYSE requested that its proposal be approved only on a six-month pilot basis.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 25400 (February 26, 1988), 53 FR 7273.[4] The Commission received 34 comment letters relating to the NYSE proposal.

I. Descriptioin of the Proposal

The Exchange's proposed Rule 80A would prohibit members and member organizations from entering into any NYSE automated order routing or trading system (such as the Designated Order Turnaround System, known as "DOT" or "SuperDot") any order or other trading interest involving index arbitrage once the DJIA reaches a level 50 or more points above or below the previous day's close.[5] The restrictions would apply to customer, as well as proprietary, orders, and would remain in effect for the remainder of any trading day on which they become applicable.[6]

"Index arbitrage" would be defined in Rule 80A as trading of "baskets" or groups of stock in conjunction with the trading of one or more cash-settled options or futures contracts on stock index groups, or options on any such futures contracts (collectively referred to as "derivative index products") in an attempt to profit from price discrepancies between the stocks and the derivative index products. The index arbitrage definition would require only that the purchase or sale of the basket or group of stocks and the purchase or sale of the derivative index products be related. Those trades would not have to be executed simultaneously, as some index arbitrage strategies allow for time lags between the executions of the two legs of a transaction.

The NYSE also proposes to adopt under Rule 80A an interpretation requiring the Exchange to presume (absent a contrary showing) that a member or member organization that enters orders representing the stock and derivative index product legs of a transaction contemporaneously and at a time when the value of the derivative index product is at a premium or discount in relation to the index value[7] is engaging in index arbitrage. The Exchange would be free to determine that other situations involving trading of baskets of stocks constitute index arbitrage.

The Exchange proposes to include three exceptions to Rule 80A. First, Rule 80A would not apply to market-on-close orders transmitted on expiration Fridays. This would allow the liquidation of previously-established index arbitrage positions where the final value of the derivative index product is based on closing expiration Friday prices. This exception would not apply to Thursday market-on-close orders for securities traded in conjunction with derivative index products that settle based on opening expiration Friday stock prices, because Rule 80A's restrictions would not apply to opening trades, and therefore could not interfere with liquidation orders designed to receive the opening price.

Second, Rule 80A would not prohibit the execution of an order that a member transmits before the restrictions are triggered. The order would have to be en route to the point of execution (*e.g.*, the specialist's post via SuperDot), thus not requiring any further action by the member to effect the execution.

Third, Rule 80A would allow the NYSE to waive the index arbitrage restricitons "whenever such waiver appears justified to foster or maintain the efficiency, fairness or orderliness of the market." The Exchange would be required to provide notice of any such waiver "through electronic or other means."

In support of its proposal, the NYSE argues that Rule 80A would help reduce the significant volatility that recently has characterized the securities markets. The Exchange believes that index arbitrage may exacerbate market volatility. The Exchange also asserts that any examination of index arbitrage's market impact must take into account not only the argument that index arbitrage may increase the efficiency of the securities and derivative product markets, but also the professional and public perception that index arbitrage increases market volatility. The Exchange believes its restrictions would decrease volatility by "controlling the amount of risk rebounding into the stock market as a result of activity in the derivative product market."[8] In its ruling filing, the NYSE noted the significant member organization, listed company, and investor support for index arbitrage restrictions voiced at various Exchange meetings and in letters to the Exchange.[9]

II. Comments Received

A large majority of the 34 comment letters received by the Commission[10]

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] Letter from Robert J. Birnbaum, President, NYSE, to Richard Ketchum, Director, Division of Market Regulation, SEC.

[4] The release contains the full text of the Exchange's proposed rule. 53 FR at 7274.

[5] The 50-point trigger represents approximately a 2.5% movement in the DJIA as it stood at the time the NYSE's rule filing was submitted to the Commission. Rule 80A would allow the Exchange to adjust the trigger 250-point movements of the DJIA to maintain the 2.5% relationship.

[6] While Rule 80A would require the Exchange to disseminate notice to members of the applicability of the index arbitrage restrictions, members would be subject to the restrictions whether or not such notice was disseminated or received. In addition, the restricti ons would apply even if the value of the DJIA were based on the prices of less than all of the 30 constituent stocks.

[7] The Commissin assumes, for purposes of this order, that the term "index value" refers to the index's theoretical fair value.

[8] 53 FR 7275.

[9] *Id.*

[10] Letters were received from the following: Leon Pordy, Chairman and Chief Executive Officer ("CEO"), Chock full o' Nuts (March 21, 1988); William J. Alley, Chairman and CEO, American Brands, Inc. (March 22, 1988); Franklin Myers, Vice President and General Counsel, Baker Hughes, Inc. (March 22, 1988); Duane A. Patterson, Secretary, Interco, Inc. (March 22, 1988); Rand V. Araskog, Chairman and CEO, ITT Corp. (March 23, 1988) ("ITT Letter"); John M. Delich, Chairman and CEO, Mutual of Omaha Fund Management Co. (March 23, 1988) ("Mutual of Omaha Letter"); Charles H. Harff, Senior Vice President, General Counsel and Secretary, Rockwell International Corp. (March 23, 1988); D.C. Wright, Vice Presdient and Chief Financial Officer ("CFO"), Great Northern Nekoosa Corp. (March 24, 1988); Richard A. Gilleland, Chairman and CEO, Intermedics, Inc. (March 24, 1988); Jean-Paul Valles, Vice President-Finance, Pfizer, Inc. (March 24, 1988); John H. Croom, Chairman and President, Columbia Gas System, Inc. (March 24, 1988); Don O. Dulude, President and CEO, Kuhlman Corp. (March 25, 1988); Robert A. Burnett, Chairman and CEO, Meredith Corp. (March 25, 1988); E.C. Gwaltney, Chairman and CEO, Russell Corp. (March 25, 1988); Charles W. Battey, Vice Chairman and CFO, United Telecommunications, Inc. (March 25, 1988); Fred L. Hartley, Chairman and CEO, Unocal Corp. (March 25, 1988); Thomas R. Donovan, President and CEO, Chicago Board of Trade (March 28, 1988) ("CBT Letter"); John D. Jackson, Vice President and Secretary, Fairchild Industries, Inc. (March 28, 1988); S.A. Brandimore, Executive Vice President and General Counsel, Florida Progress Corp. (March 28, 1988); John W. Teets, Chairman, President and CEO, Greyhound Corp. (March 28, 1988); A.E. Goebel, Vice President, Secretary and Treasurer, Southern Indiana Gas and Electric Co. (March 28, 1988); Drew

Continued

expressed strong support for the NYSE proposal.

In particular, these commentators cited the need to contain recent market volatility and prevent a repeat of last October's market events, even if it means placing controls on the markets. Commentators stressed the importance of restoring investor confidence in the markets and preserving the capital-raising function of the securities markets. Several commentators argued that the NYSE's current, voluntary restriction on index arbitrage trading, which was instituted on January 14, 1988 and essentially mirrors the proposal described herein, has helped reduce market volatility and restore investor confidence. Commentators' views were summed up by the statement that Rule 80A would be a "reasonable . . . compromise between those who feel that index arbitrage is a necessary tool of their trade and those of us who believe that steps must be taken to reduce the volatility in our capital markets if we are to recover and maintain public confidence in the markets." [11]

The Commission received comment letters critical of the NYSE's proposal from the Commodity Futures Trading Commission ("CFTC") the Chicago Board of Trade ("CBT"), and J.P. Morgan Investment Management, Inc. ("Morgan"). The CFTC acknowledged the validity of the NYSE's concerns about volitality and investor confidence but argued that index arbitrage transactions maintain "an efficient and direct linkage between the equity and derivative markets" [12] and typically are price-neutral because they involve offsetting buy and sell orders. The CFTC cited the assertion in the *Report of the Presidential Task Force on Market Mechanisms* ("Brady Report") that disconnection of the equity and futures markets during the October market break contributed to the stock market decline and "unsatisfactory market performance." [13] Last, the CFTC urged the Commission to pursue long-term, coordinated efforts on intermarket issues through inter-agency discussions and the President's Working Group on Financial Markets.[14]

While agreeing that market volatility should be reduced, the CBT in its letter argued that there is no proof index arbitrage exacerbates volatility. Instead, the CBT asserted that index arbitrage helps maintain the efficiency, fairness, and orderliness of the markets by keeping equity and derivative product prices in line with each other. The CBT noted its concern that the NYSE proposal actually could increase market volatility by causing selling pressures to be channelled independently to the securities and futures markets. The CBT argued that the market disconnection caused by DOT restrictions would prevent the two markets from being brought back into line by index arbitrage trading. The CBT cited the Brady Report assertions that index arbitrage restrictions contributed to instability during the October market break and that regulators and exchanges should implement coordinated, intermarket "circuit breaker" mechanisms. Finally, the CBT urged the NYSE to specify the conditions under which it could waive the index arbitrage restrictions.

Morgan, in its comment letter, also cited the advantages of index arbitrage and the lack of conclusive evidence that such trading increases market volatility.[15] Morgan argued that the NYSE proposal would merely increase the costs of index arbitrage, not eliminate such trading, thereby making equity and futures market reconciliation less frequent and efficient. Because market reconciliation would be cost-efficient only when the spreads between equity and index futures prices are significant, index arbitrage trading necessarily would involve greater price moves and market volatility. Morgan urged the NYSE to increase market efficiency and decrease volatility by reducing the costs of index arbitrage trading, so that such trading can occur more often and at narrower spreads. In particular, Morgan called for enhanced DOT capacity for index arbitrage trades and the creation of posts on the NYSE floor for market basket trading. Morgan also cited Brady Report concerns about disconnecting the equity and futures markets, particularly during crisis situations, and its belief that trading restrictions could drive equity trading overseas.

III. Commission Analysis

The Commission continues to believe that the "primary focus" in responding to the events of last October "should be on expanding the capacity of the markets through operational reforms and coordination measures,"[16] including efforts to enhance liquidity and improve information availability. Indeed, the Commission notes that the markets have undertaken a variety of steps to increase their capacities and that the President's Working Group currently is considering other measures to improve the performance of market mechanisms. Moreover, the Commission also continues to believe that index arbitrage trading serves a useful function by promoting accurate price relationships between derivative instruments and stock prices, thereby enhancing efficiency and the viability of trading strategies that rely on such pricing relationships.

Nevertheless, the Commission is concerned about the extreme volatility that characterized the U.S. securities markets during the last three months of 1987 and in early 1988. As noted in the Division of Market Regulation's report entitled *The October 1987 Market Break* (February 1988) ("Staff Report") and in various Commission testimony before

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Lewis, Chairman and CEO, Union Pacific Corp. (March 28, 1988); John W. Hetherington, Vice President and Secretary, Westvaco (March 28, 1988) ("Westvaco Letter"); Robert L. Peterson, Chairman and CEO, IBP, Inc. (March 29, 1988); Lindsay Macarthur, Executive Vice President, Manufacturers Hanover Trust Co. (March 29, 1988); John T. Fogarty, Secretary, Schering-Plough Corp. (March 29, 1988); S.L. Prendergast, Vice President and Treasurer, AT&T (March 31, 1988); Michael E. Autera, Senior Vice President and CFO, Bristol-Myers Co. (April 1, 1988); Jean A. Webb, Secretary, Commodity Futures Trading Commission (April 1, 1988) ("CFTC Letter"); Roger A. Sayler, Managing Director, J.P. Morgan Investment Management, Inc. (April 1, 1988) ("Morgan Letter"); John E. Hulse, Vice Chairman and CFO, Pacific Telesis (April 4, 1988) ("Pacific Telesis Letter"); John G. Smale, Chairman and CEO, Procter & Gamble Co. (April 6, 1988); Frank W. Luerssen, Chairman and CEO, Inland Steel Indus. (April 8, 1988); Raymond A. Paul, Jr., Treasurer, Sun Company, Inc. (April 8, 1988) ("Sun Letter").

[11] ITT Letter, *supra* note 10, at 1. Commentators also addressed the need for additional measures to reduce market volatility. One commentator stressed the need for increased options margin requirements and insider trading investigations. *See* Westvaco Letter, *supra* note 10, at 1. Another commentator argued that derivative stock instruments should be eliminated or strictly limited in terms of price moves, and that there should be a single regulator for the futures, options and equities markets. *See* Mutual of Omaha Letter, *supra* note 10, at 2. Finally, one commentator suggested that all forms and methods of "program trading" should be prohibited during excessively volatile periods and that a "disinterested body" such as the Commission should promulgate such a prohibition. *See* Sun Letter, *supra* note 10, at 1–2.

[12] CFTC Letter, *supra* note 10, at 1.

[13] *Id.* at 1–2.

[14] *See* Exec. Order No. 12631, 53 FR 9421 (1988). Concerns about the need to pursue coordinated, intermarket efforts also were expressed in the Pacific Telesis Letter, *supra* note 10, at 1.

[15] Morgan distinguished between "common" volatility, which is the "standard deviation of market moves," and "equilibrium" volatility, which is the movement of stocks and futures toward the "true value of equities" as a result of index arbitrage trading. Morgan Letter, *supra* note 10, at 1.

[16] Testimony of David S. Ruder, Chairman, SEC, "Securities and Exchange Commission Recommendations Regarding the October 1987 Market Break," before the U.S. Senate Comm. on Banking, Housing, and Urban Affairs, at 7 (February 3, 1988) ("February 3rd Testimony").

Congress,[17] the Commission believes that index-related trading, including index arbitrage, was a factor in accelerating and exacerbating the severe market movements of the October market break, particularly on October 16 and during certain critical time periods on October 19 and 20.[18] While it may not be desirable under normal conditions to limit arbitrage trading strategies, during periods of extreme market volatility index arbitrage and other index-related trading strategies may at times overwhelm even the increased stock and futures market capacities with surges of trading volume. Thus the Commission continues to believe that it is prudent to adopt narrowly-tailored temporary measures to reduce liquidity demands until further market enhancements, such as cash market basket products, can be implemented.[19] The Commission recognizes the concerns expressed in both the Brady Report and the Commission's Staff Report that reduction of arbitrage may shift selling pressure to the stock market and discourage stock buyers because of the "billboard effect" resulting from futures price discounts. The Commission is not able to conclude, however, that these indirect effects exceed the direct effect of stock selling resulting from index arbitrage and other index-related trading strategies during periods of substantial volatility.[20]

In light of this uncertain environment and the need to increase investor confidence in the stability of the markets, the Commission believes it is appropriate for the self-regulatory organizations ("SROs") to develop experimental initiatives intended to ameliorate extreme stock price volatility. The Commission believes that the SROs, through their officers and governors, as well as member committees, have an intimate and thorough understanding of the operation of the markets and have the most direct stake in the successful functioning of those markets. Accordingly, the Commission believes the SROs should, and should be encouraged to, take the initiative to implement measures intended to ameliorate extraordinary market volatility.

The Commission is concerned that, in view of the fragile nature of investor confidence, it might be especially unsettling to disapprove a perceived response to market volatility [21] because of uncertainty regarding its usefulness as a long-term or permanent answer to market volatility. In this connection, although it is not yet clear, the NYSE's proposed restrictions, which have been in effect on a voluntary basis since January 14,[22] may have had some impact on market volatility. Since January 14, the DJIA on several occasions has moved between 40 and 50 points from the previous day's close, twice crossing the 50-point level.[23]

The Commission stresses that the NYSE's proposal is being approved not on a permanent basis but only for six months.[24] During the six-month pilot period, the NYSE and market participants will be able to evaluate more effectively the actual market impact of the restrictions.[25] The Commission is confident that the NYSE's response at the end of the pilot period will be based on the hard evidence derived from such actual market impact. This should place the Commission in a position to determine whether the extension or permanent approval of those restrictions is consistent with the terms of the Act and the rules and regulations thereunder. In the interim, the Commission will actively pursue, and expects that the NYSE and market participants also will pursue, various intermarket coordination efforts, such as coordinated trading halts and openings, currently being considered by the President's Working Group and in ongoing discussions among federal agencies and with and among the securities and futures exchanges. In addition, other means of addressing market volatility, such as the creation of a system for stock basket trading,[26] can be evaluated.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 [27] and the rules and regulations thereunder.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act, [28] that the proposed rule change is approved.

By the Commission.

April 19, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-8896 Filed 4-21-88; 8:45 am]

BILLING CODE 8010-01-M

[17] *See, e.g.*, February 3rd Testimony, *supra* note 16.

