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WHO: The Office of the Federal Register.

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4. An introduction to the finding aids of the FR/CFR system.

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Presidential Documents

Title 3—

The President

Memorandum of August 17, 1988

Delegation of Certification Responsibility

Memorandum to the Secretary of State

By virtue of the authority vested in me as President by the Constitution and the statutes of the United States of America, including Section 621 of the Foreign Assistance Act of 1961, as amended, and Section 301 of Title 3 of the United States Code, I hereby delegate to the Secretary of State the responsibility for submitting the third report and certifications required by Section 2013 of the Anti-Drug Abuse Act of 1986 (P.L. 99–570).

This memorandum shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, August 17, 1988.

[FR Doc. 88–20555
Filed 9–6–88; 4:09 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 989 and 999

[AMS-FV-88-053FR]

Raisins Produced From Grapes Grown in California; Specialty Crops; Import Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the administrative, supplementary, and quality control rules and regulations of the California raisin marketing order and specialty crops import regulations. This action separates the Monukka varietal type into a Monukka varietal type (Monukka raisins) and an Other Seedless varietal type (Ruby Seedless, Flame Seedless, Black Imperial, and other similar seedless raisins). Currently, the Monukka varietal type includes Monukka, Ruby Seedless, Flame Seedless, Black Imperial, and other similar seedless raisins. Monukka grapes are grown primarily for the production of raisins and there is a special market for raisins made from these grapes. Raisins made from the other varietal types in the Monukka varietal type are generally considered as a salvage outlet for grapes remaining after such grapes have been harvested for table (fresh) use. For those reasons, the Raisin Administrative Committee (Committee), the agency responsible for local administration of the order, recommended segregating the Monukka varietal type. This will allow both varietal types (Monukka and Other Seedless) to be regulated based on their own separate and distinct conditions of supply and demand.

EFFECTIVE DATE: September 12, 1988.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 989 (7 CFR Part 989), as amended, regulating the handling of raisins produced from grapes grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 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 (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the 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.

There are approximately 23 handlers of raisins who are subject to regulation under the raisin marketing order, and approximately 5,000 producers in the regulated area. There are approximately 45 raisin importers subject to the requirements of the raisin import regulations. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California raisins and importers of raisins may be classified as small entities.

This final rule changes the administrative, supplementary, and quality control rules and regulations of the raisin marketing order and import regulations for specialty crops. This action was unanimously recommended by the Committee and separates the Monukka varietal type group into two varietal types: (1) A Monukka varietal type consisting solely of Monukka raisins; and (2) an Other Seedless varietal type consisting of Ruby Seedless, Flame Seedless, Black Imperial, and other similar seedless raisins. In addition, the U.S. Department of Agriculture (Department) proposed amending the import regulation to conform to the changes in the marketing order.

Section 989.10 of the order provides that the Committee, with the approval of the Secretary, may change the list of varietal types. Thus, paragraph (h) of § 989.110 is amended; new paragraph (i) is added to § 989.110; and paragraph (a) of § 989.156; paragraph (a) of § 989.210; paragraphs (a) and (b) of § 989.212; paragraphs (a), (b), (c), and (d) of § 989.213; paragraph (a) of § 989.701, and paragraph (c) of § 989.702 are amended to include the Other Seedless varietal type. In addition, import regulations that appear in 7 CFR Part 999 are amended to conform to the changes in 7 CFR Part 989 regulating raisins produced from grapes grown in California.

Presently, the Monukka varietal type includes Monukkas, Ruby Seedless, Flame Seedless, Black Imperial and other similar seedless raisins. Monukka grapes are primarily produced for drying into raisins. The market for Monukka raisins is in health and specialty stores, and the number of Monukka producers is small.

In contrast, the Ruby Seedless, Flame Seedless, Black Imperial and other similar seedless grapes are grown primarily for use as table grapes. Grapes left after the vines have been picked are dried into raisins. Raisins produced from these seedless varieties usually are marketed through grocery stores rather than through specialty stores where Monukkas are sold. The Monukka varietal type possesses characteristics different from the other seedless raisins sufficient to make it desirable to have separate identification and classification.

Currently, when volume regulations are in effect, the same free percentage (the amount which can be handled in the primary market) applies to each kind of raisin in the Monukka varietal type

irrespective of differences in market demands for such varietal types. This action allows the Committee to recommend different volume regulations for the Monukka varietal type and the Other Seedless varietal type and thereby recognize distinct differences in supply and demand conditions.

In addition, other marketing order provisions such as the weight dockage system and minimum grade and condition requirements could vary, if deemed appropriate, between Monukkas and Other Seedless raisins as a result of this change. Further, this change will affect the raisin diversion program provisions in the regulations by separating Monukkas and Other Seedless raisins, thereby permitting the quantity eligible for diversion to be announced separately for these varietal types when appropriate.

The Committee therefore recommended that the Monukka varietal type be separated into two varietal types: (1) Monukka Seedless; and (2) Other Seedless. This recognizes differences in supply and demand conditions for Monukka and Other Seedless raisins and allows producers of Monukka grapes dried into raisins to take advantage of a separate and distinct market for Monukka raisins. Pursuant to Section 8e of the Act, this final rule also amends the import regulations which appear in 7 CFR Part 999 to conform to the changes in this final rule. Imported raisins are required to meet the same or comparable quality standards as the domestically produced crop.

Section 8e of the Act (7 U.S.C. 608e–1) requires the Secretary of Agriculture to issue, after reasonable notice of not less than 3 days, grade, size, quality or maturity requirements on specified imported commodities, including raisins, which are the same as, or comparable to, those applied to the domestic commodity regulated under a Federal marketing order. Because this final rule affects the grading requirements for raisins produced from grapes grown in California under Marketing Order No. 989, this change will be applicable to imported raisins regulated under 7 CFR 999.300, as amended.

Notice of this action was published in the July 7, 1988, issue of the **Federal Register** (53 FR 25497). Written comments were invited from interested persons until July 22, 1988. One comment was received. The commenter supported the separation of the Monukka varietal type into a Monukka varietal type and an Other Seedless varietal type. In addition, the commenter proposed that the Ruby Seedless varietal type also be established as a separate and distinct varietal type from Other Seedless raisins. The commenter, however, did not provide sufficient information and justification for the Department to proceed with such a separation. The Department, therefore, is proceeding with the finalization of this rule separating the Monukka varietal type into a Monukka varietal type and an Other Seedless varietal type and is not adopting the commenter's suggested change.

An interim final rule, published in the August 22, 1988, issue of the **Federal Register** (53 FR 31830) deleted the weight adjustment (moisture) system (7 CFR 989.211) from the rules and regulations of the raisin marketing order. Therefore, this final rule reflects the changes in that interim final rule, as appropriate.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented and other available information, it is found that this regulation, as hereafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The 1988–89 crop is in the process of being harvested and this action must be taken promptly since the Committee will be estimating the 1988–89 production of these two new varietal types in order to calculate trade demand; and (2) handlers are aware of this action which was recommended by the Committee at an open meeting.

List of Subjects

7 CFR Part 989

California, Grapes, Marketing agreements and orders, Raisins.

7 CFR Part 999

Dates, Filberts/Hazelnuts, Food grades and standards, Imports, Prunes, Raisins, and Walnuts.

For the reasons set forth in the preamble, 7 CFR Part 989 is amended as follows:

Note.—These sections will appear in the annual Code of Federal Regulations.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

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

Subpart—Administrative Rules and Regulations

2. Section 989.110 is amended by revising paragraph (h) and adding new paragraph (i) to read as follows:

§ 989.110 Varietal types.

* * * * *

(h) Monukka includes all raisins produced from Monukka grapes.

(i) Other Seedless includes all raisins produced from Ruby Seedless, Kings Ruby Seedless, Flame Seedless and other seedless grapes not included in any of the varietal categories for Seedless raisins defined in paragraphs (a), (b), (c), (d) or (h) above.

3. Section 989.156 is amended by revising the second sentence of paragraph (a)(1) to read as follows:

§ 989.156 Raisin Diversion Program.

(a)(1) * * * The quantity eligible for diversion may be announced for any of the following varietal types of raisins: Natural (sun-dried) Seedless, Muscat (including other raisins with seeds), Sultana, Zante Currant, Monukka, and Other Seedless raisins.

* * * * *

Subpart—Supplementary Regulations

4. Section 989.210 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 989.210 Handling of varietal types of raisins acquired pursuant to a weight dockage system.

(a) *General.* A handler may acquire as standard raisins lots of Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, Other Seedless, Sultana, Zante Currant and Muscat (including other raisins with seeds) raisins under the weight dockage provisions described in §§ 989.212 and 989.213. * * *

* * * * *

5. Section 989.212 is amended by revising the first sentence of paragraph (a) and the heading of (b) to read as follows:

§ 989.212 Standard dockage.

(a) *General.* Subject to prior agreement between handler and tenderer, Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka and Other Seedless raisins containing from 5.1 through 10.0 percent, by weight, of substandard raisins may be acquired

by a handler under a weight dockage system. * * *

(b) *Substandard dockage table applicable to Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, and Other Seedless raisins.* * * *

* * * * *

6. Section 989.213 is amended by revising the first sentence of paragraph (a), and the headings of (b), (c) and (d) to read as follows:

§ 989.213 Maturity dockage.

(a) *General.* Subject to prior agreement between handler and tenderer, Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka and Other Seedless raisins containing from 35.0 through 49.9 percent, by weight, of well-matured or reasonably well-matured raisins may be acquired by a handler under a weight dockage system. * * *

(b) *Maturity dockage table applicable to Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, and Other Seedless raisins with 45.0 percent through 49.9 percent Grade B or better:* * * *

(c) *Maturity dockage table applicable to Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, and Other Seedless raisins with 40.0 percent through 44.9 percent Grade B or better:* * * *

(d) *Maturity dockage table applicable to Natural (sun-dried) Seedless, Golden Seedless, Dipped Seedless, Oleate and Related Seedless, Monukka, and Other Seedless raisins with 35.0 percent through 39.9 percent Grade B or better:* * * *

* * * * *

7. Section 989.701 is amended by revising paragraph (a) to read as follows:

Subpart—Quality Control

§ 989.701 Minimum grade and condition standards for natural condition raisins.

* * * * *

(a) *Natural (sun-dried) Seedless, Monukka and Other Seedless Raisins.* Natural condition Natural (sun-dried) Seedless, Monukka, and Other Seedless raisins shall have been prepared from sound, wholesome, matured grapes properly dried and cured, and shall meet the following additional requirements: * * *

* * * * *

8. Section 989.702 is amended by revising paragraph (c) to read as follows:

§ 989.702 Minimum grade standards for packed raisins.

* * * * *

(c) *Monukka and Other Seedless Raisins.* Packed Monukka and Other Seedless raisins shall at least meet the requirements prescribed in paragraph (a) of this section, except that the tolerance for moisture shall be 19 percent rather than 18 percent.

* * * * *

For the reasons set forth in the preamble, 7 CFR Part 999 is amended as follows:

Note.—This section will appear in the annual Code of Federal Regulations.

PART 999—SPECIALTY CROPS; IMPORT REGULATIONS

1. The authority citation for 7 CFR 999.300 continues to read as follows:

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

2. Section 999.300 is amended by revising paragraphs (a)(2) and (b)(5) to read as follows:

§ 999.300 Regulation governing importation of raisins.

(a) * * *

(2) "Varietal type" means the applicable one of the following: Thompson Seedless raisins, Muscat raisins, Layer Muscat raisins, Currant raisins, Monukka raisins, Other Seedless raisins, and Golden Seedless raisins.

* * * * *

(b) * * *

(5) With respect to Monukka and Other Seedless raisins—the requirements for Thompson Seedless Raisins prescribed in paragraph (b)(1) of this section, except that the tolerance for moisture shall be 19 percent rather than 18 percent;

* * * * *

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

September 1, 1988.

[FR Doc. 88–20338 Filed 9–7–88; 8:45 am]

BILLING CODE 3410–02–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB–79]

Staff Accounting Bulletin No. 79

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This staff accounting bulletin expresses the staff's views regarding the accounting for transactions undertaken by a company's principal stockholder(s) for the benefit of the company.

FOR FURTHER INFORMATION CONTACT: Kenneth V. Moreland, Office of the Chief Accountant (202–272–2130), or Howard P. Hodges, Jr. or Robert A. Bayless, Division of Corporation Finance (202–272–2553), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Jonathan G. Katz,

Secretary.

September 2, 1988.

PART 211—[AMENDED]

Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 79 to the table found in Subpart B.

Staff Accounting Bulletin No. 79

The staff hereby adds Section T to Topic 5 of the staff accounting bulletin series. Section T discusses the staff's views regarding the accounting for transactions undertaken by a company's principal stockholder(s) for the benefit of the company.

* * * * *

Topic 5: Miscellaneous Accounting

* * * * *

T. Accounting for Expenses or Liabilities Paid by Principal Stockholder(s)

Facts: Company X was a defendant in litigation for which the company had not recorded a liability in accordance with Statement of Financial Accounting Standards ("SFAS") No. 5. A principal stockholder of the company transfers a portion of his shares

to the plaintiff to settle such litigation. If the company had settled the litigation directly, the company would have recorded the settlement as an expense.

Question: Must the settlement be reflected as an expense in the company's financial statements, and if so, how? *Interpretive Response:* Yes. The value of the shares transferred should be reflected as an expense in the company's financial statements with a corresponding credit to contributed (paid-in) capital.

The staff believes that such a transaction is similar to those described in Interpretation No. 1 to Accounting Principles Board Opinion ("APB") No. 25 ("Interpretation No. 1") in which a principal stockholder [1] establishes or finances a stock option, purchase or award plan for one or more employees of the company. Interpretation No. 1 states that "if a principal stockholder's intention is to enhance or maintain the value of his investment by entering into such an arrangement, the corporation is implicitly benefiting from the plan by retention of, and possibly improved performance by, the employee. In this case, the benefits to a principal stockholder and to the corporation are generally impossible to separate. Similarly, it is virtually impossible to separate a principal stockholder's personal satisfaction from the benefit to the corporation." As a result, Interpretation No. 1 requires the company to account for such a transaction as if it were a compensatory plan adopted by the company, with an offsetting contribution to capital, unless: (1) The stockholder's relationship to the employee would normally result in generosity, (2) the stockholder has an obligation to the employee which is unrelated to employment, or (3) the company clearly does not benefit from the transaction.

The staff believes that the problem of separating the benefit to the principal stockholder from the benefit to the company cited in Interpretation No. 1 is not limited to transactions involving stock compensation. Therefore, similar accounting is required in this and other [2] transactions where a principal stockholder pays an expense for the company, unless the stockholder's action is caused by a relationship or obligation completely unrelated to his position as a stockholder or such action clearly does not benefit the company.

Some registrants and their accountants have taken the position that since SFAS No. 57 applies to these transactions and requires only the disclosure of material related party transactions, the staff should not require the accounting called for by Interpretation No. 1 for transactions other than those specifically covered by it. The staff notes, however, that SFAS No. 57 does not address the measurement of related party transactions and that, as a result, such transactions are generally recorded at the amounts indicated by their terms.[3] However, the staff believes that transactions of the type described above differ from the typical related party transactions.

The transactions for which SFAS No. 57 requires disclosure generally are those in which a company receives goods or services directly from, or provides goods or services directly to, a related party, and the form and terms of such transactions may be structured to produce either a direct or indirect benefit to the related party. The participation of a related party in such a transaction negates the presumption that transactions reflected in the financial statements have been consummated at arm's length. Disclosure is therefore required to compensate for the fact that, due to the related party's involvement, the terms of the transaction may produce an accounting measurement for which a more faithful measurement may not be determinable.

However, transactions of the type discussed in the facts given do not have such problems of measurement and appear to be transacted to provide a benefit to the stockholder through the enhancement or maintenance of the value of the stockholder's investment. The staff believes that the substance of such transactions is the payment of an expense of the company through contributions by the stockholder. Therefore, the staff determined that it was inappropriate to permit accounting according to the form of the transaction.

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BILLING CODE 8010-01-M

[1] SFAS No. 57, paragraph 24e, defines principal owners as "owners of record or known beneficial owners of more than 10 percent of the voting interests of the enterprise."

[2] For example, Staff Accounting Bulletin Topic 2-B indicates that expenses of a business combination accounting for as a pooling-of-interests that are paid by a combining company's stockholders should be reflected as an expense in the post-combination combined financial statements as required by APB No. 16. Similarly, Staff Accounting Bulletin Topic 1-B indicates that the separate financial statements of a subsidiary should reflect any costs of its operations which are incurred by the parent on its behalf. Additional, the staff notes that AICPA Technical Practice Aids § 4160 also indicates that the payment by principal stockholders of a company's debt should be accounted for as a capital contribution.

[3] However, in some circumstances it is necessary to reflect, either in the historical financial statements or a pro forma presentation (depending on the circumstances), related party transactions at amounts other than those indicated by their terms. Two such circumstances are addressed in Staff Accounting Bulletin Topic 1-B-1, Questions 3 and 4. Another example is where the terms of a material contract with a related party are expected to change upon the completion of an offering (i.e., the principal shareholder requires payment for services which had previously been contributed by the shareholder to the company).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8224]

Income Tax; Certain Indebtedness Treated as Payments on Installment Obligations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the treatment of indebtedness as payments on installment obligations. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations for the notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register. The Tax Reform Act of 1986 and the Revenue Act of 1987 made changes to the law. The regulations affect taxpayers who use the installment method to report sales of real or personal property made in the ordinary course of their business, or sales of real property used in a trade or business or held for the production of rental income, and provide them with guidance needed to comply with the law.

EFFECTIVE DATE: The regulations are effective on September 8, 1988 and are applicable to taxable years ending after December 31, 1986.

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

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) under section 453C of the Internal Revenue Code of 1986. These amendments conform the regulations to the provisions of section 811 of the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2085) (the 1986 Act) and section 10202(a) of the Revenue Act of 1987 (Pub. L. 100-203, 101 Stat. 1330-338) (the 1987 Act).

Explanation of Provisions in General

Section 453C limits the use of the installment method of reporting. The limitation applies to applicable installment obligations that are outstanding as of the close of the taxable year. Under the limitation, a taxpayer's allocable installment indebtedness for the taxable year is allocated to such applicable installment obligations and is deemed a payment (deemed payment) received on the obligations as of the close of the taxable year. The deemed payment is subject to the general rules of the installment method for determining gain and recovery of basis.

Actual payments received on an obligation subsequent to a deemed payment on the obligation are treated as

the receipt of tax paid amounts up to the amount of the deemed payment on the obligation and are not taken into account under the installment method under sections 453 and 453A (as in effect prior to their amendment by section 10202 of the 1987 Act, discussed more fully below). Only actual payments in excess of prior deemed payments are taken into account under pre-1987 Act sections 453 and 453A.

For any taxable year, the amount of a deemed payment on an applicable installment obligation cannot exceed the remaining contract price of the obligation. For this purpose, the remaining contract price is the excess, if any, of the total contract price for the disposition over deemed and actual payments received on the obligation. Actual payments that are not taken into account under pre-1987 Act sections 453 and 453A because they do not exceed previous amounts of deemed payments, as discussed above, are not treated as the partial receipt of the contract price. If, in any taxable year, allocable installment indebtedness exceeds the amount that may be deemed a payment on the obligations arising in that taxable year and outstanding as of the close of that taxable year, the excess is allocated to outstanding obligations arising in the immediately preceding taxable year and then to such obligations arising in the second immediately preceding taxable year.

Applicable Installment Obligations

The term "applicable installment obligation" includes any obligation arising from a disposition occurring after February 28, 1986, on the installment method, of personal property by a person who regularly sells or otherwise disposes of such property on the installment plan or real property held for sale to customers in the ordinary course of a trade or business. The term also includes any obligation arising from a disposition occurring after August 16, 1986, on the installment method, of real property used in a trade or business or held for the production of rental income, provided the sales price of such real property is more than $150,000. However, the term includes only those obligations of the type described above that are held by the person that sold the property for which the obligation was received (or a member of the same affiliated group as such a person) or that are transferred in a transaction in which the transferee takes the transferor's basis in the obligation.

Due to the limited future application of section 453C, the temporary regulations provide that the term "applicable installment obligation" includes an obligation arising from the disposition of an interest in an entity only if the disposition of the interest in the entity was for a principal purpose of avoiding section 453C. No inference is intended with respect to the treatment of a disposition of an interest in an entity for purposes of any other section of the Code, including section 453A.

Finally, the term "applicable installment obligation" does not include obligations arising from the disposition of personal use property or the disposition of property produced or used by a taxpayer in the trade or business of farming. These rules are discussed more fully below.

Allocable Installment Indebtedness

A taxpayer's allocable installment indebtedness for a taxable year is generally the excess (if any) of the installment percentage of the taxpayer's average quarterly indebtedness, over the aggregate amount treated as allocable installment indebtedness with respect to outstanding obligations arising in a prior year. However, this prior year allocable installment indebtedness must first be reduced by the amount of actual payments on applicable installment obligations that are not taken into account for purposes of pre-1987 Act sections 453 and 453A.

The installment percentage is the percentage that results from dividing the outstanding face amount of applicable installment obligations outstanding as of the close of the taxable year by the sum of the outstanding face amounts of all installment obligations and the adjusted bases of all assets held by the taxpayer as of the close of the taxable year. In determining the taxpayer's average quarterly indebtedness, payments made with a principal purpose of reducing or eliminating the indebtedness determination will be ignored. Thus, indebtedness decreases near the end of a quarter followed by indebtedness increases soon after the start of the next quarter may be ignored in computing average quarterly indebtedness.

If a taxpayer has no obligations arising from dealer dispositions of real or personal property outstanding at any time during a taxable year, the taxpayer does not compute average quarterly indebtedness for that taxable year. Instead, the taxpayer uses its indebtedness outstanding as of the close of the taxable year. If a taxpayer has obligations arising from dealer dispositions of real or personal property during the taxable year, but none of these obligations are outstanding as of the close of the taxable year, the taxpayer may compute allocable installment indebtedness using either average quarterly indebtedness or indebtedness outstanding as of the close of the taxable year.

In determining the adjusted bases of a taxpayer's assets, the taxpayer may use the deduction for depreciation which is used in computing earnings and profits under section 312(k), regardless of whether the taxpayer is required to compute earnings and profits. In addition, personal use property is not taken into account as an asset.

The temporary regulations provide that the outstanding face amount of an obligation is the total of all remaining payments due under the obligation, including the fair market value of any contingent payments.

Indebtedness

The temporary regulations adopt a broad definition of indebtedness. In addition to items typically regarded as indebtedness such as mortgages, promissory notes, debt instruments, loans, and bonds, the term includes all other liabilities of the taxpayer that are treated as such for federal income tax purposes as of the date such liabilities are so treated. In determining a taxpayer's indebtedness, any secured indebtedness substantially all the security for which is personal use property is not taken into account.

Aggregation

In applying section 453C, persons that are treated as a single employer under section 52 are generally treated as one taxpayer. In such case, each group member is treated as having the assets and liabilities of each other member.

The temporary regulations generally apply an entity level approach in the case of partnerships, S corporations, and trusts. In general, the entity level computation is made without regard to the applicable installment obligations, adjusted bases of assets, and liabilities of the partners or shareholders.

If, based upon the facts and circumstances, a transaction between an entity (including any corporation or partnership) and its owners is structured with a principal purpose of avoiding the application of section 453C, the temporary regulations treat these related parties as one taxpayer. Thus, allocable installment indebtedness is determined using the assets and liabilities of the entity and its owners.

Generally, when an entity and its members (or owners) are treated as one taxpayer, liabilities between the entity and its members (or owners) are disregarded for purposes of section 453C. Similarly, in the case of such persons, the ownership interest of a

member in an entity is not taken into account as an asset of the member.

Personal Use Property, Property Held for Rental Income, and Property Used in Farming

As noted above, obligations arising from the sale of personal use property are not applicable installment obligations subject to section 453C. Similarly, indebtedness secured by personal use property is not taken into account for purposes of section 453C. In general, the term "personal use property" means any property held by an individual substantially all the use of which is by an individual and not in connection with a trade or business or any activity described in section 212. Nevertheless, the term does not include cash or cash equivalents.

The temporary regulations provide that real property is not held for rental income if the primary motivation for holding the property is to realize gain from the appreciation of the property and the property generates no more than nominal rents.

As noted above, the term "applicable installment obligation" does not include any obligation arising from the disposition by a taxpayer of property used or produced in the trade or business of farming. A taxpayer for this purpose includes a farm-related taxpayer as that term is defined in section 464. This determination is based on the facts and circumstances.

Sales of Timeshares and Residential Lots

A taxpayer may elect to have section 453C not apply to certain sales. The election applies to any obligation arising from a sale in the ordinary course of the taxpayer's trade or business to an individual of (1) a timeshare right to use or ownership interest in residential real estate of not more than 6 weeks, or a right to use recreational campgrounds, and (2) an unimproved residential lot which the taxpayer (or a related party) will not improve, provided that the obligation is not guaranteed by any person other than an individual. In determining an individual's timeshare use or ownership, an interest held by the individual's spouse, children, grandchildren or parents is considered held by that individual. In addition, in determining whether a person is related to the seller, the rules of sections 267 and 707(b) apply with the modification that 10 percent is substituted for 50 percent each place it appears in those sections. Finally, a lot is not considered developed merely because it is provided with common infrastructure items such as roads or sewers.

If a taxpayer makes the election to have section 453C not apply, the taxpayer must pay interest on the portion of the tax for the taxable year that is attributable to the receipt of the deferred payment on the obligation. For this purpose, payments received in the year of sale are disregarded. The interest on the deferred payment on an obligation is computed from the date of sale to the date of payment using the applicable Federal rate in effect at the time of the sale. The regulations provide a simplified method of computing interest by allowing a taxpayer to elect to treat all payments as received in the middle of the year. The interest is subject to applicable limitations on the deductibility of interest and is reported as an addition to tax that is due as of the due date of the return (determined without regard to extensions) for the taxable year of the deferred payment.

Effective Date, Transitional Rules, and 1987 Act

As enacted by section 811(a) of the 1986 Act, section 453C applies to taxable years ending after December 31, 1986, with respect to dispositions of real or personal property in the ordinary course of the taxpayer's trade or business occurring after February 28, 1986, and with respect to dispositions of certain real property used in the taxpayer's trade or business or held for the production of rental income occurring after August 16, 1986. In the case of a disposition that occurs after February 28, 1986 (or August 16, 1986), but in a taxable year ending on or before January 1, 1987, the regulations provide that such disposition is treated as occurring on the first day of the taxpayer's first taxable year ending after December 31, 1986. This rule, nevertheless, does not affect the application of the general installment method rules applicable to the sale in the taxable year of the sale.

Section 811(c) (6) and (7) of the 1986 Act provides transitional rules that apply to dealer sales in the first and second taxable years ending after December 31, 1986. Under the transitional rules, the income or tax attributable to the application of section 453C to those sales is spread over a two-year or three-year period. These temporary regulations provide guidance with respect to those transitional rules.

In the case of dealer sales of real property, the temporary regulations provide that income attributable to a deemed 1987 payment on any applicable installment obligation is taken into account ratably over three taxable years beginning with the first taxable year ending after December 31, 1986. The deemed 1987 payment with respect to any installment obligation is the amount of allocable installment indebtedness for the first taxable year ending after December 31, 1986, that is treated under § 1.453C–5T(a) as a payment on such obligation. Similarly, any income attributable to a deemed 1988 payment on any applicable installment obligation is taken into account ratably over two taxable years beginning with the second taxable year ending after December 31, 1986. The deemed 1988 payment with respect to any installment obligation is the amount of allocable installment indebtedness for the second taxable year ending after December 31, 1986, that is treated under § 1.453C–5T (a) and (d) as a payment on such obligation.

In the case of dealer sales of personal property, the temporary regulations provide that, solely for purposes of determining the time for payment of tax and any interest with respect to such tax, the tax attributable to deemed 1987 payments is treated as imposed ratably over the three taxable years beginning with the first taxable year ending after December 31, 1986. Similarly, any tax attributable to deemed 1988 payments is treated as imposed ratably over the two taxable years beginning with the second taxable year ending after December 31, 1986.

The temporary regulations provide that § 1.453C–5T(b) (relating to the treatment of subsequent payments as the receipt of tax paid amounts) and § 1.453C–5T(c) (relating to the limitation on amounts treated as received) apply without regard to the section 811(c) (6) and (7) transitional rules. Thus, an amount is treated as received in a taxable year for purposes of § 1.453–5T (b) and (c), even though under the transitional rules income or tax attributable to such amount is taken into account ratably over the two-year or three-year period beginning with such taxable year.

In addition, the temporary regulations provide special rules for determining estimated taxes and for recognizing income or paying tax attributable to deemed 1987 and 1988 payments when a dealer dies, terminates or otherwise ceases to engage in a trade or business, changes from C corporation to S corporation status, or terminates an S election.

As amended by section 10202 of the 1987 Act, section 453C does not apply to installment obligations arising from dealer dispositions of property within the meaning of section 453(l) (as added to the Code by section 10202 of the 1987 Act) effective for dispositions after December 31, 1987. In the case of

installment obligations arising from dealer dispositions before January 1, 1988, section 453C does not apply to taxable years beginning after December 31, 1987.

In the case of installment obligations arising from nondealer dispositions within the meaning of section 453A (as amended by section 10202 of the 1987 Act), section 453C does not apply to dispositions in taxable years beginning after December 31, 1987. Nevertheless, a taxpayer may elect, according to the provisions of Notice 88–81, 1988–30 I.R.B 28, to have section 453C not apply to taxable years ending after December 31, 1986, with respect to dispositions occurring after August 16, 1986.

Special Analyses

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

Drafting Information

The principal authors of these temporary regulations are William L. Blagg of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service and Ewan D. Purkiss, formerly of that Division. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations on matters of both substance and style.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason it is impracticable to issue this Treasury decision with notice and public procedure under section (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

List of Subjects in 26 CFR 1.441–1—1.483–2

Income taxes, Accounting, Deferred compensation plans.

Amendments to the regulations

For the reasons set forth in the preamble, Title 26, Chapter 1, Subchapter A, Part 1 of the Code of Federal Regulations is amended as follows:

Paragraph 1. The authority for Part 1 is amended by adding the following citations to read as follows:

Authority: 26 U.S.C. 7805. * * * Sections 1.453C–6T, 1.453C–4T(a)(4), 1.453C–2T(b), and 1.453C–2T(a)(3) also issued under 26 U.S.C. 453C(e).

§ 1.453(c)–10T [Redesignated as § 1.453C–10T]

§§ 1.453C–0T through 1.453C–9T [Added]

Par. 2. New §§ 1.453C–0T through 1.453C–9T are added in the appropriate place. Section 1.453(c)–10T which was added at 53FR 26244 (July 12, 1988) is redesignated as § 1.453C–10T.

§ 1.453C–0T Table of contents (temporary).

This section lists the captions that appear in the temporary regulations under section 453C of the Internal Revenue Code.

§ 1.453C–1T Overview of limitation on installment method of reporting (temporary).

§ 1.453C–2T Applicable installment obligations (temporary).

(a) Definitions.
(1) In general.
(2) Obligations must be held by certain persons.
(3) Special rule for related party transactions.
(4) Exceptions.
(b) Look-through of disposition of interest in an entity.
(1) In general.
(2) Rule in case of tax avoidance.
(c) Certain AIOs treated as one.

§ 1.453C–3T Allocable installment indebtedness (temporary).

(a) Definition.
(1) In general.
(2) Installment percentage.
(3) Outstanding face amount.
(b) Reduction of AII for receipt of tax paid amounts.
(c) Additional rules for computing AII.
(1) Computing average quarterly indebtedness.
(2) Annual indebtedness used for casual sales.
(3) Rule in case of tax avoidance.
(4) Determination of adjusted bases of assets.
(5) Personal use property.
(d) Examples.

§ 1.453C–4T Indebtedness (temporary).

(a) Definition.
(b) Certain amounts not treated as indebtedness.
(1) In general.
(2) Related party debts.
(3) Certain secured indebtedness.

§ 1.453C–5T Mechanics of limitation on installment method (temporary).

(a) All deemed to be payment on AIOs.
(b) Treatment of subsequent actual payment.
(c) Remaining contract price limitation on paragraph (a) of this section.
(d) Excess AII.
(e) Deemed payments under section 453A (d).
(f) Examples.

§ 1.453C–6T Aggregation rules (temporary).

(a) In general.
(b) Controlled groups and businesses under common control.
(c) Passthrough entities.
(1) Application at entity level.
(2) AIOs held by owners of certain passthrough entities.
(d) Rule in case of tax avoidance.
(1) In general.
(2) Example.
(e) Disregard of amounts attributable to certain related party transactions.
(1) Liabilities.
(2) Assets.
(3) AIOs.
(4) Basis reduction.
(5) Example.
(f) Special rule in applying paragraph (b) and (d) of this section.
(g) Example.

§ 1.453C–7T Special rules (temporary).

(a) Personal use property.
(1) Definition.
(2) Indebtedness secured by personal use property.
(b) Real property held for rental income.
(1) In general.
(2) Rental of property incidental to holding such property for investment.
(c) Property used in trade or business of farming.

§ 1.453C–8T Sales of timeshares and residential lots (temporary).

(a) In general.
(1) Scope of election.
(2) Determination of timeshare ownership.
(3) Related persons.
(4) Residential lot.
(b) Interest must be paid on deferred tax.
(1) In general.
(2) Determination of tax liability attributable to receipt of payments on an obligation.
(3) Period for which interest is determined.
(i) In general.
(ii) Midpoint method.
(4) Computation of interest.
(5) Time when interest payment due.
(6) Deduction for interest allowable.
(c) Example.

§ 1.453C–9T Effective dates and transitional rules (temporary).

(a) Effective dates.
(1) In general.
(2) Certain dispositions deemed made on first day of effective taxable year.
(3) Example.
(b) Certain transitional rules.
(1) In general.
(2) Dealer sales of real property.
(3) Dealer sales of personal property.
(4) Application of § 1.453C–5T (b) and (c).
(5) Examples.
(6) Effect of death, termination or cessation of trade or business.
(i) In general.
(ii) Section 381 transactions.

(7) S corporation election and terminations.
(8) Tax returns to be identified.
(9) Estimated tax payments.

§ 1.453C-1T Overview of limitation on installment method of reporting (temporary).

Section 453C limits the use of the installment method under sections 453 and 453A (as in effect prior to their amendment by section 10202 of the Revenue Act of 1987) with respect to a taxpayer's applicable installment obligations. Under section 453C, a taxpayer with applicable installment obligations must compute the amount of the taxpayer's applicable installment indebtedness and then allocate on a pro rata basis such indebtedness to each applicable installment obligation arising in the taxable year and outstanding as of the close of the taxable year. The allocated amount is deemed to be a payment made on that obligation and is accounted for under the ordinary rules applicable to the installment method. Thus, the taxpayer must apply the gross profit ratio applicable to the installment sale to determine gain and recovery of basis with respect to the deemed payment.

§ 1.453C-2T Applicable installment obligations (temporary).

(a) *Definitions*—(1) *In general.* The term "applicable installment obligation" (AIO) means any obligation that arises from the disposition under the installment method—

(i) After February 28, 1986 and before January 1, 1988, of—

(A) Personal property by a person who regularly sells or otherwise disposes of personal property of the same type on the installment plan, or

(B) Real property held by the taxpayer for sale to customers in the ordinary course of business, and

(ii) After August 16, 1986, in taxable years beginning before January 1, 1988, of—

(A) Real property used in the taxpayer's trade or business if the sales price of such property exceeds $150,000, or

(B) Real property held for the production of rental income if the sales price of such property exceeds $150,000.

For purposes of paragraph (a)(1)(ii) of this section, in determining whether the sales price exceeds $150,000, all sales or exchanges that are part of the same transaction are treated as one sale or exchange. See section 1274A(d). For rules relating to the determination of whether property is held for the production of rental income, see § 1.453C-7T.

(2) *Obligations must be held by certain persons.* The term "AIO" includes any obligation described in paragraph (a)(1) of this section only if such obligation is held by—

(i) The taxpayer that disposed of the property for which the obligation was received,

(ii) Any person that is a member of the same affiliated group (within the meaning of section 1504(a), but without regard to section 1504(b)) as the taxpayer that disposed of the property for which the obligation was received, or

(iii) Any person whose basis in such obligation is determined (in whole or in part) by reference to another person's basis in such obligation. But only if that obligation was an AIO when held by such other person.

(3) *Special rule for related party transactions.* The term "AIO" includes any installment obligation arising from the disposition of property if—

(i) The taxpayer received such property from a related person, and

(ii) An AIO would have arisen from an installment sale of such property by such related person.

For purposes of this paragraph (a)(3), a person is related to the taxpayer if such person has a relationship to the taxpayer as specified in section 267(b) or 707(b), substituting 10 percent for 50 percent each place it appears.

(4) *Exceptions.* The term "AIO" does not include any obligation arising from any disposition of—

(i) Personal use property,

(ii) Property used or produced by the taxpayer in the trade or business of farming,

(iii) Personal property under a revolving credit plan, or

(iv) Personal property if such obligation meets the requirements of section 811(c)(2) of the Tax Reform Act of 1986.