[18] *See* Staff Report at 2-4 through 2-24 and 3-11 through 3-13.

[19] *See* February 3rd Testimony, *supra* note 16, at 7.

[20] In this connection, the Commission notes that the Standard & Poor's 500 future traded at a low of 201.5 on October 19 and 181 on October 20, the equivalent of the DJIA reaching 1,612 and 1,443, respectively. The Commission also notes that many portfolio insurers did not sell all of the futures that their portfolio models required on October 19.

[21] The Commission notes that several press accounts have suggested that the voluntary DOT restrictions have been helpful in reducing volatility, although such a conclusion is premature. *See, e.g.*, Wallace, Computer Trade Curb Cheers Some Investors, *N.Y. Times*, March 26, 1988, at 41.

[22] The NYSE's original request to its members was for a voluntary restraint from using the Exchange's automated systems for index arbitrage on days when the DJIA moved 75 points or more. In conjunction with its decision to file the current proposal, the NYSE on February 4 moved the voluntary limit to 50 points.

[23] On April 14, 1988, the NYSE's voluntary restrictions on use of DOT for index arbitrage became applicable at approximately 1:54 p.m., when the DJIA crossed the 50-point threshold. As a result, member firms were precluded from effecting index arbitrage transactions through DOT for the remainder of that day's trading. At the close of trading, the DJIA was 101.46 points lower than the previous day's close, due primarily to unfavorable news about the U.S. trade deficit. On April 6, 1988, the DJIA crossed the 50-point threshold at approximately 3:20 p.m. At the close of trading, the DJIA was 64.16 points higher than the previous day's close. Indications are that the market's steep rise that day was orderly and due primarily to favorable news about the U.S. dollar.

[24] The Commission expects the NYSE to adopt explicit conditions as to when it would waive its index arbitrage restrictions, and to provide prompt and effective notice to members of any such waiver.

[25] The Commission expects the NYSE to develop criteria to evaluate the pilot. The Commission also expects the NYSE to evaluate alternative measures to curb extraordinary market volatility. Finally, the Commission wishes to emphasize that the absence or existence of volatility, in itself, would not necessarily demonstrate the effectiveness of the pilot.

[26] *See* Staff Report at 3-18.

[27] 15 U.S.C. 78f (1982).

[28] 15 U.S.C. 78s(b)(2) (1982).

DEPARTMENT OF TRANSPORTATION

[Order 88-4-45]

Order Adjusting International Cargo Rate Flexibility Level

Policy statement PS-109, implemented by Regulation ER-1322 of the Civil Aeronautics Board and adopted by the Department, established geographic zones of cargo pricing flexibility within which cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The SFRL for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the relevant ratemaking entity. The first adjustment was effective April 1, 1983. By Order 87-10-18, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the six-month period starting April 1, 1988, we have projected nonfuel costs based on the year ended December 31, 1987, data

and have determined fuel prices on the basis of the latest experienced monthly fuel cost levels as reported to the Department by the carriers.

By Order 88–4–45 cargo rates may be adjusted by the following adjustment factors over the April 1, 1982, level:

Atlantic	1.1070
Western Hemisphere	.9477
Pacific	1.2260

For further information contact: Julien Schrenk, (202) 366–2441.

By the Department of Transportation.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

Dated: April 15, 1988.

[FR Doc. 88–8821 Filed 4–21–88; 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

Commercial Motor Vehicle Safety Regulatory Review Panel; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces that the Commercial Motor Vehicle Safety Regulatory Review Panel (Safety Panel) will hold a meeting on May 5, 1988, beginning at 9:00 a.m., in Washington, DC, at the Department of Transportation's Headquarters Building, 400 Seventh Street SW., Washington, DC, Room 4200.

The agenda for this meeting will be a discussion of general options for achieving the uniformity directed in the Motor Carrier Safety Act of 1984, 49 U.S.C. app. section 2507 (Supp. III 1985), particularly as it may relate to the Motor Carrier Safety Assistance Program (MCSAP). The Safety Panel will also discuss the pending notification to states regarding the preliminary review of the scope and relative stringency of the laws and regulations of those states pertaining to commercial motor vehicle safety.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph S. Toole, Executive Director, Commercial Motor Vehicle Safety Regulatory Review Panel, Federal Highway Administration, HOA–1, Room 4218, 400 Seventh Street SW., Washington, DC 20590, (202) 366–2238. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

Issued on: April 15, 1988.

R.D. Morgan,

Executive Director, Federal Highway Administration.

[FR Doc. 88–8828 Filed 4–21–88; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

[FRA Waiver Petition Docket No. RSOR–86–5]

New Jersey Transit Rail Operations, Inc.; Public Hearing

In accordance with 49 CFR 211.41, notice is given that the Federal Railroad Administration (FRA) will hold a public hearing on the petition by New Jersey Transit Rail Operations, Inc. (NJTR) for a permanent waiver of §§ 218.25 and 218.27 of FRA's railroad operating practices regulations (49 CFR 218.25, 218.27) with respect to some of its activities at South Amboy and Hoboken, New Jersey. This proceeding is identified as FRA Waiver Petition Docket No. RSOR–86–5.

In its petition, NJTR states that it "operates passenger service in New Jersey and New York," running "529 scheduled passenger trains per weekday" with a fleet of 85 diesel locomotives and 744 passenger/multiple unit (MU) cars.

The provisions from which the railroad seeks relief establish minimum requirements for the protection of railroad employees engaged in the inspection, testing, repair, and servicing of rolling equipment, whose activities require them to work on, under, or between such equipment and subject them to the danger of personal injury posed by any movement of such equipment. Train and yard crews are excluded from such protection except when assigned to work on rolling equipment that is not part of the train or yard movement that they have been called to operate.

Section 218.25 specifies the type of protection required for workmen on main tracks. It states as follows:

When workmen are on, under, or between rolling equipment on a main track:

(a) A blue signal must be displayed at each end of the rolling equipment; and

(b) If the rolling equipment to be protected includes one or more locomotives, a blue signal must be attached to the controlling locomotive at a location where it is readily visible to the engineman or operator at the controls of that locomotive.

(c) When emergency repair work is to be done on, under, or between a locomotive or one or more cars coupled to a locomotive, and blue signals are not available, the engineman or operator must be notified and effective measures must be taken to protect the workmen making the repairs.

Section 218.27 specifies the type of protection required for workmen on other than a main track:

When workmen are on, under, or between rolling equipment on track other than main track—

(a) A blue signal must be displayed at or near each manually operated switch providing access to that track;

(b) Each manually operated switch providing access to the track on which the equipment is located must be lined against movement to that track and locked with an effective locking device; and

(c) The person in charge of the workmen must have notified the operator of any remotely controlled switch that work is to be performed and have been informed by the operator that each remotely controlled switch providing access to the track on which the equipment is located has been lined against movement to that track and locked as prescribed in § 218.30.

In addition, under § 218.27(d), if the track involved is equipped with one or more crossovers, both switches of each crossover must be lined against movement through the crossover toward the rolling equipment, and the switch of each crossover that provides access to the rolling equipment must be protected in accordance with the provisions of §§ 218.27 (a), (b), and (c). Finally, under § 218.27(e), if the rolling equipment involved includes one or more locomotives, a blue signal must be attached to the controlling locomotive at a location readily visible to the engineman or operator at the controls of that locomotive.

1. South Amboy, New Jersey

According to the petition, several NJTR trains that operate on NJTR's "North Jersey Coast Line change locomotive at South Amboy. The change of locomotive is from diesel power to electric and vice versa. The locomotive change is made on the main track within interlocking limits of Church Interlocking." Mechanical Department employees are assigned to make the locomotive change by uncoupling the locomotive from the train and disconnecting the power source cables and air brake hoses between the coaches and the locomotive.

The NJTR proposes to treat these Mechanical Department employees, while changing locomotives at South Amboy, as members of the train crew,

instead of providing them with the protections described in § 218.25.

In particular, NJTR proposes that the car inspector "will notify the engineer and conductor befor fouling the equipment." Any request for movement will be given by the car inspector to the conductor, who will stand outside and alongside the equipment between the first car and the locomotive, and give all signals to the engineer. The train will be protected by the North Jersey Coast Line dispatcher, who will place the signals at stop on the main track on which the change is being made.

Blocking devices will not be applied while the change is in process. These changes take place on main tracks 1 and 2 and are protected by certain signals. NJTR "feels that the locomotive changes can be safely made without extensive delays to the passenger trains and without providing the protection as described by (§ 218.25)."

2. Hoboken, New Jersey

The railroad also proposes to treat as a member of the train crew any Mechanical Department employee working with a hostler in the Hoboken Terminal area, instead of providing blue signal protection. The Mechanical Department employee's position is known as "locomotive cutter." The duties of the locomotive cutter are to uncouple the locomotive from the standing equipment ("cut the locomotive away from the standing equipment") so that the hostler can take the locomotive for repairs or servicing.

3. Hoboken Terminal

In its petition, NJTR states that "(i)n Hoboken Terminal there are eighteen tracks that cannot be locked up to provide protection" described in § 218.27, "without causing serious delays to the operation, since slip switches are used and they serve three or more tracks." NJTR proposes that on Tracks 1, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 6 Main, 2 Main, 8 Hill, T, Q, N, A, and the Extension Track in Hoboken Terminal, blocking devices be applied to the signals only and not to the switches.

The Brotherhood Railway Carmen and the Railway Labor Executives' Association (RLEA) have protested NJTR's petition, and the RLEA has requested a hearing. After examining the petition, the protests and hearing request, and the available facts, FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10:00 a.m. on Thursday, June 9, 1988, in Room 300, Military Park Building, 60 Park Place, Newark, New Jersey.

In accordance with § 211.25 of the FRA Rules of Practice (49 CFR 211.25), the hearing will be informal and will be conducted by a representative designated by FRA. Strict rules of evidence will not apply, and cross-examination will be somewhat limited. The FRA representative will make an opening statement outlining the scope of the hearing. Then each person in attendance will be permitted to make an initial statement. After each initial statement is completed, the hearing officer, the technical panel, and the audience will be allowed to question the witness. After all the initial statements are completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so, in the same order in which they made their initial statements. In addition, written statements or other evidence may be submitted at the hearing for inclusion in the record of this proceeding. If practical, eight copies of each written statement or other document should be submitted. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on April 19, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88-8929 Filed 4-21-88; 8:45 am]

BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

[Docket No. IP 88-03; Notice 1]

General Motors Corp.; Receipt of Petition For Determination of Inconsequential Noncompliance

General Motors Corporation, of Warren, Michigan, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.210, Federal Motor Vehicle Safety Standard No. 210, "Seat Belt Assembly Anchorages," on the basis that it is inconsequential as it relates to motor vehicle safety.

This Notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S6(c) of Federal Motor Vehicle Safety Standard (FMVSS) No. 210, requires owner's manuals in vehichles with GVWR of 10,000 pounds or less manufactured after September 1, 1987, to have a diagram or diagrams showing the location of the shoulder belt anchorages (required by FMVSS No. 210) "for the rear outboard designated seating positions, if shoulder belts are not installed as items of original equipment by the vehicle manufacturer at those positions." General Motors reported that 20,514, 1987 and 1988 Chevrolet Caprice vehicles do not have owner's manuals containing the required seat belt anchorage location diagram.

General Motors believes that this noncompliance is inconsequential as it relates to motor vehicle safety because the owner's manuals in question have a section titled "Rear Seat Shoulder Belts (Dealer-Installed Accessory)" which explains the proper use and availability of rear seat lap shoulder belt kits. This section also includes a diagram of the rear seat shoulder belt anchorage locations. General Motors feels that this section makes people aware that shoulder belts can be installed in the rear seat; therefore, it serves the intended purpose of Paragraph S6(c) of FMVSS No. 210.

Interested persons are invited to submit written data, views and arguments on the petition of General Motors, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: May 23, 1988.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on April 18, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-8830 Filed 4-21-88; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: April 15, 1988.

The Department of Treasury has made revisions and resubmitted 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 regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0710.
Form Number: 5500 Series.
Type of Review: Resubmission.
Title: Annual Return/Report of Employee Benefit Plan, Return/Report of Employee Benefit Plan and Associated Schedules.
Description: Forms listed in item 4 are annual information returns filed by employee benefit plans. The IRS uses this data to determine if the plan appears to be operating properly as required under the law or whether the plan should be audited.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Burden: 944,683 hours.
Clearance Officer: Garrick Shear (202) 535-4297, 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.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88-8896 Filed 4-21-88; 8:45 am]
BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 78
Friday, April 22, 1988

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 the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:58 p.m. on Saturday, April 16, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Chairman L. William Seidman, concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the mattrs on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: April 19, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Assistant Executive Secretary (Operations).

[FR Doc. 88-8910 filed 4-19-88; 4:50 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:02 p.m. on Sunday, April 17, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: April 19, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Assistant Executive Secretary (Operations).

[FR Doc. 88-8911 Filed 4-19-88; 4:50 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:36 a.m. on Monday, April 18, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider the following matters:

Application of Dedham Co-operative Bank, an operating non-FDIC insured co-operative bank located at 402 Washington Street, Dedham, Massachusetts, for Federal deposit insurnace.

Recommendation regarding the Corporation's assistance agreement with an insured bank.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No 47,202
Midland Consolidated Office, Midland, Texas

Matters relating to the possible closing of certain insured banks.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

Dated: April 19, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Assistant Executive Secretary (Operations).

[FR Doc. 88-8912 Filed 4-19-88; 4:50 pm]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, April 27, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: April 20, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-8937 Filed 4-20-88; 10:33 am]

BILLING CODE 6210-01-M

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 9:00 a.m., Wednesday, April 27, 1988.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW., Washington, DC 20570.

STATUS: Open to public observation.

MATTERS TO BE CONSIDERED: To consider whether to upgrade the Hartford Subregional office. These considerations do not contemplate any change in the current boundary of Subregion 39.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, DC 20570, Telephone: (202) 254–9430.

Dated, Washington, DC, By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 88–9001 Filed 4–20–88; 4:05 pm]

BILLING CODE 7545–01–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 April 25, 1988:

A closed meeting will be held on Tuesday, April 26, 1988, at 2:30 p.m. An open meeting will be held on Wednesday, April 27, 1988, at 10:00 a.m.

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 Fleischman, 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 Tuesday, April 26, 1988, at 2:30 p.m., will be:

Institution of injunctive actions.
Litigation matter.
Settlement of administrative proceedings of an enforcement nature.
Institution of administrative proceeding of an enforcement nature.

The subject matter of the open meeting scheduled for Wednesday, April 27, 1988, at 10:00 a.m., will be:

1. Consideration of whether to request the Congress to amend Sections 149(b) and 14(c) of the Securities Exchange Act of 1934. The amendments would require broker and bank nominees to forward proxy materials and other shareholder communications to the beneficial owners of investment company securities; require broker and bank nominees to deliver information statements to the beneficial owners of both investment company and non-investment company securities; and require registrants to transmit information statements to the record holders of investment company securities. For further information, please contact Dorothy M. Donohue at (202) 272–2107.

2. Consideration of whether to adopt amendments to Rules 14a–1, 14a–13, 14b–1, 14b–2, 14c–1, 14c–7, and 17a–3 that exclude specific employee benefit plan participants from the operation of the shareholder communication rules. For information, please contact Sarah A. Miller at (202) 272–2589.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Jacqueline Higgs at (202) 272–2149.

Jonathan G. Katz,

Secretary.

April 19, 1988.

[FR Doc. 88–9002 Filed 4–20–88; 4:06 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 53, No. 78
Friday, April 22, 1988

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.

ENVIRONMENTAL PROTECTION AGENCY

[OPP-66137; FRL-3363-5]

Chlordane/Heptachlor Termiticides; Notification of Cancellation and Amendment of Existing Stocks Determination

Correction

In notice document 88-7799 beginning on page 11798 in the issue of Friday, April 8, 1988, make the following corrections:

1. On page 11799, in the second column, in the table, in the third entry, the first column should read "Rigo Company Inc."; the second column should read "70-119"; and the last column should read "4/27/87".

2. On page 11800, in the third column, in the second complete paragraph, in the first line, "sec. 5(a)(1)" should read "sec. 6(a)(1)".