For rules relating to the determination of whether property is personal use property, or property used or produced by a taxpayer in the trade or business of farming, see § 1.453C-7T.

(b) *Look-through of disposition of interest in an entity*—(1) *In general.* Except as provided in this paragraph (b), an obligation arising from an installment disposition of stock, a partnership interest, or a similar interest in any entity shall, for purposes of paragraph (a) of this section, be treated as arising from the disposition of such interest and not from a disposition of the underlying assets.

(2) *Rule in case of tax avoidance.* An obligation arising from an installment disposition of stock, a partnership interest, or a similar interest in any entity shall be deemed an AIO if, based on all the facts and circumstances, a principal purpose for disposing of the interest in the entity (rather than disposing of the entity's assets) was the avoidance of the application of section 453C and the regulations thereunder.

(c) *Certain AIOs treated as one.* For purposes of paragraph (a)(l) of this section, a dealer in personal property that, under section 453A (as in effect prior to its amendment by section l0202 of the Revenue Act of 1987), returns its income from AIOs under the installment method (without regard to section 453C) on an aggregate basis, may treat the obligations from which income is returned on such basis as one obligation. For purposes of the preceding sentence, income is returned on an aggregate basis if, with respect to all or part of its sales, a taxpayer computes a single gross profit ratio, and reports income and recovery of basis from such sales on the aggregate amount of payments received from such sales.

§ 1.453C-3T Allocable installment indebtedness (temporary).

(a) *Definition*—(1) *In general.* The term "allocable installment indebtedness" (AII), for any taxable year, means the excess of—

(i) The installment percentage of the taxpayer's average quarterly indebtedness for such taxable year, over

(ii) The aggregate amount treated as AII with respect to AIOs that are outstanding as of the close of the taxable year, but that arose in a prior taxable year.

(2) Installment percentage. For purposes of paragraph (a)(1) of this section, the term "installment percentage" means the percentage (not in excess of 100 percent) determined by dividing—

(i) The outstanding face amount of all AIOs of the taxpayer outstanding as of the close of the taxable year, by

(ii) The sum of—

(A) The aggregate adjusted basis of all assets other than installment obligations (including AIOs) held as of the close of the taxable year, and

(B) The outstanding face amount of installment obligations (including AIOs) outstanding as of such time.

(3) *Outstanding face amount.* The outstanding face amount of an obligation is the total of all remaining payments due under the obligation excluding interest (stated or unstated) or original issue discount. The outstanding face amount includes the fair market value of any contingent payment. Payments deemed received under

§ 1.453C–5T (a) or (d) do not affect the outstanding face amount of an obligation. However, payments deemed received under § 1.453C–5T(e) reduce the outstanding face amount of an obligation.

(b) *Reduction of AII for receipt of tax paid amounts.* For purposes of applying paragraph (a)(1)(ii) of this section, for any taxable year (and any subsequent taxable year) in which an actual payment is treated as a tax paid amount under § 1.453C–5T(b), the AII with respect to AIOs that are outstanding as of the close of the taxable year of actual payment, but that arose in a preceding taxable year shall be reduced (but not below zero) by the amount of such payment which pursuant to § 1.453C–5T(b) is not taken into account for purposes of sections 453 and 453A (as in effect prior to their amendment by section 10202 of the Revenue Act of 1987).

(c) *Additional rules for computing AII*—(1) *Computing average quarterly indebtedness.* For purposes of paragraph (a)(1)(i) of this section, the average quarterly indebtedness of a taxpayer is determined by adding the taxpayer's outstanding indebtedness (as defined in § 1.453C–4T) at the end of each 3-month period ending with or within the taxable year, and dividing the result by the number of 3-month periods ending with or within the taxable year. These 3-month periods are determined by reference to the 3-month period that ends on the last day of the taxable year. If such reference period does not end on the last day of a calendar month, it is deemed to end on the last day of such month, but only for the purpose of determining on what date such period begins and the immediately preceding 3-month period ends. Any remaining period of less than three months is treated as a 3-month period. Thus, for example, a taxable year beginning January 1, and ending on July 15 consists of the following three 3-month periods: May 1–July 15, February 1–April 30, and January 1–January 31. A taxable year consisting of less than 3 months is treated as one 3-month period ending on the last day of the taxable year.

(2) *Annual indebtedness used for casual sales.* In applying paragraph (a)(1)(i) of this section—

(i) If a taxpayer has no AIOs of the type described in paragraph (a)(1)(i) of § 1.453C–2T outstanding at any time during the taxable year, such taxpayer must substitute the taxpayer's outstanding indebtedness (as defined in § 1.453C–4T) as of the close of the taxable year for the taxpayer's average quarterly indebtedness.

(ii) If a taxpayer has AIOs of the type described in paragraph (a)(1)(i) of § 1.453C–2T outstanding during the taxable year, but no such obligations outstanding as of the close of the taxable year, such taxpayer may substitute the taxpayer's indebtedness as of the close of the taxable year for the taxpayer's average quarterly indebtedness.

(3) *Rule in case of tax avoidance.* For purposes of calculating average quarterly indebtedness under paragraph (c)(1) of this section or annual indebtedness under paragraph (c)(2) of this section, repayment of amounts with a principal purpose of avoiding or reducing the determination of such indebtedness shall be ignored. For example, decreases in indebtedness occurring toward the close of a 3-month period (or year, if applicable) that have the effect of reducing AII will be examined closely.

(4) *Determination of adjusted bases of assets.* For purposes of paragraph (a)(2) of this section, in determining the aggregate adjusted bases of assets (other than installment obligations) held as of the close of the taxable year, a taxpayer may elect to use the deduction for depreciation which is used in computing earnings and profits under section 312(k) (without regard to whether the taxpayer is required to compute earnings and profits). For rules relating to this election, see 26 CFR 5h.5 (temporary regulations relating to elections under the Tax Reform Act of 1986).

(5) *Personal use property.* For purposes of paragraph (a) of this section, personal use property and installment obligations arising from the sale of such property shall not be taken into account in determining the aggregate adjusted bases of assets and the aggregate face amount of installment obligations. For special rules relating to the determination of whether property is personal use property, see § 1.453C–7T.

(d) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). (i) A is a dealer in personal property and reports income on a fiscal year basis. For taxable year one, A receives one AIO. As of the close of taxable year one, the outstanding face amount of the one AIO is $384,000. The AIO calls for monthly payments of $4,000 for an eight-year period beginning in taxable year two. The AIO provides for adequate stated interest under sections 483 and 1274.

(ii) The adjusted bases of assets (other than installment obligations) held by A as of the close of taxable year one is $235,000. A has no installment obligations other than the AIO. A's average quarterly indebtedness is $280,000.

(iii) A's installment percentage is .62036, determined as follows:

$$\frac{\$384,000}{\$235,000+\$384,000}=.62036$$

Thus, for taxable year one A's AII is $173,701 (.62036×$280,000).

Example (2). (i) The facts are the same as in example (1). In taxable year two, A receives the 12 monthly payments due on the AIO arising in taxable year one for a total of $48,000. Thus, as of the close of taxable year two the outstanding face amount of the obligation arising in taxable year one is $336,000. In taxable year two, A receives an additional AIO with a face amount of $324,000. The AIO calls for monthly payments of $3,000 for a nine-year period beginning in taxable year three. The AIO provides for adequate stated interest under sections 483 and 1274. The adjusted bases of assets (other than installment obligations) held by A as of the close of taxable year two is $316,000. A's average quarterly indebtedness is $307,000 for taxable year two.

(ii) The actual payments of $48,000 that A received on the AIO arising in taxable year one do not exceed the $173,701 of AII previously allocated to the AIO. Thus, under § 1.453C–5T(b) such actual payments are not taken into account for purposes of sections 453 and 453A (as in effect prior to their amendment by the 1987 Act).

(iii) As of the close of taxable year two, the outstanding face amount of all AIOs outstanding as of such time (i.e., both the taxable year one and two obligations) is $660,000. A's installment percentage for taxable year two is .67623, determined as follows:

$$\frac{\$660,000}{\$316,000+\$660,000}=.67623$$

A's AII for taxable year two is $81,902, determined as follows:

(.67623×307,000)−(173,701−48,000)= $81,902 (First, A must multiply its installment percentage (.67623) by its average quarterly indebtedness ($307,000). From this result, A must subtract the AII with respect to the AIO arising in taxable year one but still outstanding as of the close of taxable year two ($173,701). However, the AII attributable to the year one AIO must, under paragraph (b) of this section, first be reduced by the actual payments of $48,000 received on the taxable year one obligation not taken into account under § 1.453C–5T(b) for purposes of pre-1987 Act sections 453 and 453A).

§ 1.453C–4T Indebtedness (temporary).

(a) *Definition.* For purposes of section 453C and the regulations thereunder, the term "indebtedness" includes only amounts treated as liabilities for federal income tax purposes as of the date such amounts are so treated under the taxpayer's method of accounting. The determination of whether an amount is

indebtedness for purposes of this paragraph (a) is made without regard to whether the amount is recourse or nonrecourse and without regard to whether the amount is secured or unsecured (except as provided in paragraph (b)(3) of this section). Thus, the term "indebtedness" includes but is not limited to—

(1) Loans, promissory notes, mortgages, bonds, debt instruments and other obligations issued for cash or property;

(2) Liabilities of an accrual basis taxpayer with respect to which the "all events test" has been met and "economic performance" has occurred within the meaning of section 461(h). Examples of such liabilities include compensation, product liability, interest, utilities, accounts payable, taxes (other than federal income taxes), etc.;

(3) Retainers, deposits and other prepayments received by the taxpayer for goods or services unless such amounts have been included in taxable income;

(4) Reserves with respect to which a federal income tax deduction is allowable (e.g., insurance company reserves and reserves for bad debts to the extent allowed under the Internal Revenue Code); and

(5) Customer deposits of a financial institution.

(b) *Certain amounts not treated as indebtedness*—

(1) *In general.* For purposes of section 453C and the regulations thereunder, the term "indebtedness" does not include amounts, such as certain reserves and contingent liabilities, not yet treated as liabilities for federal income tax purposes (including liabilities with respect to which the "all events test" has not been met and "economic performance" has not occurred within the meaning of section 461(h)). Thus, for example, the term "indebtedness" does not include—

(i) Federal income tax liability (including current federal income tax expense and deferred federal income tax expense); and

(ii) Wrapped indebtedness (as defined in § 15a.453–1(b)(3)(ii)) if such indebtedness is treated in accordance with the provisions of § 15a.453–1(b)(3)(ii).

(2) *Related party debts.* See § 1.453C–6T(e) for circumstances in which indebtedness between two or more persons treated as one taxpayer is not taken into account for purposes of section 453C and the regulations thereunder.

(3) *Certain secured indebtedness.* For purposes of section 453C and the regulations thereunder, the term "indebtedness" does not include indebtedness—

(i) Secured by personal use property (within the meaning of § 1.453C–7T(a)); or

(ii) Secured by an obligation described in paragraph (a)(1)(ii) of § 1.453C–2T, but only if such obligation is pledged as security for the indebtedness after December 17, 1987.

§ 1.453C–5T Mechanics of limitation on installment method (temporary).

(a) *All deemed to be payment on AIOs.* For purposes of sections 453 and 453A (as in effect prior to their amendment by section 10202 of the Revenue Act of 1987), the AII of a taxpayer for a taxable year is allocated to AIOs that arise in such taxable year, and that are outstanding as of the close of such taxable year. A taxpayer must allocate to each such AIO an amount of AII that bears the same ratio to total AII as the remaining contract price (see paragraph (c) of this section) of the AIO bears to the aggregate remaining contract price of all such AIOs. Subject to the limitation described in paragraph (c) of this section, the AII allocated to an AIO is deemed a payment received on the AIO immediately before the close of the taxable year.

(b) *Treatment of subsequent actual payment.* If any amount of AII (including excess AII as defined in paragraph (d) of this section) is deemed to be a payment on an AIO, a subsequent actual payment received on that AIO shall be treated as a tax paid amount and shall not be taken into account for purposes of sections 453 and 453A (as in effect prior to their amendment by section 10202 of the Revenue Act of 1987) to the extent of the amount of AII (and excess AII) deemed to be a payment on the AIO.

(c) *Remaining contract price limitation on paragraph (a) of this section.* Notwithstanding paragraph (a) of this section, the amount of AII deemed to be a payment on an AIO for any taxable year shall not exceed the remaining contract price with respect to the AIO. For purposes of this section, the remaining contract price with respect to an AIO means the excess (if any) of—

(1) The total contract price of the disposition from which the AIO arose, over

(2) The deemed and actual payments (other than payments treated as tax paid amounts under paragraph (b) of this section) received on the AIO.

(d) *Excess AII.* If, for any taxable year, the AII for the taxable year exceeds the amount to be allocated under paragraphs (a) and (c) of this section to AIOs arising in and outstanding as of the close of the taxable year, the excess AII shall, under the rules of this section, be allocated to outstanding AIOs that arose in the first immediately preceding taxable year, etc.

(e) *Deemed payments under section 453A(d).* Section 453A(d) (as added to the Code by section 10202(c) of the Revenue Act of 1987) provides that the proceeds of indebtedness secured by the pledge (after December 17, 1987) of an obligation described in § 1.453C–2T(a)(1)(ii) are treated as a payment received on such an obligation. Such proceeds are also treated as a deemed payment for purposes of section 453C and the regulations thereunder. Thus, deemed payments under section 453A(d) reduce the remaining contract price (see paragraph (c) of this section) of a pledged AIO. In addition, such deemed payments reduce the outstanding face amount (see § 1.453C–3T(a)(3)) of a pledged obligation.

(f) *Examples.* The provisions of this section may be further illustrated by the following examples:

Example (1). Assume taxpayer A has five AIOs arising in the taxable year. The total remaining contract price of the obligations as of the close of the taxable year is $2,100,000. The remaining contract price of each obligation as of such time is $420,000, $380,000, $440,000, $400,000 and $460,000, respectively. The ratio of the remaining contract price of each obligation to the sum of the remaining contract prices of all obligations is as follows:

Remaining contract price of each AIO	Sum of remaining contract prices of all AIOs	Ratio of each AIO to all AIOs
1. $420,000	$2,100,000	.20000
2. $380,000	2,100,000	.18095
3. $440,000	2,100,000	.20952
4. $400,000	2,100,000	.19048
5. $460,000	2,100,000	.21905

Assume that A has $460,000 of AII. Under the method of allocation described in paragraph (a) of this section, the amount of such AII allocated to, and deemed to be a payment on, each obligation is as follows:

Ratio of each AIO to all AIOs	AII	Deemed payment
1. .20000	$460,000	$92,000
2. .18095	460,000	83,237
3. .20952	460,000	96,379
4. .19048	460,000	87,621
5. .21905	460,000	100,763

Example (2). (i) In taxable year one, taxpayer B has two AIOs that arose during the taxable year. These AIOs have remaining contract prices as of the close of the taxable year of $25,000 (obligation one) and $16,000 (obligation two). In addition, in that year, B

has AII of $3,820. Under the method of allocation described in paragraph (a) of this section, $2,329 [($25,000/$41,000)×$3,820] is allocated to obligation one, and $1,491 [($16,000/$41,000)×$3,820] is allocated to obligation two. The allocated amounts are deemed to be payments received on such obligations. Each deemed payment is accounted for under the general rules of the installment method. Thus, the gross profit ratio applicable to the sales must be applied to the deemed payments to determine the amount of gain reportable under the installment method, and the amount of basis recovery.

(ii) During the second taxable year, B did not receive any additional AIOs. However, in that year, B received a $5,000 payment on obligation one and a $1,000 payment on obligation two. These actual payments are treated as the receipt of tax paid amounts not taken into account for purposes of sections 453 and 453A to the extent of the amounts of AII deemed in year one to be a payment on the obligations. Since $2,329 was deemed to be a payment in year one on obligation one, only the remaining amount of the actual payment on obligation one, $2,671, is subject to the general rules of installment method reporting. The entire $1,000 payment on obligation two is treated as the receipt of tax paid amounts ($1,491 was deemed to be a payment in year one on obligation two). Thus, under paragraph (a) of this section, the remaining contract price of obligation one is $20,000 ($25,000−$2,329−$2,671), and the remaining contract price of obligation two is $14,509 ($16,000−$1,491).

(iii) For the second taxable year, B has AII of $4,081. Since no AIOs arose in the second taxable year, the entire amount of the AII is excess AII, and must be allocated to the AIOs that arose in the immediately preceding taxable year and are outstanding as of the close of the current taxable year. Under the method of allocation described in paragraph (a) of this section, $2,365 [($20,000/$34,509)×$4,081] of the excess AII is allocated to obligation one, and $1,716 [($14,509/$34,509)×$4,081] is allocated to obligation two. These amounts are deemed to be payments received on the obligations in the second taxable year.

Example (3). In taxable year one, taxpayer C receives two AIOs with remaining contract prices at the close of the year of $10,000 (obligation one) and $12,000 (obligation two). C has no AII in year one. No payments are received on these obligations in taxable year two. In taxable year two, however, C sells property for a total contract price of $9,000. For the sale, C receives a cash down payment of $1,800 and an AIO (obligation three) with a face amount of $7,200 due in a balloon payment five years from the date of the sale. For taxable year two, C has $7,857 of AII to be allocated. However, the maximum amount allocable to obligation three (the only AIO arising in taxable year two) is $7,200, the excess of the total contract price ($9,000) over the amount of the actual payment ($1,800) received before the close of the taxable year. The remaining amount of AII, $657, is excess AII. The excess AII is allocated to the two obligations that arose in taxable year one and are still outstanding as of the close of taxable year two. Under the method of allocation described in paragraph (a) of this section, $298.64 [($10,000/$22,000)×$657] of the $657 excess AII is allocated to, and treated as a payment on, obligation one, and $358.36 [($12,000/$22,000×$657] of the excess AII is allocated to, and treated as a payment on, obligation two.

§ 1.453C–6T Aggregation rules (temporary).

(a) *In general.* This section prescribes rules relating to the circumstances in which related taxpayers will be treated as one taxpayer for purposes of section 453C and the regulations thereunder.

(b) *Controlled groups and businesses under common control.* For purposes of section 453C and the regulations thereunder, all persons treated as a single employer under section 52 shall be treated as one taxpayer. Thus, for example, corporations that are members of the same controlled group (within the meaning of section 52(a)) shall be treated as one taxpayer. Similarly, trades or businesses under common control shall be treated as one taxpayer. In applying section 453C and the regulations thereunder to a group of persons treated as one taxpayer under this paragraph (b), AII is determined using the aggregate of the assets and liabilities of all the members of the group. The total AII so determined then is allocated (under § 1.453C–5T) to all AIOs held by members of the group. For purposes of this paragraph (b), the term "trades or businesses under common control" means a group of trades or businesses (including partnerships, sole proprietorships, etc.) that is—

(1) A "parent-subsidiary group under common control" as defined in § 1.52–1(c),

(2) A "brother-sister group under common control" as defined in § 1.52–1(d), or

(3) A "combined group under common control" as defined in § 1.52–1(e).

(c) *Passthrough entities*—(1) *Application at entity level.* Except as otherwise provided in paragraphs (b) and (d) of this section, section 453C and the regulations thereunder apply to a passthrough entity without regard to the adjusted bases of assets or the liabilities of the entity's members. For purposes of this section, the term "passthrough entity" includes, but is not limited to, partnerships, S corporations, and trusts.

(2) *AIOs held by owners of certain passthrough entities*—(i) *Partnerships.* For purposes of applying section 453C and the regulations thereunder to the AIOs separately held by a partner of a partnership subject to this paragraph (c), such partner shall take into account the adjusted basis of its partnership interest (as opposed to its share of the adjusted bases of underlying assets) and its share of partnership liabilities (as determined under section 752).

(ii) *S corporations.* For purposes of applying section 453C and the regulations thereunder to AIOs separately held by a shareholder of an S corporation subject to this paragraph (c), such shareholder shall take into account the adjusted basis of the shareholder's stock in such corporation and the shareholder's adjusted basis in any liability of the corporation that is treated under section 1366(d) as indebtedness of the corporation to the shareholder. In addition, such shareholder must take into account any indebtedness of the shareholder, the proceeds of which are loaned to the corporation.

(d) *Rule in case of tax avoidance*—(1) *In general.* If, based on the facts and circumstances, a transaction between an entity (including any corporation, partnership, or other entity) and its owners is structured for a principal purpose of avoiding the application of section 453C, such entity and its owners shall be treated as one taxpayer for purposes of section 453C and the regulations thereunder (if not otherwise treated as one taxpayer under paragraph (b) of this section). In applying section 453C and the regulations thereunder to an entity and its owners under this paragraph (d), the entity and its owners shall determine the total AII using the aggregate of all the assets and all the liabilities of the entity and its owners. The total AII so determined then is allocated (under § 1.453C–5T) to the AIOs held by the entity and its owners.

(2) *Example.* Individual taxpayer A owns an unencumbered parcel of real property from which A derives rental income. The adjusted basis of this property is $400,000. A is primarily liable on unsecured indebtedness of $500,000. In anticipation of a sale of the rental property A organizes Y, an S corporation, and transfers the rental property to Y. A principal purpose of the transaction is to avoid the application of section 453C and the regulations thereunder. Corporation Y sells the property for an installment note with an outstanding face amount of $600,000 on December 31, 1987. Absent the application of the rule in paragraph (d)(1) of this section, no AII would be allocated to the installment obligation since Y has no outstanding indebtedness. However, the rule in paragraph (d)(1) of this section requires that A and Y be treated as one taxpayer. Thus, the indebtedness of A is allocated to the installment obligation and treated as a payment received by Y on December 31, 1987.

(e) *Disregard of amounts attributable to certain related party transactions*—(1) *Liabilities.* Except as provided in

paragraph (e)(3) of this section, a liability that arises as a result of any transaction (including the issuance of stock or a partnership interest) between any persons treated as one taxpayer under paragraph (b) or (d) of this section shall not be considered an asset of the lender or indebtedness of the borrower for purposes of section 453C and the regulations thereunder.

(2) *Assets.* An ownership interest in any entity shall not be treated as an asset of the owner of such interest if the entity and its owners are treated as one taxpayer under paragraph fb) or (d) of this section.

(3) *AIOs.* Notwithstanding paragraph (e)(1) of this section, an AIO arising from a transaction described in that paragraph shall be treated as an AIO of the persons treated as one taxpayer. In addition, the persons treated as one taxpayer are treated as having a liability represented by the AIO. In computing the indebtedness of such persons, however, the face amount of a liability represented by such an AIO may be reduced by the amount of the basis reduction required by paragraph (e)(4) of this section.

(4) *Basis reduction.* For purposes of section 453C and the regulations thereunder, the adjusted basis of property transferred from one member of a group treated as one taxpayer to another member of such group shall be reduced by the portion of the gain that has not been recognized or otherwise has been deferred as of the end of the taxable year (but before the application of this section for such taxable year), either under § 1.1502–13 or because the gain on the transfer was eligible to be reported under the installment method.

(5) *Example.* The following example illustrates the provisions of this paragraph (e):

Example. (i) Corporations Y and Z are accrual basis, calendar year C corporations all of the outstanding stock of which is owned by A, an individual. At the end of 1987, Y has a note receivable from Z, and Z has a note payable to Y. This note relates to funds Z borrowed from Y. In addition, Z has an AIO with a face amount of $1,000,000 outstanding at the end of 1987 representing the purchase price of property sold by Z to Y. Z had a $600,000 basis in the property.

(ii) Pursuant to paragraph (b) of this section, Y and Z are treated as one taxpayer for purposes of applying section 453C. Paragraph (e)(1) of this section provides that the loan between Y and Z is disregarded both as indebtedness (i.e., the note payable) and as an asset (i.e., the note receivable) of the Y–Z group. Pursuant to paragraph (e)(3) of this section, however, the $1,000,000 AIO held by Z is not disregarded as an AIO of the Y–Z group for purposes of section 453C. In addition the $1,000,000 liability represented by the AIO is treated as indebtedness of the Y–Z group. The property Y purchased from Z is treated as an asset of the Y–Z group, but pursuant to paragraph (e)(4) of this section the basis of such property for purposes of section 453C must be reduced by the $400,000 gain deferred by Z in the installment sale. The Y–Z group may also reduce the $1,000,000 indebtedness by the same $400,000 pursuant to paragraph (e)(3) of this section.

(f) *Special rule in applying paragraphs (b) and (d) of this section.* If two or more persons treated as one taxpayer under paragraphs (b) or (d) of this section have different taxable years, whenever a taxable year of such a person that holds an AIO ends, the taxable years of all other persons treated as one taxpayer are deemed to end for purposes of applying paragraph (b) and (d) of this section. The AII computed and allocated under this special rule shall be treated as a payment received on the last day of the actual taxable year of each such person.

(g) *Example.* The following example illustrates the provisions of this section:

Example. (i) X, a widely held C corporation, is the common parent of wholly owned subsidiaries S1 and S2. X is a calendar year taxpayer, and S1 and S2 are fiscal year taxpayers with taxable years ending November 30. Under paragraph (b) of this section, X, S1 and S2 are treated as one taxpayer.

(ii) On November 30, 1987, S1 has outstanding no AIOs, but S2 has outstanding one AIO (obligation one) and X has outstanding one AIO (obligation two). These obligations arose from dealer sales occurring on July 1, 1987, and have outstanding face amounts (as of November 30, 1987) of $100,000 and $150,000, respectively. The remaining contract prices of the obligations as of November 30, 1987, are also $100,000 and $150,000. The adjusted bases of X's assets (other than obligation two and the stock in S1 and S2) on November 30, 1987, is $38,000. The adjusted bases of S1's assets and S2's assets (other than obligation one) are $46,000 and $57,000, respectively. Thus, the aggregate adjusted bases of the group's assets (other than installment obligations) is $141,000. The liabilities of the group are as follows:

	2/28/87	5/31/87	8/31/87	11/30/87
X	$20,000	$22,000	$19,000	$24,000
S1	37,000	31,000	23,000	35,000
S2	10,000	8,000	11,000	18,000
Total	67,000	61,000	53,000	77,000

Thus, the aggregate average quarterly indebtedness for the group is $64,500. The group's installment percentage is .63939 ($250,000/($250,000 + $141,000)). Thus, the aggregate AII for the group is $41,241 ($64,500 × .63939). Both obligation one and obligation two arose during the taxable year ending November 30, 1987. Therefore, the aggregate AII must be allocated to obligations one and two using the method described in § 1.453C–5T(a): $16,496 (($100,000/$250,000) × $41,241) to obligation one and $24,745 (($150,000/$250,000) × $41,241) to obligation two. These amounts are treated as payments received on the obligations on November 30, 1987. S2 must report the income resulting from the deemed payment on obligation one on its income tax return for the taxable year ending November 30, 1987. X, however, must report the income resulting from the deemed payment on obligation two on its income tax return for the taxable year ending December 31, 1987.

(iii) On December 31, 1987, obligations one and two remain outstanding and no other AIOs are held by X, S1, or S2. The adjusted bases of X's assets (other than obligation two and the stock in S1 and S2) on December 31, 1987 is $39,000. The adjusted bases of S1's assets and S2's assets (other than obligation one) are $45,000 and $58,000 respectively. Thus, the aggregate adjusted basis of the group's assets (other than installment obligations) is $142,000. The liabilities of the group are as follows:

	3/31/87	6/30/87	9/30/87	12/31/87
X	$21,000	$21,000	$18,000	$25,000
S1	38,000	32,000	24,000	36,000
S2	10,000	8,000	11,000	18,000
Total	69,000	61,000	53,000	79,000

Thus, the aggregate average quarterly indebtedness for the group is $65,500. The group's installment percentage is .63776 ($250,000/($250,000 + $142,000)). Thus, the aggregate AII for the group is $532 (($65,500 × .63776) − $41,241 (the AII previously allocated to obligations one and two)). Since no obligations arose during December 1987, the $532 of AII must be allocated, under § 1.453C–5T(a), to obligations one and two: $213 to obligation one and $319 to obligation two. These amounts are treated as a payment received on the obligations on December 31, 1987. Thus, X reports on its 1987 tax return income attributable to $25,064 of deemed payments.

§ 1.453C–7T Special rules (temporary).

(a) *Personal use property*—(1) *Definition.* For purposes of section 453C and the regulations thereunder, the term "personal use property" means any property held by an individual substantially all the use of which is by an individual and not in connection with a trade or business or any activity described in section 212. The term does not include cash or cash equivalents.

(2) *Indebtedness secured by personal use property.* For purposes of paragraph (c) (1) and (2) of § 1.453C–3T (relating to the determination of annual and average quarterly indebtedness), any indebtedness secured by personal use property (as defined in paragraph (a) of this section), or by installment obligations arising from the disposition

of such property, shall not be taken into account. For purposes of this section, indebtedness is "secured by personal use property" only if at least 90 percent of the value of the property securing the indebtedness is personal use property. However, if the amount of the indebtedness secured by personal use property exceeds the fair market value of such property, the excess is not considered to be secured by personal use property.

(b) *Real property held for rental income*—(1) *In general.* For purposes of section 453C and the regulations thereunder, except as otherwise provided in this paragraph (b), real property is held for the production of rental income if—

(i) The property is used by customers or held for use by customers; and

(ii) The gross income attributable to the property represents (or, in the case of property held for use by customers, the expected gross income attributable to the property would represent) amounts paid or to be paid principally for the use of such property (without regard to whether the use of the property by customers is pursuant to a lease or pursuant to a service contract or other arrangement that is not denominated a lease).

(2) *Rental of property incidental to holding such property for investment.* For purposes of this paragraph (b), real property is not held for the production of rental income if—

(i) The principal purpose for holding the property is to realize gain from the appreciation of the property (without regard to whether it is expected that such gain will be realized from the sale or exchange of the property in its current state of development); and

(ii) The annual gross rental income from the property (based on the 12 months preceding the disposition of such property) is less than two percent of the lesser of—

(A) The unadjusted basis of such property; or

(B) The selling price of such property (as defined in § 15a.453–1(b)(2)(ii)).

For purposes of this paragraph (b)(2), the term "unadjusted basis" means adjusted basis determined without regard to any adjustment described in section 1016 that decreases basis.

(c) *Property used in trade or business of farming.* For purposes of section 453C and the regulations thereunder, property is used in the trade or business of farming if such property is used by the taxpayer in the trade or business of farming as that term is defined in section 2032A(e) (4) or (5). For this purpose, the term "taxpayer" includes a "farm-related taxpayer," as defined in section 464 (f)(3)(B). The term "AIO," within the meaning of § 1.453C–2T (a), does not include any obligation arising from the disposition of property used or produced by a taxpayer (or a farm-related taxpayer) in the trade or business of farming.

§ 1.453C–8T Sales of timeshares and residential lots (temporary).

(a) *In general*—(1) *Scope of election.* If a taxpayer elects, section 453C and the regulations thereunder (except for this section) shall not apply to any AIO—

(i) Which arises from a sale in the ordinary course of the taxpayer's trade or business to an individual of—

(A) Any—

(*1*) Timeshare right to use or timeshare ownership interest in residential real property for not more than 6 weeks, or

(*2*) The right to use specified campgrounds for recreational purposes, or

(B) Any residential lot but only if the taxpayer (or any related person) is not to make any improvements with respect to such lot, and

(ii) Which is not guaranteed or insured by any person other than an individual. (Thus, for example, any Federal or private insurance relating to the payment of an obligation disqualifies such obligation from the election described in this paragraph (a)).

For rules relating to the making of the election to have section 453C not apply, see 26 CFR 5h.5 (temporary regulations relating to elections under the Tax Reform Act of 1986). Notwithstanding paragraph (a)(2) of those regulations, a taxpayer may make this election at any time on or before December 7, 1988. In the case of AIOs held by a partnership, S corporation, or trust, the election must be made by such entity and not by its owners.

(2) *Determination of timeshare ownership.* For purposes of paragraph (a)(1)(i)(A)(*1*) of this section, a timeshare right to use, or a timeshare interest in property held by an individual's spouse, children, grandchildren, or parents is considered held by such individual.

(3) *Related persons.* For purposes of paragraph (a)(1)(i)(B) of this section, a person is related to the taxpayer if such person has a relationship to the taxpayer as specified in section 267(b) or 707(b) determined by substituting 10 percent for 50 percent each place it appears.

(4) *Residential lot.* For purposes of paragraph (a)(1)(i)(B) of this section, a residential lot is a parcel of unimproved land upon which the purchaser intends to construct (or intends to contract to have another person construct) a dwelling unit for use as a residence by the purchaser. The terms "dwelling unit" and "use as a residence" as used herein are defined by section 280A. A parcel of land shall not be considered improved merely because it has been provided with common infrastructure items such as roads and sewers.

(b) *Interest must be paid on deferred tax*—(1) *In general.* If a taxpayer makes the election to have section 453C and the regulations thereunder (excluding this paragraph (b)) not apply to any obligation described in paragraph (a) of this section, the taxpayer (or the taxpayer's owners, in the case of a partnership, S corporation, or trust) shall pay interest on the portion of any tax for any taxable year (determined without regard to any deduction allowable for such interest) that is attributable to the receipt of payments on the obligation in such year (other than payments received in the taxable year of sale).

(2) *Determination of tax liability attributable to receipt of payments on an obligation.* For purposes of paragraph (b)(1) of this section, the tax liability attributable to a payment received on any obligation for which the election under paragraph (a) of this section has been made shall be determined by allocating to such payment its applicable share of the excess of—

(i) The taxpayer's tax liability (including alternative minimum tax) for such year determined with regard to payments received on all obligations for which the election under paragraph (a) of this section applies, over

(ii) The taxpayer's tax liability (including alternative minimum tax) for such year determined without regard to payments received on all obligations for which the election under paragraph (a) of this section applies.

For this purpose, the applicable share of the excess that is allocated to a payment is an amount that bears the same ratio to the total excess as the gain attributable to the payment bears to the total gain attributable to all such payments received in the taxable year. The tax liability is determined without regard to any deduction for interest determined under paragraph (b) of this section. In the case of obligations held by a partnership, S corporation, or trust, the determination described in this paragraph (b)(2) shall be made at the owner level.

(3) *Period for which interest is determined*—(i) *In general.* Interest on any tax liability attributable to an obligation to which the election described in paragraph (a) of this section applies shall be determined for the period from the date of the sale to

the date the payment on the obligation is received.

(ii) *Midpoint method.* For purposes of paragraph (b)(3)(i) of this section, a taxpayer may, at the taxpayer's option, treat all payments received during the taxable year on all obligations to which the election described in paragraph (a) of this section applies as if they were received on the day halfway between the beginning and end of the taxable year (midpoint method). A taxpayer adopts the midpoint method by using it to compute the interest owed under this paragraph (b). The midpoint method is a method of accounting that must be used consistently from one taxable year to the next and cannot be revoked without the consent of the Commissioner. In addition, for its first taxable year ending after December 31, 1986, a taxpayer may adopt the midpoint method by using it on an amended return filed on or before December 7, 1988.

(4) *Computation of interest.* The interest for the period described in paragraph (b)(3) of this section shall be determined by using the applicable Federal rate under section 1274(d) (determined without regard to section 1274(d) (2) or (3)) in effect as of the date of the sale, compounded semiannually, or as prescribed by the Commissioner in revenue rulings under section 1274, an equivalent rate based on compounding periods other than a semiannual period (e.g., annual, quarterly, or monthly compounding periods).

(5) *Time when interest payment due.* Any interest determined under paragraph (b) of this section shall be treated as an addition to tax for the taxable year during which the payment on the obligation is received, and the last date for payment of such tax shall be the due date (determined without regard to extensions) of the return for such taxable year.

(6) *Deduction for interest allowable.* The interest determined under paragraph (b) of this section shall be taken into account in computing the amount of any deduction allowable to the taxpayer for interest paid or accrued for the taxable year in which the payment on the obligation is received (subject to any applicable limitation on the deductibility of interest on an underpayment of tax). The timing of such deduction shall be determined under the taxpayer's method of accounting.

(c) *Example.* The provisions of this section may be illustrated by the following example:

Example. (i) A, an accrual basis corporation, is a calendar year dealer in undeveloped residential lots. In taxable year 1987, A receives two AIOs for which the election described in paragraph (a) of this section is effective. The face amount of each obligation is $180,000. Each obligation provides for monthly principal payments of $1,000 for a period of 15 years and for adequate stated interest under sections 483 and 1274. The dates of the two sales are June 1, 1987, and July 1, 1987. The first monthly payment on the June 1, 1987 obligation is due on July 1, 1987, and on the first of every month thereafter until satisfied. The first monthly payment on the July 1, 1987 obligation is due on September 1, 1987, and on the first day of every month thereafter until satisfied.

(ii) Under paragraph (b)(1) of this section, no interest is required to be paid on the payments received in the year of sale. The first payments on which interest is required to be paid occur on January 1, 1988. With respect to the June 1, 1987 obligation, the first payment is received 7 whole monthly compounding periods from the date of the sale. With respect to the July 1, 1987 obligation, the first payment is received 6 whole monthly compounding periods from the date of the sale.