BILLING CODE 1505-01-D

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Docket No. R-0545A]

Update to Official Staff Commentary

Correction

In rule document 88-7347 beginning on page 11047 in the issue of Tuesday, April 5, 1988, make the following corrections:

PART 226—Supplement I—[CORRECTED]

Section 226.17, Paragraph 17(c)(1)11.——[Corrected]

1. On page 11051, in the second column, in the first paragraph, in the sixth line, "the" should read "a".

Section 226.18, Paragraph 18(f)1.——[Corrected]

2. On the same page, in the third column, in the 22nd line from the top, the section designation should read "§ 226.18(f)(1)".

Section 226.19, Paragraph 19(B)4.——[Corrected]

3. On page 11052, in the first column, in the second line from the bottom, "when" should read "where".

Section 226.19, Paragraph 19(b)(2)(vii)——[Corrected]

4. On page 11053, in the second column, under *Paragraph 19(b)(2)(vii)*, in paragraph number 1, in the 13th line, "state of" should read "state or"; and in paragraph number 2, in the 5th line, "are" should read "is".

5. On the same page, in the third column, in paragraph number 4, in the second line, "applied" should read "applies".

Section 226.19, Paragraph (b)(2)(x)——[Corrected]

6. On page 11054, in the second column, in the second line from the top, after "loan" insert "originated".

7. On the same page, in the same column, in the 18th line from the top, after "until" insert "the fourth year because of the 2 percentage point annual rate".

8. On the same page, in the same column, in the 22nd line from the top, after "rate" insert "the most recent rate shown in the historical example should be".

Section 226.19, Paragraph (b)(2)(xiii)——[Corrected]

9. On the same page, in the same column, under *Paragraph 19(b)(2)(xiii)*, in the first line of paragraph 1, "Multiple loan programs" should be italicized; and in the ninth line, "exists" should read "exist".

Supplement I, Appendix H——[Corrected]

10. On page 11055, in the third column, in paragraph 18, "*Model H-14.*" should read "*Sample H-14.*".

BILLING CODE 1505-01-D

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; TIL-1]

Truth in Lending; Update to Official Staff Commentary

Correction

In rule document 88-7350 beginning on page 11055 in the issue of Tuesday, April 5, 1988, make the following corrections:

1. On page 11056, in the second column, under "Section 226.7—— Periodic Statement", in the fifth line, the first section reference should read "§ 226.4(e)".

PART 226, Supplement I, Section 226.30——[Corrected]

2. On page 11059, in the third column, under "*Section 226.30——Limitation on Rates*", in paragraph number 4, in the fifth line, "increasingly" should read "increasing".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Five Texas Cave Invertebrates To Be Endangered Species

Correction

In proposed rule document 88-8520 beginning on page 12787 in the issue of Tuesday, April 19, 1988, make the following correction:

On page 12787, in the first column, under "**FOR FURTHER INFORMATION CONTACT**", in the last line, the "FTS" number should read "474-3972"

BILLING CODE 1505-01-D

Federal Register

Friday
April 22, 1988

Part II

Environmental Protection Agency

40 CFR Part 261

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Technical Corrections

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL-3358-7]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Technical corrections.

SUMMARY: The Environmental Protection Agency (EPA) today is amending its regulations under the Resource Conservation and Recovery Act (RCRA) to make technical corrections to the lists of commercial chemical products that are hazardous wastes when discarded (§ 261.33(e) and (f)), and to the list of hazardous constituents (Appendix VIII of Part 261). In addition, EPA is adding hazardous waste numbers to substances listed in Appendix VIII that also are listed in § 261.33 (e) or (f).

DATES: This amendment becomes effective on April 22, 1988.

ADDRESSES: The OSW docket is located in the sub-basement at the following address, and is open from 9:30 to 3:30, Monday through Friday, excluding Federal holidays: EPA RCRA Docket (S-212) (WH-562), 401 M Street SW., Washington, DC 20460.

The public must make an appointment (by calling (202) 475-9327) to review docket materials. Refer to "Docket number F-88-CCPF-FFFFF" when making appointments to review any background documentation for this rulemaking. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost; additional copies cost $0.20 per page. Copies of not easily obtainable references are available for *viewing and copying only* in the OSW docket.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424-9346 or at (202) 382-3000. For technical information contact Wanda LeBleu-Biswas, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-7392.

SUPPLEMENTARY INFORMATION:

I. Background

Under the authority of Section 3001 of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), the Agency promulgated in 40 CFR 261.33 lists of commercial chemical products or manufacturing chemical intermediates that are hazardous wastes if they are discarded or intended to be discarded. The phrase "commercial chemical product or manufacturing chemical intermediate" refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use, and which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. 40 CFR 261.33 also lists as hazardous off-specification variants and the residue and debris from the clean-up of spills of these chemicals, if discarded or intended to be discarded (§ 261.33 (b) and (d)). Finally, § 261.33 lists as hazardous the containers that have held those chemicals listed in § 261.33 (e), if they are discarded or intended to be discarded, unless the containers have been triple-rinsed with a solvent capable of removing the chemical, or have been decontaminated in an equivalent manner.

Chemicals are listed in Appendix VIII if they have been shown in reputable scientific studies to have toxic, carcinogenic, mutagenic, or teratogenic effects on humans or other life forms, and include such substances as those identified by the Agency's Carcinogen Assessment Group as being carcinogenic.

The Agency published on August 6, 1986 (51 *FR* 28296) a revision of Part 261 that included technical corrections to § 261.33 (e) and (f) and Appendix VIII, as well as the addition of Chemical Abstracts Service (CAS) registry numbers to all listings.

II. Reason and Basis for Today's Amendment

The Agency's on-going review of the clarity and accuracy of the existing hazardous waste lists has resulted in a number of corrections being made in today's revision. In addition, the hazardous waste numbers (from § 261.33) are being added to Appendix VIII of Part 261 as an identification aid. All chemical names in Appendix VIII and § 261.33 (e) and (f) correspond to the names in the Chemical Abstracts Service Registry Handbook—Number Section for the listed CAS number. This corresponds to the CAS Ninth Collective Index nomenclature for most compounds.

Since this notice involves only technical corrections and clarification, no public comment period will be necessary. Any correspondence regarding corrections to the appendices should be sent to Ms. Wanda LeBleu-Biswas at the address shown in the **"ADDRESSES"** section of this notice. Under 5 U.S.C. 553(b)(B), a rule is exempt from notice and public comment requirements "when the Agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedures thereon are impractical, unnecessary, or contrary to the public interest." For the same reasons, this rule is effective immediately. See 5 U.S.C. 553(d) and 42 U.S.C. 6930(b).

III. Regulatory Impact Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. Due to the nature of this regulation (technical correction), the amendment is not "major"; therefore, no Regulatory Impact Analysis is required.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Date: March 24, 1988.

J.W. McGraw,

Acting Assistant Administrator for Solid Waste and Emergency Response.

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, 3002, and 3017 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, 6922, and 6937).

2. In 40 CFR 261.33, the table in paragraph (e) is revised to read as follows:

Hazardous waste No.	Chemical abstracts No.	Substance
P023	107-20-0	Acetaldehyde, chloro-
P002	591-08-2	Acetamide, N-(aminothioxomethyl)-
P057	640-19-7	Acetamide, 2-fluoro-
P058	62-74-8	Acetic acid, fluoro-, sodium salt
P002	591-08-2	1-Acetyl-2-thiourea
P003	107-02-8	Acrolein
P070	116-06-3	Aldicarb
P004	309-00-2	Aldrin
P005	107-18-6	Allyl alcohol
P006	20859-73-8	Aluminum phosphide (R,T)
P007	2763-96-4	5-(Aminomethyl)-3-isoxazolol
P008	504-24-5	4-Aminopyridine
P009	131-74-8	Ammonium picrate (R)
P119	7803-55-6	Ammonium vanadate
P099	506-61-6	Argentate(1-), bis(cyano-C)-, potassium
P010	7778-39-4	Arsenic acid H_3AsO_4
P012	1327-53-3	Arsenic oxide As_2O_3
P011	1303-28-2	Arsenic oxide As_2O_5
P011	1303-28-2	Arsenic pentoxide
P012	1327-53-3	Arsenic trioxide
P038	692-42-2	Arsine, diethyl-
P036	696-28-6	Arsonous dichloride, phenyl-
P054	151-56-4	Aziridine
P067	75-55-8	Aziridine, 2-methyl-
P013	542-62-1	Barium cyanide
P024	106-47-8	Benzenamine, 4-chloro-
P077	100-01-6	Benzenamine, 4-nitro-
P028	100-44-7	Benzene, (chloromethyl)-
P042	51-43-4	1,2-Benzenediol, 4-[1-hydroxy-2-(methylamino)ethyl]-, (R)-
P046	122-09-8	Benzeneethanamine, alpha,alpha-dimethyl-
P014	108-98-5	Benzenethiol
P001	[1] 81-81-2	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, & salts, when present at concentrations greater than 0.3%
P028	100-44-7	Benzyl chloride
P015	7440-41-7	Beryllium
P017	598-31-2	Bromoacetone
P018	357-57-3	Brucine
P045	39196-18-4	2-Butanone, 3,3-dimethyl-1-(methylthio)-, O-[methylamino)carbonyl] oxime
P021	592-01-8	Calcium cyanide
P021	592-01-8	Calcium cyanide $Ca(CN)_2$
P022	75-15-0	Carbon disulfide
P095	75-44-5	Carbonic dichloride
P023	107-20-0	Chloroacetaldehyde
P024	106-47-8	p-Chloroaniline
P026	5344-82-1	1-(o-Chlorophenyl)thiourea
P027	542-76-7	3-Chloropropionitrile
P029	544-92-3	Copper cyanide
P029	544-92-3	Copper cyanide Cu(CN)
P030	.....	Cyanides (soluble cyanide salts), not otherwise specified
P031	460-19-5	Cyanogen
P033	506-77-4	Cyanogen chloride
P033	506-77-4	Cyanogen chloride (CN)Cl
P034	131-89-5	2-Cyclohexyl-4,6-dinitrophenol
P016	542-88-1	Dichloromethyl ether
P036	696-28-6	Dichlorophenylarsine
P037	60-57-1	Dieldrin
P038	692-42-2	Diethylarsine
P041	311-45-5	Diethyl-p-nitrophenyl phosphate
P040	297-97-2	O,O-Diethyl O-pyrazinyl phosphorothioate
P043	55-91-4	Diisopropylfluorophosphate (DFP)
P004	309-00-2	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a,-hexahydro-, (1alpha,4alpha,4abeta,5alpha,8alpha,8abeta)-
P060	465-73-6	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1alpha,4alpha,4abeta,5beta,8beta,8abeta)-
P037	60-57-1	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2aalpha,3beta,6beta,6aalpha,7beta,7aalpha)-
P051	[1] 72-20-8	2,7:3,6-Dimethanonaphth [2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2abeta,3alpha,6alpha,6abeta,7beta,7aalpha)-, & metabolites
P044	60-51-5	Dimethoate
P046	122-09-8	alpha,alpha-Dimethylphenethylamine
P047	[1] 534-52-1	4,6-Dinitro-o-cresol, & salts
P048	51-28-5	2,4-Dinitrophenol
P020	88-85-7	Dinoseb
P085	152-16-9	Diphosphoramide, octamethyl-
P111	107-49-3	Diphosphoric acid, tetraethyl ester
P039	298-04-4	Disulfoton
P049	541-53-7	Dithiobiuret
P050	115-29-7	Endosulfan
P088	145-73-3	Endothall
P051	72-20-8	Endrin
P051	72-20-8	Endrin, & metabolites
P042	51-43-4	Epinephrine
P031	460-19-5	Ethanedinitrile
P066	16752-77-5	Ethanimidothioic acid, N-[[(methylamino)carbonyl]oxy]-, methyl ester
P101	107-12-0	Ethyl cyanide
P054	151-56-4	Ethyleneimine
P097	52-85-7	Famphur
P056	7782-41-4	Fluorine
P057	640-19-7	Fluoroacetamide
P058	62-74-8	Fluoroacetic acid, sodium salt
P065	628-86-4	Fulminic acid, mercury(2+) salt (R,T)
P059	76-44-8	Heptachlor
P062	757-58-4	Hexaethyl tetraphosphate
P116	79-19-6	Hydrazinecarbothioamide
P068	60-34-4	Hydrazine, methyl-
P063	74-90-8	Hydrocyanic acid
P063	74-90-8	Hydrogen cyanide
P096	7803-51-2	Hydrogen phosphide
P060	465-73-6	Isodrin
P007	2763-96-4	3(2H)-Isoxazolone, 5-(aminomethyl)-
P092	62-38-4	Mercury, (acetato-O)phenyl-
P065	628-86-4	Mercury fulminate (R,T)
P082	62-75-9	Methanamine, N-methyl-N-nitroso-
P064	624-83-9	Methane, isocyanato-
P016	542-88-1	Methane, oxybis[chloro-
P112	509-14-8	Methane, tetranitro- (R)
P118	75-70-7	Methanethiol, trichloro-
P050	115-29-7	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide
P059	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-
P066	16752-77-5	Methomyl
P068	60-34-4	Methyl hydrazine
P064	624-83-9	Methyl isocyanate
P069	75-86-5	2-Methyllactonitrile
P071	298-00-0	Methyl parathion
P072	86-88-4	alpha-Naphthylthiourea
P073	13463-39-3	Nickel carbonyl
P073	13463-39-3	Nickel carbonyl $Ni(CO)_4$, (T-4)-
P074	557-19-7	Nickel cyanide
P074	557-19-7	Nickel cynaide $Ni(CN)_2$
P075	[1] 54-11-5	Nicotine, & salts
P076	10102-43-9	Nitric oxide
P077	100-01-6	p-Nitroaniline
P078	10102-44-0	Nitrogen dioxide
P076	10102-43-9	Nitrogen oxide NO
P078	10102-44-0	Nitrogen oxide NO_2
P081	55-63-0	Nitroglycerine (R)
P082	62-75-9	N-Nitrosodimethylamine
P084	4549-40-0	N-Nitrosomethylvinylamine
P085	152-16-9	Octamethylpyrophosphoramide
P087	20816-12-0	Osmium oxide OsO_4, (T-4)-
P087	20816-12-0	Osmium tetroxide
P088	145-73-3	7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid
P089	56-38-2	Parathion
P034	131-89-5	Phenol, 2-cyclohexyl-4,6-dinitro-
P048	51-28-5	Phenol, 2,4-dinitro-
P047	[1] 534-52-1	Phenol, 2-methyl-4,6-dinitro-, & salts
P020	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-
P009	131-74-8	Phenol, 2,4,6-trinitro-, ammonium salt (R)
P092	62-38-4	Phenylmercury acetate
P093	103-85-5	Phenylthiourea
P094	298-02-2	Phorate
P095	75-44-5	Phosgene
P096	7803-51-2	Phosphine
P041	311-45-5	Phosphoric acid, diethyl 4-nitrophenyl ester