(iii) The gross profit ratio applicable to the June 1, 1987 sale is 0.6600. The gross profit ratio applicable to the July 1, 1987 sale is 0.4500. A has taxable income unrelated to these installment sales of $21,000 determined without regard to any deduction allowable for the interest determined under paragraph (b) of this section. With respect to the June 1, 1987 sale, A receives a partial payment of principal of $1,000 on January 1, 1988. Based on the gross profit ratio, $660 of the payment is gain and $340 is recovery of basis. With respect to the July 1, 1987 sale, A receives a partial payment of principal of on January 1, 1988. Based on the gross profit ratio, $450 of the payment is gain and $550 is recovery of basis. A's gain on the other eleven 1988 payments on the June 1, 1987 obligation is $7,260. A's gain on the other eleven payments on the July 1 obligation is $4,950. Thus, A recognizes total gain of $13,320 on the two obligations in 1988.

(iv) A determines that it has no alternative minimum tax liability when it calculates income with regard to payments received on all obligations for which the election has been made. Thus, A's tax liability determined with regard to such payments is $5,148 (0.15×$34,320). A also determines that it has no alternative minimum tax liability when it calculates income without regard to payments received on all obligations for which the election has been made. Thus, A's tax liability determined without regard to such payments is $3,150 (0.15×$21,000). The excess of A's tax liability with regard to such payments over its tax liability without regard to such payments is $1,998. Of this $1,998 excess, $99 ($1,998×$660/$13,320) is allocated to and treated as the tax liability attributable to the January 1, 1988 payment on the June 1, 1987 obligation and $67 ($1,998×$450/$13,320) is allocated to and treated as the tax liability attributable to the January 1, 1988 payment on the July 1, 1987 obligation.

(v) The long-term applicable Federal rate in effect on the date of the June 1, 1987 sale is 8.34 percent, compounded monthly. The long-term applicable Federal rate in effect on the date of the July 1, 1987 sale is 8.57 percent, compounded monthly. The amount of interest due with respect to the January 1, 1988 payment on the June 1, 1987 obligation is $4.92. The amount of interest due with respect to the January 1, 1988 payment on the July 1, 1987 obligation is $2.92. These amounts of interest are taken into account as interest on an underpayment of tax in computing the amount of any deduction allowable for interest for taxable year 1988, and are treated as an addition to tax due on the due date of A's return for taxable year 1988. A must similarly determine the interest due on the gain with respect to each monthly payment received on the two obligations in taxable year 1988. However, if A adopts the midpoint method described in paragraph (b)(3)(ii) of this section, A may treat all of the payments received during 1988 on each of the obligations as received on July 1, 1988.

§ 1.453C-9T Effective dates and transitional rules.

(a) *Effective dates*—(1) *In general.* Except as otherwise provided, section 453C and the regulations thereunder apply to taxable years ending after December 31, 1986, with respect to dispositions of property occurring after February 28, 1986, and before January 1, 1988.

(2) *Certain dispositions deemed made on first day of effective taxable year.* In the case of a taxpayer's first taxable year ending after December 31, 1986, for purposes of section 453C and the regulations thereunder only, any disposition made after February 28, 1986 (or August 16, 1986, in the case of a disposition of real property of the type described in § 1.453C–2T(a)(1)(ii)), and before the beginning of such taxable year, is deemed made on the first day of such taxable year.

(3) *Example.* The following example illustrates the provisions of paragraph (a) of this section:

Example. X is a fiscal year dealer in personal property with a taxable year ending on June 30. After February 28, 1986, but before July 1, 1986 (i.e., during X's 1986 taxable year), X receives AIOs. After June 30, 1986 (i.e., during X's 1987 taxable year), X receives more AIOs. Since the AIOs received after June 30, 1986, are received in X's first taxable year ending after December 31, 1986, section 453C applies to these obligations under paragraph (a)(1) of this section. Under paragraph (a)(2) of this section, for purposes of section 453C and the regulations thereunder, the AIOs arising after February 28, 1986, and on or before June 30, 1986, are deemed to arise on July 1, 1986, the first day of X's first taxable year beginning after February 28, 1986 and ending after December 31, 1986, and section 453C applies to the obligations.

(b) *Certain transitional rules*—(1) *In general*— (i) *Applicability.* This paragraph (b) applies to AIOs that—

(A) Arise from the sale of property in the ordinary course of the trade or business of the taxpayer; and

(B) Are outstanding as of the close of the first or second taxable year of the taxpayer ending after December 31, 1986.

(ii) *Deemed 1987 and 1988 payments.* (A) The term "deemed 1987 payment" means, with respect to any AIO to which paragraph (b) of this section applies, the amount of AII for the first taxable year of the taxpayer ending after December 31, 1986, that is treated under § 1.453C–5T(a) as a payment on such obligation.

(B) The term "deemed 1988 payment" means, with respect to any AIO to which paragraph (b) of this section applies, the amount of AII for the second taxable year of the taxpayer ending after December 31, 1986, that is treated under § 1.453C–5T (a) and (d) as a payment received on such obligation.

(iii) *Income attributable to deemed 1987 and 1988 payments.* The income of a taxpayer that is attributable to a deemed 1987 payment or a deemed 1988 payment on an AIO to which paragraph (b) of this section applies is the amount that bears the same relationship to such deemed payment as the gross profit (realized or to be realized when payment is completed) bears to the total contract price.

(2) *Dealer sales of real property*—(i) *Applicability.* This paragraph (b)(2) applies to installment obligations described in paragraph (b) of this section that arise out of a sale of real property.

(ii) *Treatment of deemed 1987 payments.* A taxpayer's income attributable to deemed 1987 payments on AIOs to which paragraph (b)(2) of this section applies shall be taken into account ratably over the three taxable years beginning with the first taxable year of the taxpayer ending after December 31, 1986.

(iii) *Treatment of deemed 1988 payments.* A taxpayer's income attributable to deemed 1988 payments on AIOs to which paragraph (b)(2) of this section applies shall be taken into account ratably over the two taxable years beginning with the second taxable year of the taxpayer ending after December 31, 1986.

(3) *Dealer sales of personal property*—(i) *Applicability.* This paragraph (b)(3) applies to installment obligations described in paragraph (b) of this section that arise out of a sale of personal property.

(ii) *Treatment of deemed 1987 and 1988 payments.* Solely for purposes of determining the time for payment of tax and any interest payable with respect to such tax—

(A) Any increase in tax imposed on a taxpayer that is attributable to deemed 1987 payments on AIOs to which paragraph (b)(3) of this section applies shall be treated as imposed ratably over the three taxable years beginning with the first taxable year of the taxpayer that ends after December 31, 1986; and

(B) Any increase in tax imposed on a taxpayer that is attributable to deemed 1988 payments on AIOs to which paragraph (b)(3) of this section applies shall be treated as imposed ratably over the two taxable years beginning with the second taxable year of the taxpayer that ends after December 31, 1986.

(iii) *Increase in tax attributable to deemed 1987 and 1988 payments.* (A) The increase in tax imposed on a taxpayer that is attributable to deemed 1987 payments on AIOs to which this paragraph (b)(3) applies is the excess (if any) of—

(*1*) The tax that would be imposed on the taxpayer for the first taxable year ending after December 31, 1986, determined by taking into account income attributable to deemed 1987 payments on AIOs to which this paragraph (b)(3) applies, over

(*2*) The tax that would be imposed on the taxpayer for such taxable year, determined without regard to income attributable to deemed 1987 payments on AIOs to which paragraph (b)(3) of this section applies.

(B) The increase in tax imposed on a taxpayer that is attributable to deemed 1988 payments on AIOs to which paragraph (b)(3) of this section applies is the excess (if any) of—

(*1*) The tax that would be imposed on the taxpayer for the second taxable year ending after December 31, 1986, determined by taking into account income attributable to deemed 1988 payments on installment obligations to which paragraph (b)(3) of this section applies, over

(*2*) The tax that would be imposed on the taxpayer for such taxable year, determined without regard to income attributable to deemed 1988 payments on AIOs to which paragraph (b)(3) of this section applies.

(iv) *Tax imposed.* For purposes of paragraph (b)(3) of this section, the tax imposed is the greater of zero or the amount of tax imposed by chapter 1 of the Internal Revenue Code of 1986 (including the alternative minimum tax) determined without reducing such amount by—

(A) The credit under section 31 for tax withheld;

(B) The credit under section 33 for tax withheld at source on nonresident aliens and foreign corporations; and

(C) Payments of tax or estimated tax by the taxpayer.

(4) *Application of §§ 1.453C–5T (b) and (c).* The taxable year in which an amount is treated as received for purposes of § 1.453C–5T(b) (relating to the treatment of subsequent payments as the receipt of tax paid amounts) and § 1.453C–5T(c) (relating to the limitation on amounts treated as received) shall be determined without regard to paragraphs (b) (2) and (3) of this section. Thus, an amount is treated as received in a taxable year for such purposes even if under paragraph (b) (2) or (3) of this section, the income or tax attributable to such amount is taken into account or treated as imposed over the two-year or three-year period beginning with such taxable year.

(5) *Examples.* The following examples illustrate the application of paragraph (b) of this section:

Example (1). (i) Corporation X is a fiscal year dealer in real property with a taxable year ending on June 30. At the close of its taxable year ending June 30, 1987, X holds 10 AIOs, all of which arose during that taxable year. These AIOs provide for adequate stated interest under sections 483 and 1274, and each has a year-end balance of $210,000.

(ii) Assume that the adjusted bases of assets (other than AIOs) held by X as of the close of the taxable year is $2,000,000. Thus, the installment percentage for the taxable year is .51220 ($2,100,000 (the outstanding face amount as of the close of the taxable year of all AIOs) /$4,100,000 (the sum of such amount and the adjusted bases of other assets held by X as of the close of the taxable year)). Assume further that X's average quarterly indebtedness for the taxable year is $460,976. Accordingly, the amount of AII for the taxable year is $236,112 (.51220×$460,976). Under § 1.453C–5T(a), a ratable portion of this amount is treated as a payment received on each AIO for X's taxable year ending June 30, 1987. Thus, X has a deemed 1987 payment of $23,611 on each of the 10 AIOs.

(iii) Assume that the gross profit ratio with respect to each of the 10 sales for which an AIO was received is 45.833%. Thus, $10,822 ($23,611×.45833) of each deemed 1987 payment is income. (The remaining portion of each deemed payment ($12,789) is recovery of basis.) Accordingly, the total income attributable to the deemed 1987 payments is $108,220. Assume X has no other items of income or loss for the taxable year.

(iv) Under paragraph (b)(2)(ii) of this section, the $108,220 is taken into account ratably over the three taxable years beginning with taxable year 1987. Thus, $36,073 is taken into account in each such taxable year.

(v) During its taxable year ending June 30, 1988, X receives actual payments of $20,000 on each of the AIOs. All of each $20,000 payment is treated as the receipt of a tax paid amount under § 1.453C-5T(b) even though only one third of the income attributable to the 1987 AII has been taken into account.

Example (2). The facts are the same as in example (1), except that X receives the 10 AIOs in its 1988 taxable year. Under paragraph (b)(2)(iii) of this section, the $108,220 of income attributable to the deemed 1988 payments of $236,112 is taken into account ratably over the two taxable years beginning with taxable year 1988. Thus, $54,110 is taken into account in each such taxable year.

Example (3). (i) Corporation X is a calendar year dealer in personal property. On March 1, 1987, X receives an AIO with a face amount of $1,000,000 arising from the sale of property in the ordinary course of its business. The obligation provides for adequate stated interest under sections 483 and 1274. The gross profit ratio on the obligation is 66%. The total gain from such disposition is thus $660,000. X receives no payments on the obligation during 1987. On December 31, 1987, X has no other AIOs outstanding. X has no other items of income or deduction for the taxable year and no credits. X has AII of $650,000 for 1987. Thus, X has a deemed 1987 payment of $650,000 on the AIO and total income attributable to the deemed 1987 payment of $429,000 ($650,000 × .66).

(ii) The increase in tax attributable to the deemed 1987 payment is $29,346, the excess of $161,346 over $132,000. The tax imposed with regard to income attributable to the deemed 1987 payment is $161,346, determined as follows:

Regular tax computation:

Taxable income	$429,000
Regular tax	$161,346

Alternative minimum tax computation:

Alternative minimum taxable income	$660,000
Tentative minimum tax	$132,000

Because X's regular tax liability exceeds its tentative minimum tax, $161,346 is the tax imposed. The tax imposed without regard to income attributable to the deemed 1987 payment is $132,000, determined as follows:

Regular tax computation:

Taxable income	$0
Regular tax	$0

Alternative minimum tax computation:

Alternative minimum taxable income	$660,000
Tentative minimum tax	$132,000

Because X's regular tax is $0 and X's tentative minimum tax exceeds its regular tax by $132,000, $132,000 is the tax imposed.

(iii) The increase of $29,346 attributable to the deemed 1987 payment will be imposed ratably over the three taxable years beginning with X's 1987 taxable year. Thus, X will pay taxes of $141,782 ($161,346-$29,346+$9,782) in 1987 and have an additional tax liability of $9,782 in 1988 and in 1989. X may not include the additional $9,782 in the amount of its regular tax in 1988 or 1989 for purposes of determining whether it is liable for alternative minimum tax. X is liable for an additional $9,782 of tax in each of those years whether it is liable for alternative minimum or regular tax in those years.

Example (4). (i) The facts are the same as in example (3), except that in 1988 X has a $30,000 net operating loss ("NOL") for purposes of the regular tax and a $10,000 NOL for purposes of the alternative minimum tax. Both of these NOLs are carried back under section 172(b) to 1987. Since the NOL carryback to 1987 is taken into account in computing X's taxable income for 1987, X's increase in tax attributable to the deemed 1987 payment must be computed.

(ii) The increase in tax attributable to the deemed 1987 payment is $19,362, the excess of $149,362 over $130,000. The tax imposed with regard to income attributable to the deemed 1987 payment is $149,362, determined as follows:

Regular tax computation:

Taxable income before NOL carryback	$429,000
NOL carryback	(30,000)
Taxable income	$399,000
Regular tax	$149,362

Alternative minimum tax computation:

Alternative minimum taxable income before NOL carryback	$660,000
NOL carryback	(10,000)
Alternative minimum taxable income	$650,000
Tentative minimum tax	$130,000

Because X's regular tax liability exceeds its tentative minimum tax, $149,362 is the tax imposed. The tax imposed without regard to income attributable to the deemed 1987 payment is $130,000, determined as follows:

Regular tax computation:

Taxable income	$0
Regular tax	$0

Alternative minimum tax computation:

Alternative minimum taxable income before NOL carryback	$660,000
NOL carryback	(10,000)
Alternative minimum taxable income	$650,000
Tentative minimum tax	$130,000

Since X's regular tax is $0 and X's tentative minimum tax exceeds its regular tax by $130,000, that amount is the tax imposed.

(iii) The increase of $19,362 attributable to the deemed 1987 payment will be imposed ratably over the three taxable years beginning with 1987. X will thus pay taxes of $136,454 ($149,362-$19,362+$6,454) in 1987 and have an additional tax liability of $6,454 in each of 1987 and 1988.

(6) *Effect of death, termination or cessation of trade or business*—(i) *In general.* If a taxpayer holding an AIO to which this section applies dies, terminates, or ceases to engage in the trade or business to which the obligation relates and paragraph (b)(6)(ii) of this section does not apply, the income or tax attributable to deemed 1987 or 1988 payments not taken into account under this section in any prior taxable year shall be taken into account in the taxable year of such death, termination, or cessation.

(ii) *Section 381 transactions.* If a corporation acquires AIOs to which this section applies in a transaction to which section 381 applies and continues to engage in the trade or business to which the obligations relate, the income or tax attributable to deemed 1987 or 1988 payments on such obligations shall be taken into account—

(A) By treating the acquiring corporation as if it were the distributor or transferor corporation for taxable years of the acquiring corporation ending after the last day of the last taxable year of the distributor or transferor corporation; and

(B) By taking into account for purposes of paragraphs (b) (2) and (3) of this section the taxable years of the distributor or transferor corporation beginning after December 31, 1986, and the taxable years of the acquiring corporation ending after the last day of the last taxable year of the distributor or transferor corporation.

(7) *S corporation election and terminations.* (i) *In general.* For purposes of paragraph (b)(6)(i) of this section, neither the election by an existing corporation taxable under subchapter C to be taxable under subchapter S nor the termination of an S election shall be treated as the termination of the taxpayer or the cessation by the taxpayer of engaging in the trade or business.

(ii) *Change to S corporation status.* If the tax attributable to deemed 1987 or 1988 payments on AIOs held by a corporation is treated under paragraph (b)(3) of this section as imposed ratably over a two-year or three-year period and the corporation is not an S corporation in the first year of such period, the S corporation shall pay the portion of the tax treated as imposed for taxable years in which the corporation is an S corporation. In any case in which the tax attributable to deemed 1987 or 1988 payments is payable by an S corporation, the tax treated as imposed for a taxable year shall be due as of the due date (without regard to extensions) of the return of the S corporation for

such taxable year, and shall be reported on such return.

(iii) *Termination of S corporation election.* If the tax attributable to deemed 1987 or 1988 payments on AIOs held by a corporation is treated under paragraph (b)(3) of this section as imposed ratably over a two-year or three-year period and the corporation is an S corporation in the first year of such period, the owners shall pay the entire amount of such tax even if a portion of the tax is treated as imposed for a taxable year in which the corporation is no longer an S corporation.

(8) *Tax returns to be identified.* A dealer in personal property reporting a ratable portion of the tax attributable to deemed 1987 or 1988 payments on a return must type or legibly print on page 1 of the return (or such other place on the return as may be required by any instruction to the return) the following: "Section 453C tax computation."

(9) *Estimated tax payments*—(i) *In general.* For purposes of sections 6654(d)(1)(B) and 6655(d)(1)(B) (relating to the determination of the required payment for estimated tax purposes), the tax shown on the return for the taxable year (or, if no return is filed, the tax for such taxable year) shall—

(A) Exclude any portion of the tax attributable to deemed 1987 or 1988 payments that pursuant to paragraph (b)(3)(ii) of this section is treated as imposed in a taxable year other than the current taxable year;

(B) Include any portion of the tax attributable to deemed 1987 or 1988 payments that pursuant to paragraph (b)(3)(ii) of this section is treated as imposed in the current taxable year.