Hazardous waste No.	Chemical abstracts No.	Substance
P039	298-04-4	Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl] ester
P094	298-02-2	Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl] ester
P044	60-51-5	Phosphorodithioic acid, O,O-dimethyl S-[2-(methylamino)-2-oxoethyl] ester
P043	55-91-4	Phosphorofluoridic acid, bis(1-methylethyl) ester
P089	56-38-2	Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester
P040	297-97-2	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester
P097	52-85-7	Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl]phenyl] O,O-dimethyl ester
P071	298-00-0	Phosphorothioic acid, O,O,-dimethyl O-(4-nitrophenyl) ester
P110	78-00-2	Plumbane, tetraethyl-
P098	151-50-8	Potassium cyanide
P098	151-50-8	Potassium cyanide K(CN)
P099	506-61-6	Potassium silver cyanide
P070	116-06-3	Propanal, 2-methyl-2-(methylthio)-, O-[(methylamino)carbonyl]oxime
P101	107-12-0	Propanenitrile
P027	542-76-7	Propanenitrile, 3-chloro-
P069	75-86-5	Propanenitrile, 2-hydroxy-2-methyl-
P081	55-63-0	1,2,3-Propanetriol, trinitrate (R)
P017	598-31-2	2-Propanone, 1-bromo-
P102	107-19-7	Propargyl alcohol
P003	107-02-8	2-Propenal
P005	107-18-6	2-Propen-1-ol
P067	75-55-8	1,2-Propylenimine
P102	107-19-7	2-Propyn-1-ol
P008	504-24-5	4-Pyridinamine
P075	[1] 54-11-5	Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-, & salts
P114	12039-52-0	Selenious acid, dithallium(1+) salt
P103	630-10-4	Selenourea
P104	506-64-9	Silver cyanide
P104	506-64-9	Silver cyanide Ag(CN)
P105	26628-22-8	Sodium azide
P106	143-33-9	Sodium cyanide
P106	143-33-9	Sodium cyanide Na(CN)
P107	1314-96-1	Strontium sulfide
P107	1314-96-1	Strontium sulfide SrS
P108	[1] 57-24-9	Strychnidin-10-one, & salts
P018	357-57-3	Strychnidin-10-one, 2,3-dimethoxy-
P108	[1] 57-24-9	Strychnine, & salts
P115	7446-18-6	Sulfuric acid, dithallium(1+) salt
P109	3689-24-5	Tetraethyldithiopyrophosphate
P110	78-00-2	Tetraethyl lead
P111	107-49-3	Tetraethyl pyrophosphate
P112	509-14-8	Tetranitromethane (R)
P062	757-58-4	Tetraphosphoric acid, hexaethyl ester
P113	1314-32-5	Thallic oxide
P113	1314-32-5	Thallium oxide Tl_2O_3
P114	12039-52-0	Thallium(I) selenite
P115	7446-18-6	Thallium(I) sulfate
P109	3689-24-5	Thiodiphosphoric acid, tetraethyl ester
P045	39196-18-4	Thiofanox
P049	541-53-7	Thioimidodicarbonic diamide $[(H_2N)C(S)]_2NH$
P014	108-98-5	Thiophenol
P116	79-19-6	Thiosemicarbazide
P026	5344-82-1	Thiourea, (2-chlorophenyl)-
P072	86-88-4	Thiourea, 1-naphthalenyl-
P093	103-85-5	Thiourea, phenyl-
P123	8001-35-2	Toxaphene
P118	75-70-7	Trichloromethanethiol
P119	7803-55-6	Vanadic acid, ammonium salt
P120	1314-62-1	Vanadium oxide V_2O_5
P120	1314-62-1	Vanadium pentoxide
P084	4549-40-0	Vinylamine, N-methyl-N-nitroso-
P001	[1] 81-81-2	Warfarin, & salts, when present at concentrations greater than 0.3%
P121	557-21-1	Zinc cyanide
P121	557-21-1	Zinc cyanide $Zn(CN)_2$
P122	1314-84-7	Zinc phosphide Zn_3P_2, when present at concentrations greater than 10% (R,T)

[1] CAS Number given for parent compound only.

3. In 40 CFR 261.33, the table in paragraph (f) is revised to read as follows:

Hazardous waste No.	Chemical abstracts No.	Substance
U001	75-07-0	Acetaldehyde (I)
U034	75-87-6	Acetaldehyde, trichloro-
U187	62-44-2	Acetamide, N-(4-ethoxyphenyl)-
U005	53-96-3	Acetamide, N-9H-fluoren-2-yl-
U240	[1] 94-75-7	Acetic acid, (2,4-dichlorophenoxy)-, salts & esters
U112	141-78-6	Acetic acid ethyl ester (I)
U144	301-04-2	Acetic acid, lead(2+) salt
U214	563-68-8	Acetic acid, thallium(1+) salt
see F027	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-
U002	67-64-1	Acetone (I)
U003	75-05-8	Acetonitrile (I,T)
U004	98-86-2	Acetophenone
U005	53-96-3	2-Acetylaminofluorene
U006	75-36-5	Acetyl chloride (C,R,T)
U007	79-06-1	Acrylamide
U008	79-10-7	Acrylic acid (I)
U009	107-13-1	Acrylonitrile
U011	61-82-5	Amitrole
U012	62-53-3	Aniline (I,T)
U136	75-60-5	Arsinic acid, dimethyl-
U014	492-80-8	Auramine
U015	115-02-6	Azaserine
U010	50-07-7	Azirino[2',3':3,4]pyrrolo[1,2-a]indole-4,7-dione, 6-amino-8-[[(aminocarbonyl)oxy]methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-, [1aS-(1aalpha, 8beta,8aalpha,8balpha)]-
U157	56-49-5	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-
U016	225-51-4	Benz[c]acridine
U017	98-87-3	Benzal chloride
U192	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-
U018	56-55-3	Benz[a]anthracene
U094	57-97-6	Benz[a]anthracene, 7,12-dimethyl-
U012	62-53-3	Benzenamine (I,T)
U014	492-80-8	Benzenamine, 4,4'-carbonimidoylbis[N,N-dimethyl-
U049	3165-93-3	Benzenamine, 4-chloro-2-methyl-, hydrochloride
U093	60-11-7	Benzenamine, N,N-dimethyl-4-(phenylazo)-
U328	95-53-4	Benzenamine, 2-methyl-
U353	106-49-0	Benzenamine, 4-methyl-
U158	101-14-4	Benzenamine, 4,4'-methylenebis[2-chloro-
U222	636-21-5	Benzenamine, 2-methyl-, hydrochloride
U181	99-55-8	Benzenamine, 2-methyl-5-nitro-
U019	71-43-2	Benzene (I,T)
U038	510-15-6	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester
U030	101-55-3	Benzene, 1-bromo-4-phenoxy-
U035	305-03-3	Benzenebutanoic acid, 4-[bis(2-chloroethyl)amino]-
U037	108-90-7	Benzene, chloro-
U221	25376-45-8	Benzenediamine, ar-methyl-
U028	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester
U069	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester
U088	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester
U102	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester
U107	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester
U070	95-50-1	Benzene, 1,2-dichloro-
U071	541-73-1	Benzene, 1,3-dichloro-
U072	106-46-7	Benzene, 1,4-dichloro-
U060	72-54-8	Benzene, 1,1'-(2,2-dichloroethylidene)bis[4-chloro-
U017	98-87-3	Benzene, (dichloromethyl)-
U223	26471-62-5	Benzene, 1,3-diisocyanatomethyl- (R,T)
U239	1330-20-7	Benzene, dimethyl- (I,T)
U201	108-46-3	1,3-Benzenediol
U127	118-74-1	Benzene, hexachloro-
U056	110-82-7	Benzene, hexahydro- (I)
U220	108-88-3	Benzene, methyl-
U105	121-14-2	Benzene, 1-methyl-2,4-dinitro-
U106	606-20-2	Benzene, 2-methyl-1,3-dinitro-
U055	98-82-8	Benzene, (1-methylethyl)- (I)
U169	98-95-3	Benzene, nitro-
U183	608-93-5	Benzene, pentachloro-
U185	82-68-8	Benzene, pentachloronitro-
U020	98-09-9	Benzenesulfonic acid chloride (C,R)
U020	98-09-9	Benzenesulfonyl chloride (C,R)
U207	95-94-3	Benzene, 1,2,4,5-tetrachloro-
U061	50-29-3	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-chloro-
U247	72-43-5	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-methoxy-
U023	98-07-7	Benzene, (trichloromethyl)-
U234	99-35-4	Benzene, 1,3,5-trinitro-

Hazardous waste No.	Chemical abstracts No.	Substance
U021	92-87-5	Benzidine
U202	[1] 81-07-2	1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide, & salts
U203	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-
U141	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-
U090	94-58-6	1,3-Benzodioxole, 5-propyl-
U064	189-55-9	Benzo[rst]pentaphene
U248	[1]81-81-2	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, & salts, when present at concentrations of 0.3% or less
U022	50-32-8	Benzo[a]pyrene
U197	106-51-4	p-Benzoquinone
U023	98-07-7	Benzotrichloride (C,R,T)
U085	1464-53-5	2,2'-Bioxirane
U021	92-87-5	[1,1'-Biphenyl]-4,4'-diamine
U073	91-94-1	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dichloro-
U091	119-90-4	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethoxy-
U095	119-93-7	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl-
U225	75-25-2	Bromoform
U030	101-55-3	4-Bromophenyl phenyl ether
U128	87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-
U172	924-16-3	1-Butanamine, N-butyl-N-nitroso-
U031	71-36-3	1-Butanol (I)
U159	78-93-3	2-Butanone (I,T)
U160	1338-23-4	2-Butanone, peroxide (R,T)
U053	4170-30-3	2-Butenal
U074	764-41-0	2-Butene, 1,4-dichloro- (I,T)
U143	303-34-4	2-Butenoic acid, 2-methyl-, 7-[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, [1S-[1alpha(Z),7(2S*,3R*),7aalpha]]-
U031	71-36-3	n-Butyl alcohol (I)
U136	75-60-5	Cacodylic acid
U032	13765-19-0	Calcium chromate
U238	51-79-6	Carbamic acid, ethyl ester
U178	615-53-2	Carbamic acid, methylnitroso-, ethyl ester
U097	79-44-7	Carbamic chloride, dimethyl-
U114	[1] 111-54-6	Carbamodithioic acid, 1,2-ethanediylbis-, salts & esters
U062	2303-16-4	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester
U215	6533-73-9	Carbonic acid, dithallium(1+) salt
U033	353-50-4	Carbonic difluoride
U156	79-22-1	Carbonochloridic acid, methyl ester (I,T)
U033	353-50-4	Carbon oxyfluoride (R,T)
U211	56-23-5	Carbon tetrachloride
U034	75-87-6	Chloral
U035	305-03-3	Chlorambucil
U036	57-74-9	Chlordane, alpha & gamma isomers
U026	494-03-1	Chlornaphazin
U037	108-90-7	Chlorobenzene
U038	510-15-6	Chlorobenzilate
U039	59-50-7	p-Chloro-m-cresol
U042	110-75-8	2-Chloroethyl vinyl ether
U044	67-66-3	Chloroform
U046	107-30-2	Chloromethyl methyl ether
U047	91-58-7	beta-Chloronaphthalene
U048	95-57-8	o-Chlorophenol
U049	3165-93-3	4-Chloro-o-toluidine, hydrochloride
U032	13765-19-0	Chromic acid H_2CrO_4, calcium salt
U050	218-01-9	Chrysene
U051	.....	Creosote
U052	1319-77-3	Cresol (Cresylic acid)
U053	4170-30-3	Crotonaldehyde
U055	98-82-8	Cumene (I)
U246	506-68-3	Cyanogen bromide (CN)Br
U197	106-51-4	2,5-Cyclohexadiene-1,4-dione
U056	110-82-7	Cyclohexane (I)
U129	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha,6beta)-
U057	108-94-1	Cyclohexanone (I)
U130	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-
U058	50-18-0	Cyclophosphamide
U240	[1] 94-75-7	2,4-D, salts & esters
U059	20830-81-3	Daunomycin
U060	72-54-8	DDD
U061	50-29-3	DDT
U062	2303-16-4	Diallate
U063	53-70-3	Dibenz[a,h]anthracene
U064	189-55-9	Dibenzo[a,i]pyrene
U066	96-12-8	1,2-Dibromo-3-chloropropane
U069	84-74-2	Dibutyl phthalate
U070	95-50-1	o-Dichlorobenzene
U071	541-73-1	m-Dichlorobenzene
U072	106-46-7	p-Dichlorobenzene
U073	91-94-1	3,3'-Dichlorobenzidine
U074	764-41-0	1,4-Dichloro-2-butene (I,T)
U075	75-71-8	Dichlorodifluoromethane
U078	75-35-4	1,1-Dichloroethylene
U079	156-60-5	1,2-Dichloroethylene
U025	111-44-4	Dichloroethyl ether
U027	108-60-1	Dichloroisopropyl ether
U024	111-91-1	Dichloromethoxy ethane
U081	120-83-2	2,4-Dichlorophenol
U082	87-65-0	2,6-Dichlorophenol
U084	542-75-6	1,3-Dichloropropene
U085	1464-53-5	1,2:3,4-Diepoxybutane (I,T)
U108	123-91-1	1,4-Diethyleneoxide
U028	117-81-7	Diethylhexyl phthalate
U086	1615-80-1	N,N'-Diethylhydrazine
U087	3288-58-2	O,O-Diethyl S-methyl dithiophosphate
U088	84-66-2	Diethyl phthalate
U089	56-53-1	Diethylstilbesterol
U090	94-58-6	Dihydrosafrole
U091	119-90-4	3,3'-Dimethoxybenzidine
U092	124-40-3	Dimethylamine (I)
U093	60-11-7	p-Dimethylaminoazobenzene
U094	57-97-6	7,12-Dimethylbenz[a]anthracene
U095	119-93-7	3,3'-Dimethylbenzidine
U096	80-15-9	alpha,alpha-Dimethylbenzylhydroperoxide (R)
U097	79-44-7	Dimethylcarbamoyl chloride
U098	57-14-7	1,1-Dimethylhydrazine
U099	540-73-8	1,2-Dimethylhydrazine
U101	105-67-9	2,4-Dimethylphenol
U102	131-11-3	Dimethyl phthalate
U103	77-78-1	Dimethyl sulfate
U105	121-14-2	2,4-Dinitrotoluene
U106	606-20-2	2,6-Dinitrotoluene
U107	117-84-0	Di-n-octyl phthalate
U108	123-91-1	1,4-Dioxane
U109	122-66-7	1,2-Diphenylhydrazine
U110	142-84-7	Dipropylamine (I)
U111	621-64-7	Di-n-propylnitrosamine
U041	106-89-8	Epichlorohydrin
U001	75-07-0	Ethanal (I)
U174	55-18-5	Ethanamine, N-ethyl-N-nitroso-
U155	91-80-5	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-
U067	106-93-4	Ethane, 1,2-dibromo-
U076	75-34-3	Ethane, 1,1-dichloro-
U077	107-06-2	Ethane, 1,2-dichloro-
U131	67-72-1	Ethane, hexachloro-
U024	111-91-1	Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro-
U117	60-29-7	Ethane, 1,1'-oxybis-(I)
U025	111-44-4	Ethane, 1,1'-oxybis[2-chloro-
U184	76-01-7	Ethane, pentachloro-
U208	630-20-6	Ethane, 1,1,1,2-tetrachloro-
U209	79-34-5	Ethane, 1,1,2,2-tetrachloro-
U218	62-55-5	Ethanethioamide
U226	71-55-6	Ethane, 1,1,1-trichloro-
U227	79-00-5	Ethane, 1,1,2-trichloro-
U359	110-80-5	Ethanol, 2-ethoxy-
U173	1116-54-7	Ethanol, 2,2'-(nitrosoimino)bis-
U004	98-86-2	Ethanone, 1-phenyl-
U043	75-01-4	Ethene, chloro-
U042	110-75-8	Ethene, (2-chloroethoxy)-
U078	75-35-4	Ethene, 1,1-dichloro-
U079	156-60-5	Ethene, 1,2-dichloro-, (E)-
U210	127-18-4	Ethene, tetrachloro-
U228	79-01-6	Ethene, trichloro-
U112	141-78-6	Ethyl acetate (I)
U113	140-88-5	Ethyl acrylate (I)
U238	51-79-6	Ethyl carbamate (urethane)
U117	60-29-7	Ethyl ether (I)
U114	[1] 111-54-6	Ethylenebisdithiocarbamic acid, salts & esters
U067	106-93-4	Ethylene dibromide
U077	107-06-2	Ethylene dichloride
U359	110-80-5	Ethylene glycol monoethyl ether
U115	75-21-8	Ethylene oxide (I,T)

Hazardous waste No.	Chemical abstracts No.	Substance
U116	96-45-7	Ethylenethiourea
U076	75-34-3	Ethylidene dichloride
U118	97-63-2	Ethyl methacrylate
U119	62-50-0	Ethyl methanesulfonate
U120	206-44-0	Fluoranthene
U122	50-00-0	Formaldehyde
U123	64-18-6	Formic acid (C,T)
U124	110-00-9	Furan (I)
U125	98-01-1	2-Furancarboxaldehyde (I)
U147	108-31-6	2,5-Furandione
U213	109-99-9	Furan, tetrahydro-(I)
U125	98-01-1	Furfural (I)
U124	110-00-9	Furfuran (I)
U206	18883-66-4	Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-, D-
U206	18883-66-4	D-Glucose, 2-deoxy-2-[[(methylnitrosoamino)-carbonyl]amino]-
U126	765-34-4	Glycidylaldehyde
U163	70-25-7	Guanidine, N-methyl-N'-nitro-N-nitroso-
U127	118-74-1	Hexachlorobenzene
U128	87-68-3	Hexachlorobutadiene
U130	77-47-4	Hexachlorocyclopentadiene
U131	67-72-1	Hexachloroethane
U132	70-30-4	Hexachlorophene
U243	1888-71-7	Hexachloropropene
U133	302-01-2	Hydrazine (R,T)
U086	1615-80-1	Hydrazine, 1,2-diethyl-
U098	57-14-7	Hydrazine, 1,1-dimethyl-
U099	540-73-8	Hydrazine, 1,2-dimethyl-
U109	122-66-7	Hydrazine, 1,2-diphenyl-
U134	7664-39-3	Hydrofluoric acid (C,T)
U134	7664-39-3	Hydrogen fluoride (C,T)
U135	7783-06-4	Hydrogen sulfide
U135	7783-06-4	Hydrogen sulfide H_2S
U096	80-15-9	Hydroperoxide, 1-methyl-1-phenylethyl- (R)
U116	96-45-7	2-Imidazolidinethione
U137	193-39-5	Indeno[1,2,3-cd]pyrene
U139	9004-66-4	Iron dextran
U190	85-44-9	1,3-Isobenzofurandione
U140	78-83-1	Isobutyl alcohol (I,T)
U141	120-58-1	Isosafrole
U142	143-50-0	Kepone
U143	303-34-4	Lasiocarpine
U144	301-04-2	Lead acetate
U146	1335-32-6	Lead, bis(acetato-O)tetrahydroxytri-
U145	7446-27-7	Lead phosphate
U146	1335-32-6	Lead subacetate
U129	58-89-9	Lindane
U163	70-25-7	MNNG
U147	108-31-6	Maleic anhydride
U148	123-33-1	Maleic hydrazide
U149	109-77-3	Malononitrile
U150	148-82-3	Melphalan
U151	7439-97-6	Mercury
U152	126-98-7	Methacrylonitrile (I, T)
U092	124-40-3	Methanamine, N-methyl- (I)
U029	74-83-9	Methane, bromo-
U045	74-87-3	Methane, chloro- (I, T)
U046	107-30-2	Methane, chloromethoxy-
U068	74-95-3	Methane, dibromo-
U080	75-09-2	Methane, dichloro-
U075	75-71-8	Methane, dichlorodifluoro-
U138	74-88-4	Methane, iodo-
U119	62-50-0	Methanesulfonic acid, ethyl ester
U211	56-23-5	Methane, tetrachloro-
U153	74-93-1	Methanethiol (I, T)
U225	75-25-2	Methane, tribromo-
U044	67-66-3	Methane, trichloro-
U121	75-69-4	Methane, trichlorofluoro-
U036	57-74-9	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-
U154	67-56-1	Methanol (I)
U155	91-80-5	Methapyrilene
U142	143-50-0	1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-
U247	72-43-5	Methoxychlor
U154	67-56-1	Methyl alcohol (I)
U029	74-83-9	Methyl bromide
U186	504-60-9	1-Methylbutadiene (I)
U045	74-87-3	Methyl chloride (I,T)
U156	79-22-1	Methyl chlorocarbonate (I,T)
U226	71-55-6	Methyl chloroform
U157	56-49-5	3-Methylcholanthrene
U158	101-14-4	4,4'-Methylenebis(2-chloroaniline)
U068	74-95-3	Methylene bromide
U080	75-09-2	Methylene chloride
U159	78-93-3	Methyl ethyl ketone (MEK) (I,T)
U160	1338-23-4	Methyl ethyl ketone peroxide (R,T)
U138	74-88-4	Methyl iodide
U161	108-10-1	Methyl isobutyl ketone (I)
U162	80-62-6	Methyl methacrylate (I,T)
U161	108-10-1	4-Methyl-2-pentanone (I)
U164	56-04-2	Methylthiouracil
U010	50-07-7	Mitomycin C
U059	20830-81-3	5,12-Naphthacenedione, 8-acetyl-10-[(3-amino-2,3,6-trideoxy)-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-
U167	134-32-7	1-Naphthalenamine
U168	91-59-8	2-Naphthalenamine
U026	494-03-1	Naphthalenamine, N,N'-bis(2-chloroethyl)-
U165	91-20-3	Naphthalene
U047	91-58-7	Naphthalene, 2-chloro-
U166	130-15-4	1,4-Naphthalenedione
U236	72-57-1	2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethyl[1,1'-biphenyl]-4,4'-diyl)bis(azo)bis[5-amino-4-hydroxy]-, tetrasodium salt
U166	130-15-4	1,4-Naphthoquinone
U167	134-32-7	alpha-Naphthylamine
U168	91-59-8	beta-Naphthylamine
U217	10102-45-1	Nitric acid, thallium(1+) salt
U169	98-95-3	Nitrobenzene (I,T)
U170	100-02-7	p-Nitrophenol
U171	79-46-9	2-Nitropropane (I,T)
U172	924-16-3	N-Nitrosodi-n-butylamine
U173	1116-54-7	N-Nitrosodiethanolamine
U174	55-18-5	N-Nitrosodiethylamine
U176	759-73-9	N-Nitroso-N-ethylurea
U177	684-93-5	N-Nitroso-N-methylurea
U178	615-53-2	N-Nitroso-N-methylurethane
U179	100-75-4	N-Nitrosopiperidine
U180	930-55-2	N-Nitrosopyrrolidine
U181	99-55-8	5-Nitro-o-toluidine
U193	1120-71-4	1,2-Oxathiolane, 2,2-dioxide
U058	50-18-0	2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-, 2-oxide
U115	75-21-8	Oxirane (I,T)
U126	765-34-4	Oxiranecarboxyaldehyde
U041	106-89-8	Oxirane, (chloromethyl)-
U182	123-63-7	Paraldehyde
U183	608-93-5	Pentachlorobenzene
U184	76-01-7	Pentachloroethane
U185	82-68-8	Pentachloronitrobenzene (PCNB)
See F027	87-86-5	Pentachlorophenol
U161	108-10-1	Pentanol, 4-methyl-
U186	504-60-9	1,3-Pentadiene (I)
U187	62-44-2	Phenacetin
U188	108-95-2	Phenol
U048	95-57-8	Phenol, 2-chloro-
U039	59-50-7	Phenol, 4-chloro-3-methyl-
U081	120-83-2	Phenol, 2,4-dichloro-
U082	87-65-0	Phenol, 2,6-dichloro-
U089	56-53-1	Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyl)bis-, (E)-
U101	105-67-9	Phenol, 2,4-dimethyl-
U052	1319-77-3	Phenol, methyl-
U132	70-30-4	Phenol, 2,2'-methylenebis[3,4,6-trichloro-
U170	100-02-7	Phenol, 4-nitro-
See F027	87-86-5	Phenol, pentachloro-
See F027	58-90-2	Phenol, 2,3,4,6-tetrachloro-
See F027	95-95-4	Phenol, 2,4,5-trichloro-
See F027	88-06-2	Phenol, 2,4,6-trichloro-
U150	148-82-3	L-Phenylalanine, 4-[bis(2-chloroethyl)amino]-
U145	7446-27-7	Phosphoric acid, lead(2+) salt (2:3)
U087	3288-58-2	Phosphorodithioic acid, O,O-diethyl S-methyl ester

Hazardous waste No.	Chemical abstracts No.	Substance
U189	1314-80-3	Phosphorus sulfide (R)
U190	85-44-9	Phthalic anhydride
U191	109-06-8	2-Picoline
U179	100-75-4	Piperidine, 1-nitroso-
U192	23950-58-5	Pronamide
U194	107-10-8	1-Propanamine (I,T)
U111	621-64-7	1-Propanamine, N-nitroso-N-propyl-
U110	142-84-7	1-Propanamine, N-propyl- (I)
U066	96-12-8	Propane, 1,2-dibromo-3-chloro-
U083	78-87-5	Propane, 1,2-dichloro-
U149	109-77-3	Propanedinitrile
U171	79-46-9	Propane, 2-nitro- (I,T)
U027	108-60-1	Propane, 2,2'-oxybis[2-chloro-
U193	1120-71-4	1,3-Propane sultone
See F027	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-
U235	126-72-7	1-Propanol, 2,3-dibromo-, phosphate (3:1)
U140	78-83-1	1-Propanol, 2-methyl- (I,T)
U002	67-64-1	2-Propanone (I)
U007	79-06-1	2-Propenamide
U084	542-75-6	1-Propene, 1,3-dichloro-
U243	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-
U009	107-13-1	2-Propenenitrile
U152	126-98-7	2-Propenenitrile, 2-methyl- (I,T)
U008	79-10-7	2-Propenoic acid (I)
U113	140-88-5	2-Propenoic acid, ethyl ester (I)
U118	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester
U162	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester (I,T)
U194	107-10-8	n-Propylamine (I,T)
U083	78-87-5	Propylene dichloride
U148	123-33-1	3,6-Pyridazinedione, 1,2-dihydro-
U196	110-86-1	Pyridine
U191	109-06-8	Pyridine, 2-methyl-
U237	66-75-1	2,4-(1H,3H)-Pyrimidinedione, 5-[bis(2-chloroethyl)amino]-
U164	56-04-2	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-
U180	930-55-2	Pyrrolidine, 1-nitroso-
U200	50-55-5	Reserpine
U201	108-46-3	Resorcinol
U202	[1] 81-07-2	Saccharin, & salts
U203	94-59-7	Safrole
U204	7783-00-8	Selenious acid
U204	7783-00-8	Selenium dioxide
U205	7488-56-4	Selenium sulfide
U205	7488-56-4	Selenium sulfide SeS_2 (R,T)
U015	115-02-6	L-Serine, diazoacetate (ester)
See F027	93-72-1	Silvex (2,4,5-TP)
U206	18883-66-4	Streptozotocin
U103	77-78-1	Sulfuric acid, dimethyl ester
U189	1314-80-3	Sulfur phosphide (R)
See F027	93-76-5	2,4,5-T
U207	95-94-3	1,2,4,5-Tetrachlorobenzene
U208	630-20-6	1,1,1,2-Tetrachloroethane
U209	79-34-5	1,1,2,2-Tetrachloroethane
U210	127-18-4	Tetrachloroethylene
See F027	58-90-2	2,3,4,6-Tetrachlorophenol
U213	109-99-9	Tetrahydrofuran (I)
U214	563-68-8	Thallium(I) acetate
U215	6533-73-9	Thallium(I) carbonate
U216	7791-12-0	Thallium(I) chloride
U216	7791-12-0	Thallium chloride TlCl
U217	10102-45-1	Thallium(I) nitrate
U218	62-55-5	Thioacetamide
U153	74-93-1	Thiomethanol (I,T)
U244	137-26-8	Thioperoxydicarbonic diamide $[(H_2N)C(S)]_2S_2$, tetramethyl-
U219	62-56-6	Thiourea
U244	137-26-8	Thiram
U220	108-88-3	Toluene
U221	25376-45-8	Toluenediamine
U223	26471-62-5	Toluene diisocyanate (R,T)
U328	95-53-4	o-Toluidine
U353	106-49-0	p-Toluidine
U222	636-21-5	o-Toluidine hydrochloride
U011	61-82-5	1H-1,2,4-Triazol-3-amine
U227	79-00-5	1,1,2-Trichloroethane
U228	79-01-6	Trichloroethylene
U121	75-69-4	Trichloromonofluoromethane
See F027	95-95-4	2,4,5-Trichlorophenol
See F027	88-06-2	2,4,6-Trichlorophenol
U234	99-35-4	1,3,5-Trinitrobenzene (R,T)
U182	123-63-7	1,3,5-Trioxane, 2,4,6-trimethyl-
U235	126-72-7	Tris(2,3-dibromopropyl) phosphate
U236	72-57-1	Trypan blue
U237	66-75-1	Uracil mustard
U176	759-73-9	Urea, N-ethyl-N-nitroso-
U177	684-93-5	Urea, N-methyl-N-nitroso-
U043	75-01-4	Vinyl chloride
U248	[1] 81-81-2	Warfarin, & salts, when present at concentrations of 0.3% or less
U239	1330-20-7	Xylene (I)
U200	50-55-5	Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-, methyl ester, (3beta,16beta,17alpha,18beta,20alpha)-
U249	1314-84-7	Zinc phosphide Zn_3P_2, when present at concentrations of 10% or less

[1] CAS Number given for parent compound only.

4. Appendix VIII is revised to read as follows:

APPENDIX VIII—HAZARDOUS CONSTITUENTS

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
Acetonitrile	Same	75-05-8	U003
Acetophenone	Ethanone, 1-phenyl-	98-86-2	U004
2-Acetylaminefluarone	Acetamide, N-9H-fluoren-2-yl-	53-96-3	U005
Acetyl chloride	Same	75-36-5	U006
1-Acetyl-2-thiourea	Acetamide, N-(aminothioxomethyl)-	591-08-2	P002
Acrolein	2-Propenal	107-02-8	P003
Acrylamide	2-Propenamide	79-06-1	U007
Acrylonitrile	2-Propenenitrile	107-13-1	U009
Aflatoxins	Same	1402-68-2	
Aldicarb	Propanal, 2-methyl-2-(methylthio)-, O-[(methylamino)carbonyl]oxime	116-06-3	P070
Aldrin	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1alpha,4alpha,4abeta,5alpha,8alpha,8abeta)-	309-00-2	P004
Allyl alcohol	2-Propen-1-ol	107-18-6	P005
Aluminum phosphide	Same	20859-73-8	P006
4-Aminobiphenyl	[1,1'-Biphenyl]-4-amine	92-67-1	
5-(Aminomethyl)-3-isoxazolol	3(2H)-Isoxazolone, 5-(aminomethyl)-	2763-96-4	P007
4-Aminopyridine	4-Pyridinamine	504-24-5	P008
Amitrole	1H-1,2,4-Triazol-3-amine	61-82-5	U011
Ammonium vanadate	Vanadic acid, ammonium salt	7803-55-6	P119
Aniline	Benzenamine	62-53-3	U012
Antimony	Same	7440-36-0	
Antimony compounds, N.O.S.[1]			
Aramite	Sulfurous acid, 2-chloroethyl 2-[4-(1,1-dimethylethyl)phenoxy]-1-methylethyl ester	140-57-8	
Arsenic	Same	7440-38-2	
Arsenic compounds, N.O.S.[1]			
Arsenic acid	Arsenic acid H_3AsO_4	7778-39-4	P010
Arsenic pentoxide	Arsenic oxide As_2O_5	1303-28-2	P011
Arsenic trioxide	Arsenic oxide As_2O_3	1327-53-3	P012
Auramine	Benzenamine, 4,4'-carbonimidoylbis[N,N-dimethyl	492-80-8	U014
Azaserine	L-Serine, diazoacetate (ester)	115-02-6	U015
Barium	Same	7440-39-3	
Barium compounds, N.O.S.[1]			
Barium cyanide	Same	542-62-1	P013
Benz[c]acridine	Same	225-51-4	U016
Benz[a]anthracene	Same	56-55-3	U018
Benzal chloride	Benzene, (dichloromethyl)-	98-87-3	U017
Benzene	Same	71-43-2	U019
Benzenearsonic acid	Arsonic acid, phenyl-	98-05-5	
Benzidine	[1,1'-Biphenyl]-4,4'-diamine	92-87-5	U021
Benzo[b]fluoranthene	Benz[e]acephenanthrylene	205-99-2	
Benzo[j]fluoranthene	Same	205-82-3	
Benzo[a]pyrene	Same	50-32-8	U022
p-Benzoquinone	2,5-Cyclohexadiene-1,4-dione	106-51-4	U197
Benzotrichloride	Benzene, (trichloromethyl)-	98-07-7	U023
Benzyl chloride	Benzene, (chloromethyl)-	100-44-7	P028
Beryllium	Same	7440-41-7	P015
Beryllium compounds, N.O.S.[1]			
Bromoacetone	2-Propanone, 1-bromo-	598-31-2	P017
Bromoform	Methane, tribromo-	75-25-2	U225
4-Bromophenyl phenyl ether	Benzene, 1-bromo-4-phenoxy-	101-55-3	U030
Brucine	Strychnidin-10-one, 2,3-dimethoxy-	357-57-3	P018
Butyl benzyl phthalate	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester	85-68-7	
Cacodylic acid	Arsinic acid, dimethyl-	75-60-5	U136
Cadmium	Same	7440-43-9	
Cadmium compounds, N.O.S.[1]			
Calcium chromate	Chromic acid H_2CrO_4, calcium salt	13765-19-0	U032
Calcium cyanide	Calcium cyanide $Ca(CN)_2$	592-01-8	P021
Carbon disulfide	Same	75-15-0	P022
Carbon oxyfluoride	Carbonic difluoride	353-50-4	U033
Carbon tetrachloride	Methane, tetrachloro-	56-23-5	U211
Chloral	Acetaldehyde, trichloro-	75-87-6	U034
Chlorambucil	Benzenebutanoic acid, 4-[bis(2-chloroethyl)amino]-	305-03-3	U035
Chlordane	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-	57-74-9	U036
Chlordane (alpha and gamma isomers)			U036
Chlorinated benzenes, N.O.S.[1]			
Chlorinated ethane, N.O.S.[1]			
Chlorinated fluorocarbons, N.O.S.[1]			
Chlorinated naphthalene, N.O.S.[1]			
Chlorinated phenol, N.O.S.[1]			
Chlornaphazin	Naphthalenamine, N,N'-bis(2-chloroethyl)-	494-03-1	U026
Chloroacetaldehyde	Acetaldehyde, chloro-	107-20-0	P023
Chloroalkyl ethers, N.O.S.[1]			
p-Chloroaniline	Benzenamine, 4-chloro-	106-47-8	P024
Chlorobenzene	Benzene, chloro-	108-90-7	U037
Chlorobenzilate	Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-, ethyl ester	510-15-6	U038