(ii) *Manner in which income is taken into account.* For purposes of sections 6654(d)(2) and 6655(e), a taxpayer (whether a dealer in real or personal property) shall—

(A) Treat the 1987 portion of the income attributable to deemed 1987 payments on installment obligations to which paragraph (b) of this section applies (see paragraph (b)(9)(iii)(A) of this section) as income for the last month of the taxpayer's first taxable year ending after December 31, 1986; then

(B) Treat a ratable portion of one half of the remaining income attributable to deemed 1987 payments on installment obligations to which paragraph (b) of this section applies as income for each month of the taxpayer's second taxable year ending after December 31, 1986; then

(C) Treat a ratable portion of the remaining income attributable to deemed 1987 payments on installment obligations to which paragraph (b) of this section applies as income for each month of the third taxable year ending after December 31, 1986;

(D) Treat the 1988 portion of the income attributable to deemed 1988 payments on installment obligations to which paragraph (b) of this section applies (see paragraph (b)(9)(iii)(B) of this section) as income for the last month of the second taxable year ending after December 31, 1986; then

(E) Treat a ratable portion of the remaining income attributable to deemed 1988 payments on installment obligations to which paragraph (b) of this section applies as income for each month of the third taxable year ending after December 31, 1986.

(iii) *1987 and 1988 portions.* (A) The 1987 portion of the income attributable to deemed 1987 payments on installment obligations to which paragraph (b) of this section applies is the amount of such income that would be taken into account for the first taxable year ending after December 31, 1986, determined as if all such obligations were obligations to which paragraph (b)(2) of this section applies.

(B) The 1988 portion of the income attributable to deemed 1988 payments on installment obligations to which paragraph (b) of this section applies is the amount of such income that would be taken into account for the second taxable year ending after December 31, 1986, determined as if all such obligations were obligations to which paragraph (b)(2) of this section applies.

(iv) *Example.* The following example illustrates the application of paragraph (b)(9) of this section:

Example. The facts are the same as in example (1) of paragraph (b)(5) of this section. For purposes of determining annualized income installments of estimated tax, X shall treat the 1987 portion of the income attributable to deemed 1987 payments on installment obligations to which this section applies as income for the last month of X's taxable year ending in 1987. For this purpose, the 1987 portion of the income attributable to such payments is the amount of such income that is taken into account for X's taxable year ending in 1987 under paragraph (b)(2) of this section. Thus, X must treat $36,073 as income for the last month of X's taxable year ending in 1987. In addition, X must treat a ratable portion of the remaining income attributable to the deemed 1987 payments ($72,146) as income for each month of the two succeeding taxable years (which also end June 30). Thus, $3,006 ($72,146/24) is treated as income for each such month. Since the 1987 portion of the income attributable to deemed payments is determined by treating all installment obligations to which this section applies as if they were obligations to which paragraph (b)(2) of this section applies, the result would be the same even if X were a dealer in personal property.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: August 10, 1988.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88-20264 Filed 9-7-88; 8:45 am]

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20 CFR Parts 1 and 602

[T.D. 8226]

Consolidated Return Regulations—Adjustments Reflecting a Restructuring of a Consolidated Group

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary and final regulations.

SUMMARY: This Treasury Decision amends final regulations and adds new temporary regulations concerning consolidated returns. The temporary and final regulations supplement the existing regulations by providing rules for determining the basis and the earnings and profits of members of an affiliated group filing consolidated returns following certain changes in the structure of the group, where the group remains in existence. The temporary and final regulations also supplement the rules that make the common parent the agent of the group by providing for alternative agents of the group if a corporation ceases to be the common parent, whether or not the group remains in existence. The text of the temporary and final regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the proposed rules section of this issue of the **Federal Register.**

EFFECTIVE DATE: These regulations are effective September 7, 1988 and generally apply to changes in the structure of the group after September 7, 1988.

FOR FURTHER INFORMATION CONTACT: Judith C. Winkler of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:LR:T, (Telephone 202-566-3458, not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative

Procedure Act (5 U.S.C. 533). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545–1046. The estimated average burden associated with the collection of information in this regulation is 30 minutes per respondent or recordkeeper.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances.

For further information concerning this collection of information, and where to submit comments on this collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the Federal Register.

Background

This document adds new temporary regulations §§ 1.1502–31T, 1.1502–33T, and 1.1502–77T to Part 1 of Title 26 of the Code of Federal Regulations and makes conforming amendments to §§ 1.1502–31, 1.1502–33, and 1.1502–77. The temporary and final regulations added by this document will remain in effect until superseded by later temporary or final regulations relating to these matters.

Explanation of Provisions

Section 1.1502–31T

The temporary regulations provide new basis rules for certain transactions by which the common parent of the group ceases to be the common parent as a result of a nonrecognition transaction, but the group remains in existence, and the stockholders of the former common parent immediately before the change own 80% or more of the value of the stock of the new common parent immediately after the change. The principal transaction covered by the temporary regulations is one in which a holding company acquires the stock of the common parent in exchange for the stock of the holding company, and the group remains in existence under § 1.1502–75(d) (2) or (3).

A group can adopt a holding company structure without changing its common parent simply by transferring ("dropping down") all the assets and liabilities of the common parent to a newly formed subsidiary in exchange for the subsidiary's stock. In general, under section 358(a), the common parent's basis in the stock of the subsidiary is the same as its basis in the assets transferred. Under section 358(d), basis is reduced by any liabilities of the common parent assumed by the subsidiary or to which the transferred property is subject. Section 357(c) provides that if the liabilities assumed by the subsidiary, plus the liabilities to which the transferred property is subject, exceed the adjusted basis of the transferred property, the excess is treated as gain.

If, on the other hand, the group adopts a holding company structure in which a newly created holding company becomes the common parent in a nonrecognition transaction, the result is essentially the same, but the holding company's basis in the stock of the former common parent (or its successor) may be determined by reference to its basis in the hands of the former common parent's shareholders or the inside net asset basis of the former common parent, depending on how the transaction is accomplished. The different basis results are not appropriate, since the structure that results from the transactions is essentially the same. In addition, the difference is inconsistent with § 1.1502–75(d), which provides for the continued existence of the group in these circumstances, in recognition of the fact that the group is essentially unchanged.

The temporary regulations provide basis rules for these transactions that approximate the effects of a dropdown of the assets by the common parent into a newly formed subsidiary. Under § 1.1502–31T, the holding company's basis in the stock of the former common parent is a "net inside basis". In general, net inside basis is the amount of money and the basis of the property of the former common parent, minus the liabilities of the former common parent and the liabilities to which its property is subject. If the liabilities exceed the sum of the amount of money and the basis of the property of the former common parent, the excess is treated as an excess loss account in the stock of the former common parent. This is analogous to the treatment under § 1.1502–14(a)(2) of nondividend distributions by a subsidiary in excess of the basis of its stock. If the group structure change is accomplished by a merger of a corporation into the former common parent, the former common parent's basis is increased by the basis of the stock of the merged corporation. In addition, adjustments may be required with respect to other property transferred into or out of this former common parent in connection with the change.

If the former common parent does not remain in existence after the change, the rules previously described apply to other members to the extent they have acquired the former common parent's assets or assumed its liabilities. For example, if a member acquires the assets and assumes the liabilities of the former common parent, the basis of the stock of the member is adjusted to reflect the net basis of those assets and liabilities.

Section 1.1502–33T

Under § 1.1502–33, the earnings and profits account of any member, including the common parent, generally reflects the earnings and profits of that member and its share of the earnings and profits of every member below it in the chain, earned during the period of their consolidation. Because the present rules do not adjust members' earnings and profits accounts following certain structural changes, distributions from the parent may not be characterized as dividends notwithstanding the presence of sufficient earnings and profits in the group.

Under the present rules, when a lower-tier corporation distributes earnings and profits to its parent as a dividend, adjustments are made to prevent earnings and profits that already have been included in the parent's earnings and profits from being reflected by the parent a second time. Although the parent's earnings and profits are increased by the amount of the dividend (§ 1.1502–33(c)(1)), they are reduced by the same amount by reflecting in earnings and profits the reduction in the basis of the stock of its subsidiary (§§ 1.1502–32(b)(2)(iii)(*a*) and 1.1502–33(c)(4)(ii)(*a*)). These adjustments offset each other, leaving the parent's earnings and profits account at the same level before and after the distribution.

For example, assume that a group consists of P and its wholly owned subsidiary, S, and that P and S have earned $100 and $200 respectively. S has $200 of earnings and profits. P's earnings and profits account is $300, representing $100 of its own earnings and profits plus the $200 of earnings and profits of S under §§ 1.1502–32(b)(1)(i), § 1.1502–32(e)(2), and 1.1502–33(c)(4)(ii). If S distributes all of its earnings and profits, the earnings and profits of P are first increased, then decreased by the amount of the distribution ($200), so that after the distribution P's earnings and

profits are still $300 and S's earnings and profits are zero.

However, assume that P's shareholders organize a new corporation, HC. HC organizes a wholly owned subsidiary, T, and T merges into P in a reverse acquisition. The group remains in existence with HC as the new common parent. Because HC is a newly created corporation, it has no earnings and profits attributable to its own operations. In addition, HC's earnings and profits account does not reflect P's $300 of earnings and profits. If P distributes its earnings and profits to HC, a literal application of the consolidated return regulations would require offsetting adjustments to HC's earnings and profits account, even though the reason for making these adjustments, to avoid the duplication of the same earnings and profits in a single corporation, is not present. HC could then distribute the group's $300 of earnings to its shareholders (formerly the shareholders of P) without dividend treatment.

New § 1.1502–33T(a)(1) provides, in general, that if there is a change in the common parent of a group, but the group remains in existence and the stockholders of the former common parent immediately before the change own 80 percent or more of the value of the stock of the new common parent immediately after the change, the earnings and profits of the new common parent are adjusted to reflect the earnings and profits of the former common parent.

Under § 1.1502–33T(a)(2), similar rules apply to a change in structure among lower tier members. Appropriate adjustments to earnings and profits are made when the position of a member in the chain of includible corporations changes, and the group remains in existence.

New § 1.1502–33T(b) provides that if § 1.1502–33T(a) does not apply to a change in the group's structure but the group remains in existence, then the negative investment adjustment made by the distributee with respect to a dividend distribution in a taxable year ending after September 7, 1988, does not apply to reduce the earnings and profits of the distributee to the extent that the distribution is out of earnings and profits of the distributee, but would have been so reflected if the new rule had applied. The effect is that such a distribution will increase the distributee's earnings and profits.

Section 1.1502–77T

Section 1.1502–77T supplements § 1.1502–77 by providing for alternative agents for the group, for purposes of mailing notices of deficiencies and for giving waivers of the statute of limitations, when the corporation that is the common parent of a group ceases to be the common parent. Under § 1.1502–77T, any one or more of the corporations listed below are deemed to be agents of the group for these purposes:

(a) The common parent of the group for all or any part of the year to which the notice or waiver applies,

(b) A successor to the former common parent in a transaction to which section 381(a) applies,

(c) The agent designated by the group under § 1.1502–77(d), or

(d) If the group remains in existence under § 1.1502–75(d) (2) or (3), the common parent of group at the time the notice is mailed or the waiver given.

Special Analyses

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6). The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Drafting Information

The principal author of the temporary regulations is Judith C. Winkler of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, other personnel of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects

26 CFR 1.1501–1 through 1.1564–1

Income taxes, Controlled group of corporations, Consolidated returns.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, Parts 1 and 602 of Title 26 of the Code of Federal Regulations are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

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

Authority: 26 U.S.C. 7805; * * * §§ .11502–31T, 1.1502–33T, and 1.1502–77T also issued under 26 U.S.C. 1502.

Par. 2. Section 1.1502–31 is amended by adding paragraph (c) to read as follows:

§ 1.1502–31 Basis of property.

* * * * *

(c) *Cross-reference to temporary regulations.* For rules relating to the basis of stock of a subsidiary when a group is restructured and the common parent is changed, see § 1.1502–31T.

Par. 3. There is added immediately after § 1.1502–31 a new § 1.1502–31T to read as follows:

§ 1.1503–31T Basis of stock of subsidiary (temporary).

(a) *Basis of stock following certain changes in structure of group*—(1) *Application.* This paragraph (a) applies to a nonrecognition transaction, as defined in section 7701(a)(45), occurring after September 7, 1988 in which the corporation that is the common parent of the group ceases to be the common parent (the "former common parent"), and—

(i) The group remains in existence under § 1.1502–75(d)(2) or

(ii) The group remains in existence under § 1.1502–75(d)(3), and the stockholders of the common parent immediately before the transaction own, immediately after the transaction, 80 percent or more of the fair market value of the outstanding stock of the new common parent.

For purposes of this section, the terms "group structure change" and "change" refer to a transaction described in this paragraph (a)(1).

(2) *Former common parent remains in existence*—(i) *General rule.* If the former common parent remains in existence after a group structure change, the basis of its stock in the hands of another member (the "owning member"), immediately after the transaction, equals the sum of—

(A) The net inside basis of the property of the former common parent (other than property received in the group structure change) immediately after the group structure change,

(B) The owning member's basis (or excess loss account, treated for this purpose as negative basis), immediately before the change, in the stock of any corporation whose assets or liabilities were acquired by the former common parent in the change (the "merged corporation"), and

(C) The amount (whether positive or negative) determined by subtracting from—

(1) The aggregate adjusted basis of property transferred by the owning member to the merged corporation in the group structure change that is not transferred in the change to the shareholders of the former common parent,

(2) The aggregate amount of any liabilities (other than liabilities described in section 357(c)(3)) of the owning member assumed by the former common parent or to which the transferred property is subject.

(ii) *Net inside basis defined.* For purposes of paragraph (a)(2)(i)(A) of this section, the net inside basis of the former common parent equals the amount (whether positive or negative) determined by subtracting from—

(A) The amount of money and the aggregate adjusted basis of the property of the former common parent (other than property received in the group structure change),

(B) The aggregate amount of any liabilities of the former common parent (other than liabilities described in section 357(c)(3) and liabilities assumed or acquired in the group structure change), immediately after the group structure change.

(iii) *Allocation of net inside basis.* A member may take into account under paragraph (a)(2)(i)(A) only the percentage of net inside basis equal to the percentage of the stock of the former common parent the member owns immediately after the group structure change. If the former common parent has more than one class of stock outstanding immediately after the group structure change, net inside basis is first allocated among the classes in proportion to the value of each class.

(iv) *Property transferred to former common parent shareholders.* A member's basis in the stock of the former common parent, as determined under paragraph (a)(2)(i) of this section, is reduced (below zero if necessary) by the fair market value of any consideration transferred to the shareholders of the former common parent with respect to their stock in the former common parent in the group structure change and furnished by the merged corporation.

(v) *Negative basis treated as an excess loss account.* If an owning member's basis in the stock of the former common parent, as determined under this paragraph (a)(2), is negative, the member shall treat the negative basis as an excess loss account with respect to the stock, and the member's basis in the stock immediately after the change is zero.

(vi) *Adjustments to higher tiers.* If stock of the former common parent is acquired by a member other than the new common parent, appropriate adjustments shall be made to the basis (in the hands of a member) of the stock of each member that owns directly or indirectly stock in the former common parent to take into account the amounts described in paragraph (a)(2)(i) (A) and (C) and (a)(2) (iii) and (iv) of this section.

(vii) *Subsequent distributions.* All distributions out of earnings and profits, accumulated before the change, of a former common parent whose stock basis is determined under this paragraph (a)(2) are deemed to be out of earnings and profits accumulated in prior consolidated return years beginning after December 31, 1965.

(3) *Former common parent does not remain in existence.*—(i) *General rule.* If the former common parent goes out of existence in a group structure change, the basis in the hands of a member (the "owning member") of the stock of each member that acquires property from the former common parent, or assumes liabilities of the former common parent (the "acquiring member"), immediately after the change, equals the sum of—

(A) The owning member's basis (or excess loss account, treated for this purpose as negative basis) in the acquiring member's stock immediately before the acquisition of property or liabilities of the former common parent,

(B) The former common parent's net basis in the property acquired from it by the acquiring member in the group structure change, and

(C) The net basis of property acquired in the group structure change by the acquiring member from the owning member that is not transferred in the change to the former common parent or its shareholders.

(ii) *Net basis defined.* For purposes of paragraph (a)(3)(i) (B) and (C) of this section, net basis equals the amount (whether positive or negative) determined by subtracting from—

(A) The amount of money and the aggregate adjusted basis of the acquired property,

(B) The aggregate amount of any liabilities of the former common parent (other than liabilities described in section 357(c)(3)) assumed by the acquiring member or to which the acquired property is subject.

(iii) *Adjustments.* The owning member's basis in the stock of the acquiring member, as determined under paragraph (a)(3)(i) of this section, is—

(A) Decreased (below zero if necessary) by the fair market value of any consideration exchanged for the former common parent's assets in the group structure change and furnished by the acquiring member in the group structure change, and

(B) Increased by the amount of any gain recognized by the former common parent on the transfer of its assets to the acquiring member in the group structure change.

(iv) *Negative basis treated as an excess loss account.* If an owning member's basis in the stock of an acquiring member, as determined under this paragraph (a)(3), is negative, the member shall treat the negative basis as an excess loss account with respect to the stock, and the member's basis in the stock immediately after the group structure change is zero.

(v) *Adjustments to higher tiers.* If assets or liabilities of the former common parent are acquired by a member other than a member that is owned directly by the new common parent, appropriate adjustments shall be made to the basis (in the hands of a member) of the stock of each member that owns directly or indirectly assets or liabilities of the former common parent to take into account amounts described in paragraph (a)(3)(i) (B) and (C) and (a)(3)(iii) of this section.

(vi) *Subsequent distributions.* All distributions by a member whose stock basis is determined under paragraph (a)(3)(i) of this section out of accumulated earnings and profits that the member acquires from the former common parent are deemed to be out of earnings and profits accumulated in prior consolidated return years beginning after December 31, 1965.

(vii) *Example.* The following example illustrate the operation of paragraph (a)(3) of this section.

Example. (a) For several years, Corporation P has owned all the stock of Corporation S. P has a basis of $100 in the S stock. P has 200 shares of an single class of stock outstanding. P contributes 800 shares of newly issued P stock to S. Corporation X, the common parent of another group filing consolidated returns, merges into S in a forward triangular merger qualifying under section 368(a)(1)(A) by reason of the application of section 368(a)(2)(D). In the merger of X into S, X's shareholders exchange their X stock for the 800 shares of P stock and $50 of S's cash. At the time of the merger, the aggregate basis of X's property is $600. X has no liabilities. The merger is a reverse acquisition under § 1.1502-75(d)(3), and the X group continues in existence after the merger, with P as the common parent.

(b) Since the stockholders of X receive in exchange for their X stock 80 percent of the P stock, P's basis in its S stock is determined under paragraph (a)(3) of this section. P's $100 basis in the S stock is increased by $600, the net basis of X's assets and decreased by $50, the amount S furnished to X's shareholders in connection with the merger.

P's basis in the S stock is $650 (its basis before the transaction, $100, plus $600 net basis of X's assets, minus $50 furnished by S in the merger).

(4) *Anti-duplication rule.* No increase or decrease in the basis of a member's stock shall be made under this paragraph (a) to the extent the increase or decrease would duplicate an amount otherwise taken into account in the basis of the member's stock.

(b) *Election to apply paragraph (a).* If a group has had a change in structure to which paragraph (a) of this section would apply except that the change occurred on or before September 7, 1988, then the group may elect to apply paragraph (a). An election to apply paragraph (a) of this section constitutes an election to apply § 1.1502–33T(a) relating to adjustments in earnings and profits. The election to apply § 1.1502–33T(a) will adjust the earnings and profits of the common parent to reflect the earnings and profits of the former common parent at the time of the change that are not, at the time of the election, reflected in the common parent's earnings and profits. The election is made by attaching a statement to the return of the group for the taxable year that includes September 7, 1988 and is effective as of the first day of that year. The election shall contain a certification that the members of the group have the information necessary to determine the adjustments required by paragraph (a) of this section and paragraph (a) of § 1.1502–33T.

Par. 4. Section 1.1502–33 is amended by adding paragraph (c)(6) to read as follows:

§ 1.1502–33 Earnings and profits.

* * * * *

(c) * * *

(6) *Cross-reference to temporary regulations.*

For rules relating to adjustments in earnings and profits of members resulting from a change in the structure of a group, see § 1.1502–33T.

Par. 5. There is added immediately after § 1.1502–33 a new § 1.1502–33T to read as follows:

§ 1.1502–33T Earnings and profits (temporary).

(a) *Changes in structure of group after September 7, 1988*—(1) *Change of common parent.* If the corporation that is the common parent of the group ceases to be the common parent in a change in the structure of the group to which § 1.1502–31T(a) applies, the earnings and profits of the new common parent shall be adjusted to reflect the earnings and profits of the former common parent at the time of the change.

(2) *Changes in subsidiaries.* If, because of a change in the structure of the group (including a change described in paragraph (a)(1) of this section), after September 7, 1988, the position of a member in a chain of includible corporations changes and the group remains in existence, proper adjustments shall be made to the earnings and profits of the members (other than the new common parent).

(3) *Section 381 transactions.* For purposes of the anti-duplication rule of § 1.1502–33(c)(5), earnings and profits reflected under this paragraph (a) are treated as earnings and profits reflected under § 1.1502–33(c)(4).

(4) *Example.* The following example illustrates the application of paragraph (a) of this section.

Example. (a) On January 1, 1989, the stock of corporation P, the common parent of a group filing a consolidated return on a calendar year basis, is acquired by X, the common parent of an unrelated group filing consolidated returns on a calendar year basis, in a reverse acquisition to which § 1.1502–75(d)(3) applies. The P shareholders receive, in exchange for their P stock, common stock of X representing 80 percent of the value of the X stock outstanding after the acquisition. Immediately before the acquisition, P has earnings and profits of $100 and X has earnings and profits of $20.

(b) Under § 1.1502–75(d)(3), the P group remains in existence with X as its common parent. Under paragraph (a)(1) of this section, X's earnings and profits are increased by $100, the amount of P's earnings and profits immediately before the acquisition. Thus, immediately after the acquisition X has $120 of earnings and profits and P has $100 of earnings and profits.

(b) *Changes in structure to which paragraph (a) does not apply*—(1) *General rule.* If paragraph (a) of this section does not apply to a change in structure of the group, but the group remains in existence under § 1.1502–75(d) (2) or (3), then, in the case of a distribution in a taxable year ending after September 7, 1988, § 1.1502–32 (b)(2)(iii)(*a*) or (c)(2)(i) shall not reduce the earnings and profits of the distributee member to the extent that the distribution is out of earnings and profits that are not reflected in the earnings and profits of the distributee member, but would have been so reflected if paragraph (a) of this section had applied.

(2) *Example.* The following example illustrates the application of paragraph (b)(1) of this section.

Example. (i) The facts are the same as in the example in paragraph (a)(4) of this section, except that the reverse acquisition takes place on January 1, 1988. P has no earnings and profits for 1988. No election is made under § 1.1502–31T(b).

(ii) Paragraph (a) of this section does not apply, and X's earnings and profits remain $20 following the acquisition. However, if P makes a $100 distribution on November 15, 1988, of its earnings and profits to X, the distribution increases X's earnings and profits by $100. X reflects the $100 distribution in its earnings and profits under § 1.1502–33(c)(1), but under paragraph (b) of this section it does not reflect in its earnings and profits under § 1.1502–33(c)(4)(ii) the $100 negative adjustment that it makes in the basis of the P stock under § 1.1502–33(b)(2)(iii) with respect to the distribution.

(c) The result of the distribution in this example would be the same if the shareholders of P received less than 80 percent of the value of the X stock outstanding after the acquisition, provided that the P group remains in existence under § 1.1502–75(d)(3) and the distribution is made in a taxable year ending after September 7, 1988.

(c) *Cross-reference.* See § 1.1502–31T(b) for an election to apply § 1.1502–31T(a) and paragraph (a) of this section even though a change in the structure of the group occurred on or before September 7, 1988.

Par. 6. Section 1.1502–77 is amended by adding paragraph (e) to read as follows:

§ 1.1502–77 Common parent agent for subsidiaries.

* * * * *

(e) *Cross-reference to temporary regulations.* For rules relating to alternative agents of the group, see § 1.1502–77T.

Par. 7. There is added immediately after § 1.1502–77 a new § 1.1502–77T to read as follows:

§ 1.1502–77T Alternative agents of the group (temporary).

(a) *General rules*—(1) *Scope.* This section applies if the corporation that is the common parent of the group ceases to be the common parent, whether or not the group remains in existence under § 1.1502–75(d).

(2) *Notice of deficiency.* A notice of deficiency mailed to any one or more corporations referred to in paragraph (a)(4) of this section is deemed for purposes of § 1.1502–77 to be mailed to the agent of the group. If the group has designated an agent that has been approved by the district director under § 1.1502–77(d), a notice of deficiency shall be mailed to that designated agent in addition to any other corporation referred to in paragraph (a)(4) of this

section. However, failure by the district director to mail a notice of deficiency to that designated agent shall not invalidate the notice of deficiency mailed to any other corporation referred to in paragraph (a)(4) of this section.

(3) *Waiver of statute of limitations.* A waiver of the statute of limitations with respect to the group given by any one or more corporations referred to in paragraph (a)(4) of this section is deemed to be given by the agent of the group.

(4) *Alternative agents.* The corporations referred to in paragraph (a)(2) and (3) of this section are—

(i) The common parent of the group for all or any part of the year to which the notice or waiver applies,

(ii) A successor to the former common parent in a transaction to which section 381(a) applies,

(iii) The agent designated by the group under § 1.1502–77(d), or

(iv) If the group remains in existence under § 1.1502–75(d) (2) or (3), the common parent of the group at the time the notice is mailed or the waiver given.

(b) *Effective date.* Paragraph (a) of this section applies to statutory notices and waivers of the statute of limitations for taxable years for which the due date (without extensions) of the consolidated return is after September 7, 1988.

PART 602—OBM CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for 26 CFR Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 9. Section 602.101 (c) is amended by inserting in the appropriate place in the table "1.1502–31T * * * 1545–1046," "1.1502–33T * * * 1545–1046" and "1.1502–77T * * * 1545–1046".

The provisions contained in this Treasury Decision are needed to provide for proper basis and proper earnings and profits adjustments in cases where there is a change in the structure of the group but the group remains in existence, and to provide for alternative agents of the group where a corporation has ceased to be the common parent of the group. It is therefore found impracticable and contrary to the public interest to issue this Treasury Decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Charles H. Brennan,

Acting Commissioner of Internal Revenue.

Approved: August 29, 1988.

Dennis Earl Ross,

Acting Assistant Secretary of the Treasury.

[FR Doc. 88–20394 Filed 9–7–88; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Parts 31 and 602

[T.D. 8227]

Time and Manner of Making Quarterly Payments of the Railroad Unemployment Repayment Tax

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the time and manner of making quarterly payments of the railroad unemployment repayment tax. The final regulations reflect amendments to the Internal Revenue Code of 1954 with respect to quarterly payments of the railroad unemployment repayment tax made by section 231(b) of the Railroad Retirement Solvency Act of 1983, and provide guidance with respect to the time and manner of making those payments. (Amendments to the railroad unemployment repayment tax made by section 13301 of the Consolidated Omnibus Budget Reconciliation Act of 1985 do not affect the rules in this document.)

DATES: The regulations contained in this document are effective October 11, 1988 and apply to remuneration paid after June 30, 1986.

FOR FURTHER INFORMATION CONTACT: Joel S. Rutstein of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202–566–3297, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this final regulation have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–0955. The estimated average burden associated with the collections of information in this final rule is .07 hours per respondent.

This estimate is an approximation of the average time expected to be necessary for a collection of information. It is based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer TR:FP, Washington, DC 20224, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Background

Railroad workers, unlike most other occupational groups within the United States, are not covered by the Federal Unemployment Tax Act (FUTA). Instead, such workers receive unemployment benefits under the Railroad Unemployment Insurance Act (RUIA), a separate program administered by the Railroad Retirement Board.

Railroad employers pay over to the Railroad Unemployment Insurance Trust Fund contributions on the wages of their employees. When contributions are insufficient to pay railroad unemployment benefits, the program can borrow from the Railroad Retirement Account and repay when the Railroad Unemployment Insurance Trust Fund has more cash than is needed to pay benefits. Prior to the enactment of the Railroad Retirement Solvency Act of 1983 (the Act) (Pub. L. 98–76, 97 Stat. 426) the unemployment fund had to borrow extensively from the retirement system, and such borrowing was coupled with non-repayment of the borrowed funds. The Act was intended to improve the financial status of both the railroad retirement and unemployment systems and to increase the likelihood that both systems would be able to meet their continuing benefit obligations.

In addition to provisions with respect to the retirement system and administration of the railroad unemployment system, the Act sought to provide for the repayment of funds borrowed by the railroad unemployment system which had not been repaid. Chapter 23A, added to the internal Revenue Code of 1954 by section 231 of the Act, provides for the imposition of the railroad unemployment repayment tax. This tax is an excise tax on railroad employers which is effective for remuneration paid after June 30, 1986.

Section 6157(d) provides that the payment of the railroad unemployment repayment tax will be on a quarterly

basis in such manner and at such time as regulations prescribed by the Secretary may provide.

The final regulations found in this document provide the time and manner of making quarterly payments of the railroad unemployment repayment tax.

Temporary Regulations and Cross-Referencing; Notice of Proposed Rulemaking

On November 5, 1986, the **Federal Register** published Temporary Employment Tax Regulations (26 CFR Part 31) (51 FR 40167) and a cross-referencing notice of proposed rulemaking (51 FR 40232) under section 6157(d) of the Internal Revenue Code of 1954. No comments were received in response to the proposed regulations. Because no public hearing was requested, none was held. The final regulations adopt, without change, the proposed regulations, and withdraw the temporary regulations.

Explanation of Provisions

The final regulations reflect amendments to the Employment Tax Regulations under sections 6011, 6071, 6157, and 6302 of the Internal Revenue Code with respect to the requirement that there be quarterly payments of the railroad unemployment repayment tax.

Section 31.6011(a)–3A(a) provides that rail employers shall make an annual return of the railroad unemployment repayment tax imposed by section 3321 on Form CT–1. Previously used for returns of railroad retirement tax, the Form CT–1 now provides for both the return of railroad retirement tax and the return of railroad unemployment repayment tax. The return must be made for each taxable period (as defined in section 3322) in which the tax is imposed beginning with the period which commenced on July 1, 1986. Section 31.6011(a)–3A(b) provides that employee representatives (as generally defined in section 3323(d)) shall make a quarterly return of the railroad unemployment repayment tax on Form CT–2. Previously used only for returns of railroad retirement tax, the Form CT–2 now provides for both the return of railroad retirement tax and the return of railroad unemployment repayment tax. The report must be made for each calendar quarter of a taxable period in which the tax is imposed beginning with the period which commenced on July 1, 1986.

Section 31.6071(a)–1A provides rules regarding the time for filing Forms CT–1 and CT–2. Section 31.6071(a)–1A(a) provides that Forms CT–1 and CT–2 are to be filed on or before the last day of the second calendar month following the period for which the return is made (the same due date applicable to such returns filed in connection with railroad retirement taxes).

Section 31.6302(c)–2A sets forth the rules governing the computation and payment by rail employers of the railroad unemployment repayment tax on a quarterly basis and provides for the deposit of the tax so computed with a Federal Reserve Bank or an authorized financial institution. The deposits are to be made by the last day of the first calendar month following the close of each of the first three calendar quarters of a taxable period. However, no deposit is required with respect to any of the first three calendar quarters if the tax computed for the quarter plus unpaid amounts for prior quarters during the taxable period is $100 or less. No deposit of the railroad unemployment repayment tax is required for the last calendar quarter in any taxable period. However, if the amount of such tax reportable on Form CT–1 for the calendar year exceeds by more than $100 the sum of the amounts deposited in the preceding three calendar quarters, § 31.6302(c)–2A(b)(3) requires that the balance due be deposited with a Federal Reserve bank or with an authorized financial institution by the last day of the first calendar month following the taxable period for which the return is being filed. Where the railroad unemployment repayment tax reportable on Form CT–1 does not exceed by more than $100 the sum of the amounts deposited in the preceding three calendar quarters, that amount is to be remitted with Form CT–1. The preprinted Federal Tax Deposit coupon (Form 8109) is the form prescribed for making the deposits of the railroad unemployment repayment tax.

Section 31.6302(c)–2A(b)(1)(ii) requires that certain rail employers make their quarterly deposits of the railroad unemployment repayment tax by wire transfer to the Treasury. The wire payments will be credited to the rail employers' CT–1 account in the same manner as railroad retirement wire transfers. The wire deposit of the railroad unemployment repayment tax may not be made in the same wire deposit as any other tax.

Special Analyses

The amendment to the regulations proposed by notice of proposed rulemaking on November 5, 1986, and adopted by this Treasury decision is interpretative. Moreover, the Internal Revenue Service concluded that the proposed amendment to the regulations would not have a significant impact on a substantial number of small entities. Accordingly, the Regulatory Flexibility Act did not apply to the notice of proposed rulemaking and no Regulatory Flexibility Analysis was required. The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive order 12291 and that a Regulatory Impact Analysis is therefore not required.

Drafting Information

The principal author of these final regulations is Gail H. Morse of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations both on matters of substance and style.

List of Subjects

26 CFR Part 31

Employment taxes, Income taxes, Lotteries, Railroad retirement, Social security, Unemployment tax, Withholding.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 31 and Part 602 are amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority for Part 31 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 31.6011(a)–3A is also issued under the authority of 26 U.S.C. 6011; § 31.6071(a)–1A is also issued under the authority of 26 U.S.C. 6071; and § 31.6302(c)–2A is also issued under 26 U.S.C. 6302 and 6157(d).

Par. 2. The authority for Part 31 is amended by removing the following language: "Section 31.6011(a)–3AT is also issued under the authority of 26 U.S.C. 6011; 31.6071(a)–1T is also issued under the authority of 26 U.S.C. 6071; § 31.6157–1T is also issued under 26 U.S.C. 6157(d); and § 31.6302(c)–2AT is also issued under 26 U.S.C. 65302."

§§ 31.6011(a)–3AT, 31.6071(a)–1T, and 31.6302(c)–2AT [Redesignated as 31.6011(a)–3A, 31.6071(a)–1A, and 31.6302(c)–2A]

Par. 3. Sections 31.6011(a)–3AT,

31.6071(a)–1T, and 31.6302(c)–2AT are redesignated as §§ 31.6011(a)–3A, 31.6071(a)–1A, and 31.6302(c)–2A, respectively, and are amended by removing from their headings the language, "(temporary)".

§ 31.6011(a)–3A [Amended]

Par. 4. Paragraph (b) of redesignated § 31.6011(a)–3A is revised by removing "§ 31.6071(a)–1T" and inserting "§ 31.6071(a)–1A" in lieu thereof.

§ 31.6071(a)–1A [Amended]

Par. 5. Paragraph (a) of redesignated § 31.6071(a)–1A is revised by removing "§ 31.6011(a)–3AT" and inserting "§ 31.6011(a)–3A" in lieu thereof.

§ 31.6302(c)–2A [Amended]

Par. 6. Paragraph (c) of redesignated § 31.6302(c)–2A is revised by removing "§ 31.6302(c)–2AT" and inserting "§ 31.6302(c)–2A" in lieu thereof.

§ 31.6157–1T [Removed]

Par. 7. Section 31.6157–1T is removed.

Par. 8. Section 31.6157–1 is amended by adding a sentence at the end of that section to read as follows:

§ 31.6157–1 Cross reference.

* * * * *

For provisions relating to the time and manner of depositing the railroad unemployment repayment tax imposed by section 3321(a), see § 31.6302(c)–2A.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 9. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 10. Section 602.101(c) is amended by deleting, "§ 31.6011(a)–3AT," "§ 31.6071(a)–1T," "31.6157–1T," and "§ 31.6302(c)–2AT," and inserting in lieu thereof "§ 31.6011(a)–3A," "§ 31.6071(a)–1A," "§ 31.6157–1," and "§ 31.6302(c)–2A," respectively.

* * * * *

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

August 15, 1988.

Approved.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 88–20393 Filed 9–7–88; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–010]

Servicing of Multi-Piece and Single Piece Rim Wheels

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

ACTION: Final rule; technical amendment.

SUMMARY: The Occupational Safety and Health Administration (OSHA) has revised the charts which are referred to in the rim wheel servicing standard, § 1910.177, and which provide information for employers and employees who service multi-piece or single piece rim wheels, and is amending the standard to indicate the availability of these revised charts. The current charts, which were prepared by the National Highway Traffic Safety Administration (NHTSA), will continue to be acceptable, as well as rim manuals and other publications. The substantive requirement for charts or rim manuals to be available in the servicing workplace, which is found in paragraph (d)(5) of § 1910.177, is not being changed. No additional burdens are imposed on employers by this amendment.

EFFECTIVE DATE: September 8, 1988.

ADDRESSES: Copies of the revised charts may be obtained from the OSHA Publications Office, U.S. Department of Labor, Room N–3101, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210 (202–523–9667).

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA Office of Information, U.S. Department of Labor, Room N–3469, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210 (202–523–8148).