APPENDIX VIII—HAZARDOUS CONSTITUENTS—Continued

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
p-Chloro-m-cresol	Phenol, 4-chloro-3-methyl-	59-50-7	U039
2-Chloroethyl vinyl ether	Ethene, (2-chloroethoxy)-	110-75-8	U042
Chloroform	Methane, trichloro-	67-66-3	U044
Chloromethyl methyl ether	Methane, chloromethoxy-	107-30-2	U046
beta-Chloronaphthalene	Naphthalene, 2-chloro-	91-58-7	U047
o-Chlorophenol	Phenol, 2-chloro-	95-57-8	U048
1-(o-Chlorophenyl)thiourea	Thiourea, (2-chlorophenyl)-	5344-82-1	P026
Chloroprene	1,3-Butadiene, 2-chloro-	126-99-8	
3-Chloropropionitrile	Propanenitrile, 3-chloro-	542-76-7	P027
Chromium	Same	7440-47-3	
Chromium compounds, N.O.S.[1]			
Chrysene	Same	218-01-9	U050
Citrus red No. 2	2-Naphthalenol, 1-[(2,5-dimethoxyphenyl)azo]-	6358-53-8	
Coal tar creosote	Same	8007-45-2	
Copper cyanide	Copper cyanide CuCN	544-92-3	P029
Creosote	Same		U051
Cresol (Cresylic acid)	Phenol, methyl-	1319-77-3	U052
Crotonaldehyde	2-Butenal	4170-30-3	U053
Cyanides (soluble salts and complexes) N.O.S.[1]			P030
Cyanogen	Ethanedinitrile	460-19-5	P031
Cyanogen bromide	Cyanogen bromide (CN)Br	506-68-3	U246
Cyanogen chloride	Cyanogen chloride (CN)Cl	506-77-4	P033
Cycasin	beta-D-Glucopyranoside, (methyl-ONN-azoxy)methyl	14901-08-7	
2-Cyclohexyl-4,6-dinitrophenol	Phenol, 2-cyclohexyl-4,6-dinitro-	131-89-5	P034
Cyclophosphamide	2H-1,3,2-Oxazaphosphorin-2-amine, N,N-bis(2-chloroethyl)tetrahydro-, 2-oxide	50-18-0	U058
2,4-D	Acetic acid, (2,4-dichlorophenoxy)-	94-75-7	U240
2,4-D, salts, esters			U240
Daunomycin	5,12-Naphthacenedione, 8-acetyl-10-[(3-amino-2,3,6-trideoxy-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-, (8S-cis)-.	20830-81-3	U059
DDD	Benzene, 1,1'-(2,2-dichloroethylidene)bis[4-chloro-	72-54-8	U060
DDE	Benzene, 1,1'-(dichloroethenylidene)bis[4-chloro-	72-55-9	
DDT	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-chloro-	50-29-3	U061
Diallate	Carbamothioic acid, bis(1-methylethyl)-, S-(2,3-dichloro-2-propenyl) ester	2303-16-4	U062
Dibenz[a,h]acridine	Same	226-36-8	
Dibenz[a,j]acridine	Same	224-42-0	
Dibenz[a,h]anthracene	Same	53-70-3	U063
7H-Dibenzo[c,g]carbazole	Same	194-59-2	
Dibenzo[a,e]pyrene	Naphtho[1,2,3,4-def]chrysene	192-65-4	
Dibenzo[a,h]pyrene	Dibenzo[b,def]chrysene	189-64-0	
Dibenzo[a,i]pyrene	Benzo[rst]pentaphene	189-55-9	U064
1,2-Dibromo-3-chloropropane	Propane, 1,2-dibromo-3-chloro-	96-12-8	U066
Dibutyl phthalate	1,2-Benzenedicarboxylic acid, dibutyl ester	84-74-2	U069
o-Dichlorobenzene	Benzene, 1,2-dichloro-	95-50-1	U070
m-Dichlorobenzene	Benzene, 1,3-dichloro-	541-73-1	U071
p-Dichlorobenzene	Benzene, 1,4-dichloro-	106-46-7	U072
Dichlorobenzene, N.O.S.[1]	Benzene, dichloro-	25321-22-6	
3,3'-Dichlorobenzidine	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dichloro-	91-94-1	U073
1,4-Dichloro-2-butene	2-Butene, 1,4-dichloro-	764-41-0	U074
Dichlorodifluoromethane	Methane, dichlorodifluoro-	75-71-8	U075
Dichloroethylene, N.O.S.[1]	Dichloroethylene	25323-30-2	
1,1-Dichloroethylene	Ethene, 1,1-dichloro-	75-35-4	U078
1,2-Dichloroethylene	Ethene, 1,2-dichlrol-, (E)-	156-60-5	U079
Dichloroethyl ether	Ethane, 1,1'oxybis[2-chloro-	111-44-4	U025
Dichloroisopropyl ether	Propane, 2,2'-oxybis[2-chloro-	108-60-1	U027
Dichloromethoxy ethane	Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro-	111-91-1	U024
Dichloromethyl ether	Methane, oxybis[chloro-	542-88-1	P016
2,4-Dichlorophenol	Phenol, 2,4-dichloro-	120-83-2	U081
2,6-Dichlorophenol	Phenol, 2,6-dichloro-	87-65-0	U082
Dichlorophenylarsine	Arsonous dichloride, phenyl-	696-28-6	P036
Dichloropropane, N.O.S.[1]	Propane, dichloro-	26638-19-7	
Dichloropropanol, N.O.S.[1]	Propanol, dichloro-	26545-73-3	
Dichloropropene, N.O.S.[1]	1-Propene, dichloro-	26952-23-8	
1,3-Dichloropropene	1-Propene, 1,3-dichloro-	542-75-6	U084
Dieldrin	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2aalpha,3beta,6beta,6aalpha,7beta,7aalpha)-.	60-57-1	P037
1,2:3,4-Diepoxybutane	2,2'Bioxirane	1464-53-5	U085
Diethylarsine	Arsine, diethyl-	692-42-2	P038
1,4-Diethyleneoxide	1,4-Dioxane	123-91-1	U108
Diethylhexyl phthalate	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester	117-81-7	U028
N,N'-Diethylhydrazine	Hydrazine, 1,2-diethyl-	1615-80-1	U086
O,O-Diethyl S-methyl dithiophosphate	Phosphorodithioic acid, O,O-diethyl S-methyl ester	3288-58-2	U087
Diethyl-p-nitrophenyl phosphate	Phosphoric acid, diethyl 4-nitrophenyl ester	311-45-5	P041
Diethyl phthalate	1,2-Benzenedicarboxylic acid, diethyl ester	84-66-2	U088
O,O-Diethyl O-pyrazinyl phosphorothioate.	Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester	297-97-2	P040
Diethylstilbesterol	Phenol, 4,4'-(1,2-diethyl-1,2-ethenediyl)bis-, (E)-	56-53-1	U089
Dihydrosafrole	1,3-Benzodioxole, 5-propyl-	94-58-6	U090
Diisopropylfluorophosphate (DFP)	Phosphorofluoridic acid, bis(1-methylethyl) ester	55-91-4	P043

APPENDIX VIII—HAZARDOUS CONSTITUENTS—Continued

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
Dimethoate	Phosphorodithioic acid, O,O-dimethyl S-[2-(methylamino)-2-oxoethyl] ester	60-51-5	P044
3,3'-Dimethoxybenzidine	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethoxy-	119-90-4	U091
p-Dimethylaminoazobenzene	Benzenamine, N,N-dimethyl-4-(phenylazo)-	60-11-7	U093
7,12-Dimethylbenz[a]anthracene	Benz[a]anthracene, 7,12-dimethyl-	57-97-6	U094
3,3'-Dimethylbenzidine	[1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl-	119-93-7	U095
Dimethylcarbamoyl chloride	Carbamic chloride, dimethyl-	79-44-7	U097
1,1-Dimethylhydrazine	Hydrazine, 1,1-dimethyl-	57-14-7	U098
1,2-Dimethylhydrazine	Hydrazine, 1,2-dimethyl-	540-73-8	U099
alpha,alpha-Dimethylphenethylamine	Benzeneethanamine, alpha,alpha-dimethyl-	122-09-8	P046
2,4-Dimethylphenol	Phenol, 2,4-dimethyl-	105-67-9	U101
Dimethyl phthalate	1,2-Benzenedicarboxylic acid, dimethyl ester	131-11-3	U102
Dimethyl sulfate	Sulfuric acid, dimethyl ester	77-78-1	U103
Dinitrobenzene, N.O.S.[1]	Benzene, dinitro-	25154-54-5	.....
4,6-Dinitro-o-cresol	Phenol, 2-methyl-4,6-dinitro-	534-52-1	P047
4,6-Dinitro-o-cresol salts	.....	.....	P047
2,4-Dinitrophenol	Phenol, 2,4-dinitro-	51-28-5	P048
2,4-Dinitrotoluene	Benzene, 1-methyl-2,4-dinitro-	121-14-2	U105
2,6-Dinitrotoluene	Benzene, 2-methyl-1,3-dinitro-	606-20-2	U106
Dinoseb	Phenol, 2-(1-methylpropyl)-4,6-dinitro-	88-85-7	P020
Di-n-octyl phthalate	1,2-Benzenedicarboxylic acid, dioctyl ester	117-84-0	U017
Diphenylamine	Benzenamine, N-phenyl-	122-39-4	.....
1,2-Diphenylhydrazine	Hydrazine, 1,2-diphenyl-	122-66-7	U109
Di-n-propylnitrosamine	1-Propanamine, N-nitroso-N-propyl-	621-64-7	U111
Disulfoton	Phosphorodithioic acid, O,O-diethyl S-[2-(ethylthio)ethyl] ester	298-04-4	P039
Dithiobiuret	Thioimidodicarbonic diamide $[(H_2N)C(S)]_2NH$	541-53-7	P049
Endosulfan	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a- hexahydro-, 3-oxide.	115-29-7	P050
Endothall	7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid	145-73-3	P088
Endrin	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aalpha,2beta,2abeta,3alpha,6alpha,6abeta,7beta,7aalpha)-.	72-20-8	P051
Endrin metabolites	.....	.....	P051
Epichlorohydrin	Oxirane, (chloromethyl)-	106-89-8	U041
Epinephrine	1,2-Benzenediol, 4-[1-hydroxy-2-(methylamino)ethyl]-, (R)-	51-43-4	P042
Ethyl carbamate (urethane)	Carbamic acid, ethyl ester	51-79-6	U238
Ethyl cyanide	Propanenitrile	107-12-0	P101
Ethylenebisdithiocarbamic acid	Carbamodithioic acid, 1,2-ethanediylbis-	111-54-6	U114
Ethylenebisdithiocarbamic acid, salts and esters.	.....	.....	U114
Ethylene dibromide	Ethane, 1,2-dibromo-	106-93-4	U067
Ethylene dichloride	Ethane, 1,2-dichloro-	107-06-2	U077
Ethylene glycol monoethyl ether	Ethanol, 2-ethoxy-	110-80-5	U359
Ethyleneimine	Aziridine	151-56-4	P054
Ethylene oxide	Oxirane	75-21-8	U115
Ethylenethiourea	2-Imidazolidinethione	96-45-7	U116
Ethylidene dichloride	Ethane, 1,1-dichloro-	75-34-3	U076
Ethyl methacrylate	2-Propenoic acid, 2-methyl-, ethyl ester	97-63-2	U118
Ethyl methanesulfonate	Methanesulfonic acid, ethyl ester	62-50-0	U119
Famphur	Phosphorothioic acid, O-[4-[(dimethylamino)sulfonyl]phenyl] O,O-dimethyl ester	52-85-7	P097
Fluoranthene	Same	206-44-0	U120
Fluorine	Same	7782-41-4	P056
Fluoroacetamide	Acetamide, 2-fluoro-	640-19-7	P057
Fluoroacetic acid, sodium salt	Acetic acid, fluoro-, sodium salt	62-74-8	P058
Formaldehyde	Same	50-00-0	U122
Formic acid	Same	64-18-6	U123
Glycidylaldehyde	Oxiranecarboxyaldehyde	765-34-4	U126
Halomethanes, N.O.S.[1]	.....	.....	.....
Heptachlor	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	76-44-8	P059
Heptachlor epoxide	2,5-Methano-2H-indeno[1,2-b]oxirene, 2,3,4,5,6,7,7-heptachloro-1a,1b,5,5a,6,6a-hexahydro-, (1aalpha,1bbeta,2alpha,5alpha,5abeta,6beta,6aalpha)-.	1024-57-3	.....
Heptachlor epoxide (alpha, beta, and gamma isomers).	.....	.....	.....
Hexachlorobenzene	Benzene, hexachloro-	118-74-1	U127
Hexachlorobutadiene	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	87-68-3	U128
Hexachlorocyclopentadiene	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	77-47-4	U130
Hexachlorodibenzo-p-dioxins	.....	.....	.....
Hexachlorodibenzofurans	.....	.....	.....
Hexachloroethane	Ethane, hexachloro-	67-72-1	U131
Hexachlorophene	Phenol, 2,2'-methylenebis[3,4,6-trichloro-	70-30-4	U132
Hexachloropropene	1-Propene, 1,1,2,3,3,3-hexachloro-	1888-71-7	U243
Hexaethyl tetraphosphate	Tetraphosphoric acid, hexaethyl ester	757-58-4	P062
Hydrazine	Same	302-01-2	U133
Hydrogen cyanide	Hydrocyanic acid	74-90-8	P063
Hydrogen fluoride	Hydrofluoric acid	7664-39-3	U134
Hydrogen sulfide	Hydrogen sulfide H_2S	7783-06-4	U135
Indeno[1,2,3-cd]pyrene	Same	193-39-5	U137
Iron dextran	Same	9004-66-4	U139
Isobutyl alcohol	1-Propanol, 2-methyl-	78-83-1	U140
Isodrin	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-, (1alpha,4alpha,4abeta,5beta,8beta,8abeta)-.	465-73-6	P060

APPENDIX VIII—HAZARDOUS CONSTITUENTS—Continued

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
Isosafrole	1,3-Benzodioxole, 5-(1-propenyl)-	120-58-1	U141
Kepone	1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-	143-50-0	U142
Lasiocarpine	2-Butenoic acid, 2-methyl-, 7-[[2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy]methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester, [1S-[1alpha(Z),7(2S*,3R*),7aalpha]]-	303-34-1	4143
Lead	Same	7439-92-1	
Lead compounds, N.O.S.[1]			
Lead acetate	Acetic acid, lead(2+) salt	301-04-2	U144
Lead phosphate	Phosphoric acid, lead(2+) salt (2:3)	7446-27-7	U145
Lead subacetate	Lead, bis(acetato-O)tetrahydroxytri-	1335-32-6	U146
Lindane	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1alpha,2alpha,3beta,4alpha,5alpha,6beta)-	58-89-9	U129
Maleic anhydride	2,5-Furandione	108-31-6	U147
Maleic hydrazide	3,6-Pyridazinedione, 1,2-dihydro-	123-33-1	U148
Malononitrile	Propanedinitrile	109-77-3	U149
Melphalan	L-Phenylalanine, 4-[bis(2-chloroethyl)amino]-	148-82-3	U150
Mercury	Same	7439-97-6	U151
Mercury compounds, N.O.S.[1]			
Mercury fulminate	Fulminic acid, mercury(2+) salt	628-86-4	P065
Methacrylonitrile	2-Propenenitrile, 2-methyl-	126-98-7	U152
Methapyrilene	1,2-Ethanediamine, N,N-dimethyl-N'-2-pyridinyl-N'-(2-thienylmethyl)-	91-80-5	U155
Methomyl	Ethanimidothioic acid, N-[[(methylamino)carbonyl]oxy]-, methyl ester	16752-77-5	P066
Methoxychlor	Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-methoxy-	72-43-5	U247
Methyl bromide	Methane, bromo-	74-83-9	U029
Methyl chloride	Methane, chloro-	74-87-3	U045
Methyl chlorocarbonate	Carbonochloridic acid, methyl ester	79-22-1	U156
Methyl chloroform	Ethane, 1,1,1-trichloro-	71-55-6	U226
3-Methylcholanthrene	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	56-49-5	U157
4,4'-Methylenebis(2-chloroaniline)	Benzenamine, 4,4'-methylenebis[2-chloro-	101-14-4	U158
Methylene bromide	Methane, dibromo-	74-95-3	U068
Methylene chloride	Methane, dichloro-	75-09-2	U080
Methyl ethyl ketone (MEK)	2-Butanone	78-93-3	U159
Methyl ethyl ketone peroxide	2-Butanone, peroxide	1338-23-4	U160
Methyl hydrazine	Hydrazine, methyl-	60-34-4	P068
Methyl iodide	Methane, iodo-	74-88-4	U138
Methyl isocyanate	Methane, isocyanato-	624-83-9	P064
2-Methyllactonitrile	Propanenitrile, 2-hydroxy-2-methyl-	75-86-5	P069
Methyl methacrylate	2-Propenoic acid, 2-methyl-, methyl ester	80-62-6	U162
Methyl methanesulfonate	Methanesulfonic acid, methyl ester	66-27-3	
Methyl parathion	Phosphorothioic acid, O,O-dimethyl O-(4-nitrophenyl) ester	298-00-0	P071
Methylthiouracil	4(1H)-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-	56-04-2	U164
Mitomycin C	Azirino[2',3':3,4]pyrrolo[1,2-a]indole-4,7-dione, 6-amino-8-[[(aminocarbonyl)oxy]methyl]-1,1a,2,8,8a,8b-hexahydro-8a-methoxy-5-methyl-, [1aS-(1aalpha,8beta,8aalpha,8balpha)]-	50-07-7	U010
MNNG	Guanidine, N-methyl-N'-nitro-N-nitroso-	70-25-7	U163
Mustard gas	Ethane, 1,1'-thiobis[2-chloro-	505-60-2	
Naphthalene	Same	91-20-3	U165
1,4-Naphthoquinone	1,4-Naphthalenedione	130-15-4	U166
alpha-Naphthylamine	1-Naphthalenamine	134-32-7	U167
beta-Naphthylamine	2-Naphthalenamine	91-59-8	U168
alpha-Naphthylthiourea	Thiourea, 1-naphthalenyl-	86-88-4	P072
Nickel	Same	7440-02-0	
Nickel compounds, N.O.S.[1]			
Nickel carbonyl	Nickel carbonyl $Ni(CO)_4$, (T-4)-	13463-39-3	P073
Nickel cyanide	Nickel cyanide $Ni(CN)_2$	557-19-7	P074
Nicotine	Pyridine, 3-(1-methyl-2-pyrrolidinyl)-, (S)-	54-11-5	P075
Nicotine salts			P075
Nitric oxide	Nitrogen oxide NO	10102-43-9	P076
p-Nitroaniline	Benzenamine, 4-nitro-	100-01-6	P077
Nitrobenzene	Benzene, nitro-	98-95-3	U169
Nitrogen dioxide	Nitrogen oxide NO_2	10102-44-0	P078
Nitrogen mustard	Ethanamine, 2-chloro-N-(2-chloroethyl)-N-methyl-	51-75-2	
Nitrogen mustard, hydrochloride salt			
Nitrogen mustard N-oxide	Ethanamine, 2-chloro-N-(2-chloroethyl)-N-methyl-, N-oxide	126-85-2	
Nitrogen mustard, N-oxide, hydrochloride salt.			
Nitroglycerin	1,2,3-Propanetriol, trinitrate	55-63-0	P081
p-Nitrophenol	Phenol, 4-nitro-	100-02-7	U170
2-Nitropropane	Propane, 2-nitro-	79-46-9	U171
Nitrosamines, N.O.S.[1]		35576-91-1D	
N-Nitrosodi-n-butylamine	1-Butanamine, N-butyl-N-nitroso-	924-16-3	U172
N-Nitrosodiethanolamine	Ethanol, 2,2'-(nitrosoimino)bis-	1116-54-7	U173
N-Nitrosodiethylamine	Ethanamine, N-ethyl-N-nitroso-	55-18-5	U174
N-Nitrosodimethylamine	Methanamine, N-methyl-N-nitroso-	62-75-9	P082
N-Nitroso-N-ethylurea	Urea, N-ethyl-N-nitroso-	759-73-9	U176
N-Nitrosomethylethylamine	Ethanamine, N-methyl-N-nitroso-	10595-95-6	
N-Nitroso-N-methylurea	Urea, N-methyl-N-nitroso-	684-93-5	U177
N-Nitroso-N-methylurethane	Carbamic acid, methylnitroso-, ethyl ester	615-53-2	U178
N-Nitrosomethylvinylamine	Vinylamine, N-methyl-N-nitroso-	4549-40-0	P084

APPENDIX VIII—HAZARDOUS CONSTITUENTS—Continued

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
N-Nitrosomorpholine	Morpholine, 4-nitroso-	59-89-2	
N-Nitrosonornicotine	Pyridine, 3-(1-nitroso-2-pyrrolidinyl)-, (S)-	16543-55-8	
N-Nitrosopiperidine	Piperidine, 1-nitroso-	100-75-4	U179
N-Nitrosopyrrolidine	Pyrrolidine, 1-nitroso-	930-55-2	U180
N-Nitrososarcosine	Glycine, N-methyl-N-nitroso-	13256-22-9	
5-Nitro-o-toluidine	Benzenamine, 2-methyl-5-nitro-	99-55-8	U181
Octamethylpyrophosphoramide	Diphosphoramide, octamethyl-	152-16-9	P085
Osmium tetroxide	Osmium oxide OsO_4, (T-4)-	20816-12-0	P087
Paraldehyde	1,3,5-Trioxane, 2,4,6-trimethyl-	123-63-7	U182
Parathion	Phosphorothioic acid, O,O-diethyl O-(4-nitrophenyl) ester	56-38-2	P089
Pentachlorobenzene	Benzene, pentachloro-	608-93-5	U183
Pentachlorodibenzo-p-dioxins			
Pentachlorodibenzofurans			
Pentachloroethane	Ethane, pentachloro-	76-01-7	U184
Pentachloronitrobenzene (PCNB)	Benzene, pentachloronitro-	82-68-8	U185
Pentachlorophenol	Phenol, pentachloro-	87-86-5	See F027
Phenacetin	Acetamide, N-(4-ethoxyphenyl)-	62-44-2	U187
Phenol	Same	108-95-2	U188
Phenylenediamine	Benzenediamine	25265-76-3	
Phenylmercury acetate	Mercury, (acetato-O)phenyl-	62-38-4	P092
Phenylthiourea	Thiourea, phenyl-	103-85-5	P093
Phosgene	Carbonic dichloride	75-44-5	P095
Phosphine	Same	7803-51-2	P096
Phorate	Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl] ester	298-02-2	P094
Phthalic acid esters, N.O.S.[1]			
Phthalic anhydride	1,3-Isobenzofurandione	85-44-9	U190
2-Picoline	Pyridine, 2-methyl-	109-06-8	U191
Polychlorinated biphenyls, N.O.S.[1]			
Potassium cyanide	Potassium cyanide K(CN)	151-50-8	P098
Potassium silver cyanide	Argentate(1-), bis(cyano-C)-, potassium	506-61-6	P099
Pronamide	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-	23950-58-5	U192
1,3-Propane sultone	1,2-Oxathiolane, 2,2-dioxide	1120-71-4	U193
n-Propylamine	1-Propanamine	107-10-8	U194
Propargyl alcohol	2-Propyn-1-ol	107-19-7	P102
Propylene dichloride	Propane, 1,2-dichloro-	78-87-5	U083
1,2-Propylenimine	Aziridine, 2-methyl-	75-55-8	P067
Propylthiouracil	4(1H)-Pyrimidinone, 2,3-dihydro-6-propyl-2-thioxo-	51-52-5	
Pyridine	Same	110-86-1	U196
Reserpine	Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-smethyl ester, (3beta,16beta,17alpha,18beta,20alpha)-	50-55-5	U200
Resorcinol	1,3-Benzenediol	108-46-3	U201
Saccharin	1,2-Benzisothiazol-3(2H)-one, 1,1-dioxide	81-07-2	U202
Saccharin salts			U202
Safrole	1,3-Benzodioxole, 5-(2-propenyl)-	94-59-7	U203
Selenium	Same	7782-49-2	
Selenium compounds, N.O.S.[1]			
Selenium dioxide	Selenious acid	7783-00-8	U204
Selenium sulfide	Selenium sulfide SeS_2	7488-56-4	U205
Selenourea	Same	630-10-4	P103
Silver	Same	7440-22-4	
Silver compounds, N.O.S.[1]			
Silver cyanide	Silver cyanide Ag(CN)	506-64-9	P104
Silvex (2,4,5-TP)	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-	93-72-1	See F027
Sodium cyanide	Sodium cyanide Na(CN)	143-33-9	P106
Streptozotocin	D-Glucose, 2-deoxy-2-[[(methylnitrosoamino)carbonyl]amino]-	18883-66-4	U206
Strontium sulfide	Strontium sulfide SrS	1314-96-1	P107
Strychnine	Strychnidin-10-one	57-24-9	P108
Strychnine salts			P108
TCDD	Dibenzo[b,e][1,4]dioxin, 2,3,7,8-tetrachloro-	1746-01-6	
1,2,4,5-Tetrachlorobenzene	Benzene, 1,2,4,5-tetrachloro-	95-94-3	U207
Tetrachlorodibenzo-p-dioxins			
Tetrachlorodibenzofurans			
Tetrachloroethane, N.O.S.[1]	Ethane, tetrachloro-, N.O.S.	25322-20-7	
1,1,1,2-Tetrachloroethane	Ethane, 1,1,1,2-tetrachloro-	630-20-6	U208
1,1,2,2-Tetrachloroethane	Ethane, 1,1,2,2-tetrachloro-	79-34-5	U209
Tetrachloroethylene	Ethene, tetrachloro-	127-18-4	U210
2,3,4,6-Tetrachlorophenol	Phenol, 2,3,4,6-tetrachloro-	58-90-2	See F027
Tetraethyldithiopyrophosphate	Thiodiphosphoric acid, tetraethyl ester	3689-24-5	P109
Tetraethyl lead	Plumbane, tetraethyl-	78-00-2	P110
Tetraethyl pyrophosphate	Diphosphoric acid, tetraethyl ester	107-49-3	P111
Tetranitromethane	Methane, tetranitro-	509-14-8	P112
Thallium	Same	7440-28-0	
Thallium compounds, N.O.S.[1]			
Thallic oxide	Thallium oxide Tl_2O_3	1314-32-5	P113
Thallium(I) acetate	Acetic acid, thallium(1+) salt	563-68-8	U214
Thallium(I) carbonate	Carbonic acid, dithallium(1+) salt	6533-73-9	U215
Thallium(I) chloride	Thallium chloride TlCl	7791-12-0	U216
Thallium(I) nitrate	Nitric acid, thallium(1+) salt	10102-45-1	U217
Thallium selenite	Selenious acid, dithallium(1+) salt	12039-52-0	P114

APPENDIX VIII—HAZARDOUS CONSTITUENTS—Continued

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
Thallium(I) sulfate	Sulfuric acid, dithallium(1+) salt	7446-18-6	P115
Thioacetamide	Ethanethioamide	62-55-5	U218
Thiofanox	2-Butanone, 3,3-dimethyl-1-(methylthio)-, 0-[(methylamino)carbonyl] oxime	39196-18-4	P045
Thiomethanol	Methanethiol	74-93-1	U153
Thiophenol	Benzenethiol	108-98-5	P014
Thiosemicarbazide	Hydrazinecarbothioamide	79-19-6	P116
Thiourea	Same	62-56-6	U219
Thiram	Thioperoxydicarbonic diamide $[(H_2N)C(S)]_2S_2$, tetramethyl-	137-26-8	U244
Toluene	Benzene, methyl-	108-88-3	U220
Toluenediamine	Benzenediamine, ar-methyl-	25376-45-8	U221
Toluene-2,4-diamine	1,3-Benzenediamine, 4-methyl-	95-80-7	
Toluene-2,6-diamine	1,3-Benzenediamine, 2-methyl-	823-40-5	
Toluene-3,4-diamine	1,2-Benzenediamine, 4-methyl-	496-72-0	
Toluene diisocyanate	Benzene, 1,3-diisocyanatomethyl-	26471-62-5	U223
o-Toluidine	Benzenamine, 2-methyl-	95-53-4	U328
o-Toluidine hydrochloride	Benzenamine, 2-methyl-, hydrochloride	636-21-5	U222
p-Toluidine	Benzenamine, 4-methyl-	106-49-0	U353
Toxaphene	Same	8001-35-2	P123
1,2,4-Trichlorobenzene	Benzene, 1,2,4-trichloro-	120-82-1	
1,1,2-Trichloroethane	Ethane, 1,1,2-trichloro-	79-00-5	U227
Trichloroethylene	Ethene, trichloro-	79-01-6	U228
Trichloromethanethiol	Methanethiol, trichloro-	75-70-7	P118
Trichloromonofluoromethane	Methane, trichlorofluoro-	75-69-4	U121
2,4,5-Trichlorophenol	Phenol, 2,4,5-trichloro-	95-95-4	See F027
2,4,6-Trichlorophenol	Phenol, 2,4,6-trichloro-	88-06-2	See F027
2,4,5-T	Acetic acid, (2,4,5-trichlorophenoxy)-	93-76-5	See F027
Trichloropropane, N.O.S.[1]		25735-29-9	
1,2,3-Trichloropropane	Propane, 1,2,3-trichloro-	96-18-4	
O,O,O-Triethyl phosphorothioate	Phosphorothioic acid, O,O,O-triethyl ester	126-68-1	
1,3,5-Trinitrobenzene	Benzene, 1,3,5-trinitro-	99-35-4	U234
Tris(1-aziridinyl)phosphine sulfide	Aziridine, 1,1',1''-phosphinothioylidynetris-	52-24-4	
Tris(2,3-dibromopropyl) phosphate	1-Propanol, 2,3-dibromo-, phosphate (3:1)	126-72-7	U235
Trypan blue	2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethyl[1,1'-biphenyl]-4,4'-diyl)bis(azo)]-bis[5-amino-4-hydroxy-, tetrasodium salt	72-57-1	U236
Uracil mustard	2,4-(1H,3H)-Pyrimidinedione, 5-[bis(2-chloroethyl)amino]-	66-75-1	U237
Vanadium pentoxide	Vanadium oxide V_2O_5	1314-62-1	P120
Vinyl chloride	Ethene, chloro-	75-01-4	U043
Warfarin	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, when present at concentrations less than 0.3%.	81-81-2	U248
Warfarin	2H-1-Benzopyran-2-one, 4-hydroxy-3-(3-oxo-1-phenylbutyl)-, when present at concentrations greater than 0.3%.	81-81-2	P001
Warfarin salts, when present at concentrations less than 0.3%.			U248
Warfarin salts, when present at concentrations greater than 0.3%.			P001
Zinc cyanide	Zinc cyanide $Zn(CN)_2$	557-21-1	P121
Zinc phosphide	Zinc phosphide Zn_3P_2, when present at concentrations greater than 10%	1314-84-7	P122
Zinc phosphide	Zinc phosphide Zn_3P_2, when present at concentrations of 10% or less	1314-84-7	U249

[1] The abbreviation N.O.S. (not otherwise specified) signifies those members of the general class not specifically listed by name in this appendix.

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federal register

Friday
April 22, 1988

Part III

Department of Agriculture

Food Safety and Inspection Service

9 CFR Part 307 et al.

Fee Increase for Inspection Services; Final Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 307, 350, 351, 352, 354, 355, 362, and 381

[Docket No. 87-026F]

Fee Increase for Inspection Services

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to increase fees charged by FSIS to provide overtime and holiday inspection, identification, certification, or laboratory services to meat and poultry establishments. The fees reflect the increased costs of providing these services due to the increase in salaries of Federal employees allocated by Congress under the Federal Pay Comparability Act of 1970 and a change in the fee structure to include the Science program as support for the meat and poultry inspection services.

EFFECTIVE DATE: April 24, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. William L. West, Director, Budget and Finance Division, Administrative Management, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3367.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This rule is issued in conformance with Executive Order 12291 and has been determined not to be a "major rule." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The fee increases only reflect an increase in costs to establishments that elect to utilize certain inspection services.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Public Law 96-354 (5 U.S.C. 601), because the fees provided for in this document merely reflect a minimal increase in the costs currently borne by those entities which elect to utilize certain inspection services and a corrected calculation of program support costs.

Background

Mandatory inspection by Federal inspectors of meat and poultry slaughtered and/or processed at official establishments is provided for under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*). Such inspection is required to ensure the safety, wholesomeness, and proper labeling of meat and poultry products and the ordinary costs of providing it are borne by the U.S. Government. However, costs for these inspection services performed on holidays or on an overtime basis may be incurred to accommodate the business needs of particular establishments. Furthermore, there may also arise from time-to-time a need for certain laboratory services which are not covered under the base time, overtime, and/or holiday costs. For example, if a suspect product is rejected, and the establishment requests and FSIS agrees to perform additional laboratory analyses to verify that the reconditioned product is in compliance, the cost of the additional laboratory services will be borne by the particular establishment at the rate of $43.80 per hour. Any or all of these costs, which are not a part of the mandatory inspection service, are recoverable by the Federal Government.

FSIS also provides a range of voluntary inspection services, the costs of which are totally recoverable by the Government. These services are provided under the Federal Meat and Poultry Products Inspection Regulations, Subchapter B—Voluntary Inspection and Certification Service, issued pursuant to the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), to assist in the orderly marketing of various animal products and byproducts not subject to the Federal Meat Inspection Act or the Poultry Products Inspection Act.

Each year, the fees for certain services rendered to operators of official meat and poultry establishments, importers, or exporters by FSIS are reviewed and a cost analysis is performed to determine if such fees are adequate to recover the cost of providing the services.[1] The analysis relates to fees charged in connection with overtime and holiday inspection, identification, certification, or laboratory services. The fees to be charged for these services are determined by an analysis of data on the current cost of these services, as well as anticipated costs associated with changes in operations of the program, coupled with the increase in those costs due to an increase in salaries of Federal employees allocated by Congress under the Federal Pay Comparability Act of 1970 or any other increases affecting Federal employees, such as costs for travel and benefits.

In this year's cost analysis, the Agency has reevaluated its organizational structure to identify all components that support the inspection services. This is in accordance with OMB Circular No. A-25 which states that the cost computation shall cover the direct and indirect cost to the government of carrying out the activity. In reviewing the organizational structure and their functions, the Science program, which in previous years was omitted from the cost computation, was identified as an indirect cost of carrying out the inspection activity. The Science program conducts all scientific product testing and research activities for the Agency through its field and contract laboratories. Normally, the volume of laboratory samples tested is in proportion to the volume of product inspected including that which is produced during overtime or on holidays. In addition to systematically scheduled product sampling, inspectors submit samples for analysis any time they suspect problems, including during overtime or holiday production. In the future, Science will play a more significant role in FSIS regulatory activities as the inspection system changes from the traditional organoleptic inspection to a scientific-based system to detect chemical and microbial hazards. For example, listeria, salmonella, and sulfamethazine contamination are current health issues receiving increased Agency attention.

Based on the Agency's analysis of the increased costs in providing these services, incurred as a result of a January 1988 pay raise of two percent for Federal employees, increased costs of the new retirement system in 1988, increased health insurance and travel costs, and the inclusion of Science as program support, FSIS published a proposed rule in the **Federal Register** on March 18, 1988 (53 FR 8922) to increase the fees relating to such services.

[1] The cost analysis is on file with the FSIS Hearing Clerk. Copies may be requested from that office.

Agency Response to Comments

The Agency received seven comments in response to the proposal. Two commenters from the meat and poultry industry objected to increasing the fees for the affected inspection services. They stated that they believe the fees are already too high. A third commenter was from an organization promoting industrial development in a local area who stated that this would increase the cost of processing and that cost would then be passed along to the consumer. Four commenters from meat and poultry trade associations objected to including the Science program as well as all indirect costs attributable to providing the affected services.

The ordinary day-to-day costs of providing inspection services under the requirements of the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) are borne by the Federal Government through the annual Congressional appropriations process. However, the Department is required by the FMIA (21 U.S.C. 695) and PPIA (21 U.S.C. 468) to recover the costs of overtime and holiday inspection services from those establishments which voluntarily elect to utilize such inspection services.

Executive branch departments and agencies are required by OMB Circular No. A–25, User Charges, to recover the total cost of carrying out any reimbursable activity. The OMB Circular directs agencies to charge for both direct and indirect costs. FSIS has historically included indirect cost components in its annual cost analysis made available to the public and industry. These components have been identified as program support and Agency support costs, each consisting of several Agency cost elements. For 1988, the Agency has identified the Science program as an additional indirect cost element and has included it in the program support category of the annual cost analysis as required by the OMB regulations. As stated in the background section included above, sampling of product is generated when plants are in an overtime or holiday basis based on the volume of production or suspected violations. Other Agency costs amounting to millions of dollars each year (for example, the Grants-to-States program, including its "fair share" portion of program and Agency support, and various one-time costs) are not applicable to these rates and have been excluded from the cost analysis.

The rates provided for in this document are statutorily mandated and reflect only an incremental increase in the costs currently borne by those entities electing to utilize these and certain other voluntary inspection services. Therefore, the amendments, as proposed, to the Federal Meat and Poultry Products Inspection Regulations are promulgated herein.

List of Subjects

9 CFR Part 307

Meat inspection, Reimbursable services.

9 CFR Part 350

Meat Inspection, Reimbursable services, Voluntary inspection, Certification service.

9 CFR Part 351

Meat inspection, Reimbursable services, Technical animal fats.

9 CFR Part 352

Meat inspection, Reimbursable services, Voluntary inspection.

9 CFR Part 354

Meat inspection, Reimbursable services, Voluntary inspection.

9 CFR Part 355

Meat inspection, Reimbursable services, Certified products.

9 CFR Part 362

Poultry products inspection, Reimbursable services, Voluntary poultry inspection.

9 CFR Part 381

Poultry products inspection, Reimbursable services.

Accordingly, the Federal meat and poultry products inspection regulations are amended as follows:

PART 307—[AMENDED]

1. The authority citation for Part 307 is revised to read as follows:

Authority: 7 U.S.C. 394, 21 U.S.C. 621, 695; 7 CFR 2.17(g) and (i), 2.55.

2. Section 307.5(a) is revised to read as follows:

§ 307.5 Overtime and holiday inspection service.

(a) The management of an official establishment, an importer, or an exporter shall pay the Food Safety and Inspection Service $24.68 per hour per Program employee to reimburse the Program for the cost of the inspection service furnished on any holiday as specified in paragraph (b) of this section; or for more than 8 hours on any day, or more than 40 hours in any administrative workweek Sunday through Saturday.

* * * * *

PART 350—[AMENDED]

3. The authority citation for Part 350 is revised to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17 (g) and (i), 2.55.

4. Section 350.7(c) is revised to read as follows:

§ 350.7 Fees and charges.

* * * * *

(c) The fees to be charged and collected for service under the regulations in this Part shall be at the rate of $21.16 per hour for base time, $24.68 per hour for overtime including Saturdays, Sundays, and holidays, and $43.80 per hour for certain laboratory services which are not covered under the base time, overtime, and/or holiday costs. Such fees shall cover the costs of the service and shall be charged for the time required to render such service. Where appropriate, this time will include, but will not be limited to, the time required for travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative workweek.

* * * * *

PART 351—[AMENDED]

5. The authority citation for Part 351 is revised to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17 (g) and (i), 2.55.

6. Section 351.8 is revised to read as follows:

§ 351.8 Charges for surveys of plants.

Applicants for the certification service shall pay the Department for salary costs at the rate of $21.16 per hour for base time, $24.68 per hour for overtime, travel, and per diem allowances at rates currently allowed by the Federal Travel Regulations, and other expenses incidental to the initial survey of the rendering plants or storage facilities for which certification service is requested.

7. Section 351.9(a) is revised to read as follows:

§ 351.9 Charges for examinations.

(a) The fees to be charged and collected by the Administrator for examination shall be $21.16 per hour for base time and $24.68 per hour for overtime including Saturdays, Sundays, and holidays, as provided for in § 351.14, and $43.80 per hour for certain laboratory services which are not covered under the base time, overtime, and/or holiday costs and which are required to determine the eligibility of any technical animal fat for certification under the regulations in this Part. Such

fees shall be charged for the time required to render such service, including, but not limited to, the time required for the travel of the inspector or inspectors in connection therewith.

* * * * *

PART 352—[AMENDED]

8. The authority citation for Part 352 is revised to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17 (g) and (i), 2.55.

9. Section 352.5(c) is revised to read as follows:

§ 352.5 Fees and charges.

* * * * *

(c) The fees to be charged and collected for service under the regulations in this Part shall be at the rate of $21.16 per hour for base time, $24.68 per hour for overtime including Saturdays, Sundays, and holidays, and $43.80 per hour for certain laboratory services which are not covered under the base time, overtime, and/or holiday costs. Such fees shall cover the costs of the service and shall be charged for the time required to render such service, including, but not limited to, the time required for the travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative workweek.

* * * * *

PART 354—[AMENDED]

10. The authority citation for Part 354 is revised to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17 (g) and (i), 2.55.

11. Section 354.101 (b) and (c) is revised to read as follows:

§ 354.101 On a fee basis.

* * * * *

(b) The charges for inspection service will be based on the time required to perform such services. The hourly rate shall be $21.16 for base time and $24.68 for overtime or holiday work.

(c) Charges for certain laboratory analysis or laboratory examination of rabbits under this Part related to inspection service shall be $43.80 per hour for that part which is not covered under the base time, overtime, and/or holiday costs.

* * * * *

PART 355—[AMENDED]

12. The authority citation for Part 355 is revised to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17 (g) and (i), 2.55.

13. Section 355.12 is revised to read as follows:

§ 355.12 Charge for service.

The fees to be charged and collected by the Administrator shall be $21.16 per hour for base time, $24.68 per hour for overtime including Saturdays, Sundays, and holidays, and $43.80 per hour for certain laboratory services which are not covered under the base time, overtime, and/or holiday costs. Such fees shall reimburse the Service for the costs of the inspection service furnished.

PART 362—[AMENDED]

14. The authority citation for Part 362 is revised to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17 (g) and (i), 2.55.

15. Section 362.5(c) is revised to read as follows:

§ 362.5 Fees and charges.

* * * * *

(c) The fees to be charged and collected for service under the regulations in this Part shall be at the rate of $21.16 per hour for base time, $24.68 per hour for overtime including Saturdays, Sundays, and holidays, and $43.80 per hour for certain laboratory services which are not covered under the base time, overtime, and/or holiday costs. Such fees shall cover the costs of the services and shall be charged for the time required for the travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative workweek.

* * * * *

PART 381—[AMENDED]

16. The authority citation for Part 381 is revised to read as follows:

Authority: 21 U.S.C. 463, 468; 7 CFR 2.17 (g) and (i), 2.55.

17. Section 381.38(a) is revised to read as follows:

§ 381.38 Overtime and holiday inspection service.

(a) The management of an official establishment, an importer, or an exporter shall pay the Food Safety and Inspection Service $24.68 per hour per Program employee to reimburse the Program for the cost of the inspection service furnished on any holiday specified in paragraph (b) of this section; or for more than 8 hours on any day, or more than 40 hours in any administrative workweek Sunday through Saturday.

* * * * *

The Administrator has determined that good cause exists to make these amendments effective less than 30 days after publication in the **Federal Register.**

Done at Washington, DC, on April 20, 1988.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 88-9004 Filed 4-21-88; 9:36 am]

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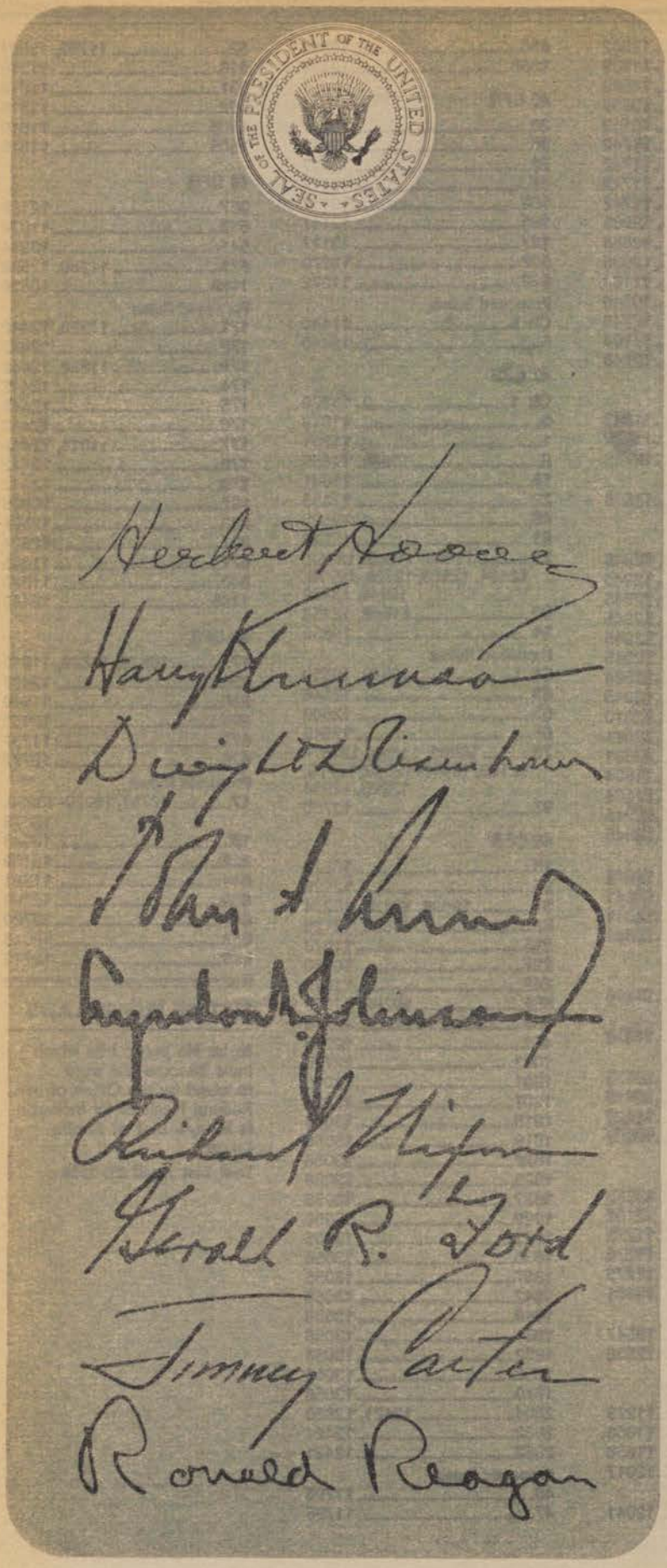

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