SUPPLEMENTARY INFORMATION: The OSHA standard for servicing multi-piece rim wheels, 29 CFR 1910.177, was originally published on January 29, 1980 (45 FR 6706). The standard was amended on February 3, 1984, to incorporate servicing requirements for single piece rim wheels, and to make minor changes to the multi-piece rim wheel servicing provisions (49 FR 4338). Paragraph (d)(5) of the standard requires the employer to have "Current charts (rim manuals) containing instructions for the types of wheels being serviced * * * available in the service area." The "charts" referred to in that requirement are defined in paragraph (b) of the standard as follows:

"Charts" means the United States Department of Transportation, National Highway Traffic Safety Administration (NHTSA) publications entitled "Safety Precautions for Mounting and Demounting Tube-Type Truck/Bus Tires" and "Multi-Piece Rim Wheel Matching Chart," or any other publications such as rim manuals containing, at a minimum, the same instructions, safety precautions and other information contained on those charts that are applicable to the types of rim wheels being serviced.

The charts and rim manuals are also an important part of the training provisions of the standard, in paragraph (c) of § 1910.177.

Appendix B of the standard indicates that copies of the NHTSA charts may be obtained directly from OSHA. There are no charts available for servicing of single piece rim wheels. For single piece rim wheels, the rim manual is the source of comparable information. For this reason, the general requirement in paragraph (d)(5) uses the term "charts (rim manuals) * * * for the types of wheels being serviced" to indicate the information that must be available in the service area for multi-piece and single piece rim wheels, respectively.

In 1986, OSHA began work on revising the NHTSA charts. In addition to the reasons set forth above, OSHA anticipated that the new charts would provide the employer and employee with a more up-to-date listing of the acceptable combinations of multi-piece rim wheel components, and would also identify wheel components which are no longer being manufactured. Information pertaining to the safe servicing of single piece rim wheels would be included in the charts. Further, the Agency intended to incorporate information from the standard itself into the charts, to provide a more comprehensive document for the employer and the employee to use in their servicing operations.

The revised charts have now been completed, and are available for distribution to employers. OSHA believes that the new charts will simplify compliance with the standard, since they consolidate information from many sources, including the NHTSA charts, the rim manuals, and the OSHA standard. OSHA will continue to accept the NHTSA charts for multi-piece rim wheels and rim manuals for single piece rim wheels in addition to the new OSHA charts. The substantive obligation on the employer to provide such information is not changed by the availability of the new charts.

In order to reflect the availability of the revised charts, OSHA is amending the definitions of "charts" in paragraph

(b) of the standard to refer to the new Department of Labor charts, the National Highway Traffic Safety Administration (NHTSA) charts or any other posters which contain at least the same instructions, safety precautions and other information contained in those charts that is applicable to the types of rim wheels being serviced. In addition, paragraph (d)(5) is amended to indicate more clearly that the standard requires the employer to have either the charts or the applicable rim manuals for the types of wheels being serviced available in the service area. Finally, Appendix B is being revised to provide ordering information for the new OSHA charts.

Because this action does not impose any additional regulatory burden over that of the current standard, the Assistant Secretary has determined that notice and comment are not necessary prior to issuance of these amendments, pursuant to 5 U.S.C. 553 and 29 CFR 1911.5. In addition, for the same reasons, OSHA is making these final rules effective immediately upon publication.

Regulatory Impact Assessment and Regulatory Flexibility Certification

Pursuant to Executive Order 12291, OSHA has evaluated this Final Rule and has determined that it is not a "major" action under any of the criteria set forth in that Order. OSHA also certifies, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this action will not have a significant impact on a substantial number of small entities. This rulemaking makes no substantive change in the requirements of § 1910.177, and imposes no new obligations on employers. It informs the public of the availability of the new OSHA charts on the servicing of single piece and multi-piece rim wheels which consolidate and update servicing information into a format which is more easily understood and used by both employers and employees.

This Rulemaking will not have a substantial effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

This Rulemaking also does not impose new recordkeeping requirements to be evaluated by OSHA under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*)

State Plan Standards

The 24 States and territories with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of the publication date of the final rule. These States and territories are: Alaska, Arizona, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, New York (for State and local government employees only), Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, Wyoming.

List of Subjects in 29 CFR Part 1910

Protective equipment, Safety, Signs and symbols.

Authority

This document has been prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Therefore, pursuant to sections 4, 6 and 8 of the Occupational Safety and Health Act (29 U.S.C. 653, 655, 657), 5 U.S.C. 553, Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR Part 1911, 29 CFR Part 1910 is hereby amended as set forth below.

Signed at Washington, DC, this 29th day of August 1988.

John A. Pendergrass,

Assistant Secretary of Labor.

PART 1910—[AMENDED]

1. The authority citation for Subpart N of Part 1910 is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

Section 1910.177 also issued under 5 U.S.C. 553 and 29 CFR Part 1911.

Sections 1910.176, .178, .179, .183, .184, .189, and .190 also issued under 29 CFR Part 1911.

2. Section 1910.177 is amended by revising the definition of "Charts" in paragraph (b), and by revising paragraph (d)(5), and Appendix B, to read as follows:

§ 1910.177 Servicing multi-piece and single piece rim wheels.

* * * * *

(b) *Definitions.* * * *

"Charts" means the U.S. Department of Labor, Occupational Safety and Health Administration publications entitled "Demounting and Mounting Procedures for Truck/Bus Tires" and "Multi-piece Rim Matching Chart," the National Highway Traffic Safety Administration (NHTSA) publications entitled "Demounting and Mounting Procedures Truck/Bus Tires" and "Multi-piece Rim Matching Chart," or any other poster which contains at least the same instructions, safety precautions and other information contained in the charts that is applicable to the types of wheels being serviced.

* * * * *

(d) *Tire servicing equipment.* * * *

(5) Current charts or rim manuals containing instructions for the type of wheels being serviced shall be available in the service area.

* * * * *

Appendix B—Ordering Information for the OSHA Charts

OSHA has printed two charts entitled "Demounting and Mounting Procedures for Truck/Bus Tires" and "Multi-piece Rim Matching Chart," as part of a continuing campaign to reduce accidents among employees who service large vehicle rim wheels.

Reprints of the charts are available through the Occupational Safety and Health Administration (OSHA) Area and Regional Offices. The address and telephone number of the nearest OSHA office can be obtained by looking in the local telephone directory under U.S. Government, U.S. Department of Labor, Occupational Safety and Health Administration. Single copies are available without charge.

Individuals, establishments and other organizations desiring single or multiple copies of these charts may order them from the OSHA Publications Office, U.S. Department of Labor, Room N–3101, Washington, DC 20210, Telephone (202) 523–9667.

[FR Doc. 88–20301 Filed 9–7–88; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 208

Sale of Federal Royalty Oil

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is amending its regulations governing the sale of Federal royalty oil at 30 CFR Part 208 to reflect a change in the title and the filing date

requirements for Form MMS–4071, Semiannual Report of Royalty-In-Kind (RIK) Oil Entitlements and Deliveries. This change in title is due to the elimination of the deliveries column from the form. Also, specified filing dates are included which eliminates confusion as to the filing date of the form.

EFFECTIVE DATE: September 8, 1988.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, Minerals Management Service, P.O. Box 25165, MS–662, Building 85, Denver Federal Center, Denver, Colorado 80225, telephone (303) 231–3432, (FTS) 326–3432.

SUPPLEMENTARY INFORMATION:

I. Introduction

The MMS published final regulations governing the sale of Federal royalty oil in the **Federal Register** on October 30, 1987 (52 FR 41908). The regulations require the submission of a Form MMS–4071, Semiannual Report of Royalty-In-Kind (RIK) Oil Entitlements and Deliveries, which is used to document monthly royalty oil entitlements delivered by lease operators to eligible refiners under RIK contracts issued by MMS. The MMS uses this report to determine if the refiner is billed correctly and in a timely manner for all royalty oil entitlements provided by the lease operator. The MMS received more than 250 telephone calls requesting clarification of the information required on the form. Many forms were returned to MMS with incorrect information, necessitating calls to the operators in order to correct the data. To simplify and improve reporting, MMS has modified the design and procedures for processing Form MMS–4071 as discussed below. This final rulemaking amends §§ 208.3 and 208.13 to reflect a change in the title and the filing date requirements of the form.

II. Discussion of Procedural Changes

The form requires a lease number. This has caused some confusion for lessees or operators who assign their own internal lease numbers. Consequently, MMS is considering changing its procedures whereby the first eight lines of Form MMS–4071 would be completed by MMS before sending it out to the lease operator. In this way, the respondent will only have to review the lines and correct, if necessary, the name and address before entering the required sales and royalty entitlement data.

Operators also have complained that the requirement to report entitlements 7 months after the first month of sale, and semiannually thereafter, requires them to submit reports throughout the year if they operate a number of leases which begin sales at different times of the year. Respondents requested a uniform report due date for all leases. Consequently, MMS has changed its procedures whereby the "month and year" on the form will be specified by MMS before it is sent out to the operator. The MMS has also changed the "filing date" requirement, whereby submission of the form will be required for all reporting by March 1 and September 1 each year for the prior 6-month period ending December 31 and June 30 respectively, rather than 7 months after the first month of sale and semiannually thereafter.

To further simplify reporting requirements, MMS has also eliminated the "Deliveries" column on the Form MMS–4071. Operators will continue to report how much of the lease production is royalty oil entitlements due the Federal Government. The MMS bills the refiner for the royalty quantity reported by the payor on Form MMS–2014, Report of Sales and Royalty Remittance. This amount will be reconciled to entitlements reported by the operator on Form MMS–4071. The refiner will be advised when the amounts are in agreement in order to verify that the correct quantity has been delivered. In this way, royalty oil deliveries can be determined without unnecessarily burdening operators by requiring delivery information on Form MMS–4071. Because deliveries will no longer be reported, the name of the form will be changed to Semiannual Report of Royalty-In-Kind (RIK) Oil Entitlements.

This rulemaking action amends 30 CFR 208.3 to reflect the new name of the form and the new filing date requirements. Section 208.13 has also been amended to clarify the revised semiannual reporting requirement.

III. Procedural Matters

Administrative Procedure Act

The changes included in this rulemaking are technical corrections only and not substantive changes. Accordingly, pursuant to 5 U.S.C. 553(b), it has been determined that it is unnecessary to issue proposed regulations before the issuance of this final regulation. For the same reason, it has been determined that in accordance with 5 U.S.C. 553(d), there is good cause to make this regulation effective upon publication in the **Federal Register**.

Executive Order 12291

The Department of the Interior (Department) has hereby determined that this document is not a major rule and does not require a regulatory analysis under Executive Order 12291. This final rulemaking is to reflect a change in the title and filing date requirements of an information collection form required to administer the Government's RIK Program. Under the amended regulation, the operator is still required to submit the report on a semiannual basis; however, the dates for filing the report have been changed.

Regulatory Flexibility Act

Because this rule primarily changes the dates for filing Form MMS–4071, there are no significant additional requirements or burdens placed upon small business entities as a result of implementation of this rule. Therefore, the Department has hereby determined that this rulemaking will not have a significant economic effect on a substantial number of small entities and does not require a regulatory flexibility analysis under the Regulatory Flexibility Act. (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act of 1980

The collections of information contained in this rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1010–0042.

Public reporting burden for this information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information including suggestions for reducing the burden, to the Information Collection Clearance Officer, Mail Stop 632, Minerals Management Service, 12203 Sunrise Valley Drive, Reston, VA 22091; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

Lists of Subjects in 30 CFR Part 208

Continental shelf, Government contracts, Mineral royalties, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements, Small businesses, Surety bonds.

Date: August 31, 1988.

William D. Bettenberg,

Director, Minerals Management Service.

For the reasons set out in the preamble, 30 CFR Part 208 is amended as follows:

TITLE 30—MINERAL RESOURCES

PART 208—SALE OF FEDERAL ROYALTY OIL

1. The authority citation for Part 208 continues to read as follows:

Authority: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; 43 U.S.C. 1801 *et seq.*; and 31 U.S.C. 9701.

2. Section 208.3 is amended by revising the name and filing date for Form MMS-4071 as shown in the table included in this section. The revised table reads as follows:

§ 208.3 Information collection.

* * * * *

Form No.	Name and filing date	OMB No.
MMS-4070	Application for the Purchase of Royalty Oil (due prior to the date of sale in accordance with the instructions in the Notice of Availability of Royalty Oil).	1010-0042
MMS-4071	Semiannual Report of Royalty-In-Kind (RIK) Oil Entitlements (due from the lease operator by Mar. 1 and Sept. 1 each year for the prior 6-month period ending Dec. 31 and June 30).	1010-0042

* * * * *

3. Paragraph (a) of § 208.13 is revised to read as follows:

§ 208.13 Reporting requirements.

(a) In addition to any other applicable royalty reporting requirements, the lessee/operator shall use Form MMS-4071, Semiannual Report of Royalty-In-Kind (RIK) Oil Entitlements, to provide MMS a semiannual report, by lease, of the monthly entitlements of royalty oil delivered by lease operators to purchasers.

* * * * *

[FR Doc. 88-20315 Filed 9-7-88; 8:45 am]

BILLING CODE 4310-MR-M

VETERANS ADMINISTRATION

DEPARTMENT OF DEFENSE

DEPARTMENT OF TRANSPORTATION

38 CFR Part 21

Veterans Education; Educational Assistance for Members of the Selected Reserve

AGENCY: Veterans Administration, Department of Defense and Department of Transportation.

ACTION: Final regulations.

SUMMARY: These regulations are designed to implement those provisions of the Veterans' Educational Assistance Act of 1984 which established a new educational assistance program for members of the Selected Reserve, This program (now commonly known as the Montgomery GI Bill—Selected Reserve) is designed to replace the program formerly contained in 10 U.S.C. ch. 106. It is available to a person who after June 30, 1985, enlists, reelists or extends an enlistment as a Reserve for service in the Selected Reserve; or to a person who, after then same date, is appointed as, or is serving as a reserve officer in the Selected Reserve and agrees to serve in the Selected Reserve for an additional period of at least six years. These regulations are intended only to implement those provisions of the Veterans' Educational Assistance Act of 1984 which affect this program. Other changes in regulation of this program required by subsequent enactments of law will be the subject of further publication of proposed regulations.

EFFECTIVE DATE: October 19, 1984.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2092.

SUPPLEMENTARY INFORMATION: On pages 44054 through 44073 of the **Federal Register** of November 17, 1987, there was published a notice of intent to amend 30 CFR, Part 21 to provide a new Subpart L. Subpart L contains the regulations the VA will use in administering the Montgomery GI Bill—Selected Reserve. Interested people were given 31 days to submit comments, suggestions or objections. The Veterans Administration (VA), the Department of Defense and the Department of Transportation received three letters containing comments. Two were from officials of an educational organization; one was from a university official.

The three letter writers had three comments in common. First, they commented that these rules merely follow complex rules which the VA has used for many years to administer other GI Bill education benefit programs. The writers thought that more modern approaches to regulation of the new program would be appropriate. Second, the writers thought that these regulations should not be made final until the Commission on Veterans' Education Policy (the Commission) established by section 320 of the Veterans' Benefits Improvement and Health Care Authorization Act of 1986, issues its final report. Third, they noted with disapproval that the rules do not take into account some changes to the Montgomery GI Bill—Selected Reserve enacted by the Veterans' Benefits Improvement and Health Care Authorization Act of 1986 (Pub. L. 99-576) and the New GI Bill Continuation Act (Pub. L. 100-48). These concerns are addressed below.

These regulations contain many new provisions which implement distinctive chapter 106 provisions (e.g. eligibility requirements, criteria for determining a reservist's delimiting date, permissible type of training). However, this series of regulations also contains many provisions similar to those implementing the other education benefits programs administered by the VA. We view this as perfectly consistent with the mandate of 10 U.S.C. 2136 which directs that various enumerated provisions of chapters 34 and 36 of Title 38 United States Code shall apply to provision of assistance under the Montgomery GI Bill Selected Reserve.

We believe that the Congress clearly intended that the Selected Reserve program, at least to the extent governed by the same statutory provisions, was to be administered in the same manner as the Vietnam Era GI Bill program. The agencies responsible for this program find no reason to alter the coextensive provisions, and, therefore, opt to apply them as written.

The VA, the Department of Defense, and the Department of Transportation do not believe implementation of these regulations should be deferred pending the issuance of a final report by the

Commission for two reasons. First, these regulations govern the period beginning October 19, 1984, and must be issued to assure that the public and VA staff may understand the correct legal procedures applicable to cases which arose after that date and which, therefore, are governed by these rules. Second, it appears that the final report on the matters studied by the Commission will not be issued until late in 1990, and the Commission's recommendations will likely be subject to Congressional action before being adopted. To wait until completion of these actions would mean that no rules would exist for possible eight or more years following enactment of Pub. L. 98–525, an unacceptable delay.

The comment letters also note that these regulations do not implement provisions of two recent laws, the Veterans' Benefits Improvement and Health Care Authorization Act of 1986, and the New GI Bill Continuation Act. Regulatory changes needed to implement those laws, which are effective at times subsequent to these regulations, are being prepared separately for notice and comment. They will be issued later. Separate chronological publication of the regulations required by each statutory revision will assure proper adjudication of questions concerning claims which arise following each change in law.

In addition to the three comments which the three letters had in common, one writer objected that the date on which these regulations appeared in the **Federal Register** fell during a time when schools were not in normal session, producing the likelihood that school officials would be unable to meet the deadline for submitting comments. These regulations were published on November 17, 1987, before most schools began their Thanksgiving vacation. The comment period ended on December 18, 1987, before most schools began their breaks for Christmas. Significantly, one of the letters actually was received from a university official. The agencies believe that interested parties did have adequate notice and find no reason to extend the comment period.

One of those commenting objected to the retroactive effective date for these regulations. As explained when the regulations were proposed, the VA finds that good cause exists for making these regulations, like the sections of the law they implement, retroactively effective on October 19, 1984. To achieve the maximum benefit of this legislation for the affected individuals, it is necessary to implement these provisions of law as soon as possible. A delayed effective date would be contrary to statutory design; would complicate administration of these provisions of law; and might, for want of rules by which to administer the program, result in denial of a benefit to a reservist who is entitled by law to it. Accordingly, the VA, Department of Defense and the Department of Transportation are not accepting this suggestion. The regulations have a retroactive effective date rather than a prospective one.

It has been determined that these regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no 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.

The Administrator of Veterans Affairs, the Secretary of Defense, and the Secretary of Transportation have certified that these regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

This certification can be made even though some small entities will have to make the reports required in the proposed §§ 21.7652, 21.7654 and 21.7656. The records needed to make the reports are maintained by educational institutions in the normal course of business. Hence, the regulations will not impose any additional recordkeeping costs on the small entities. Some costs will result from making the reports. However, the reports themselves are required by law. While the law allows some leeway in setting the frequency of these reports, in those instances where the VA has chosen a frequency greater than that required by law, the agency does not believe the economic impact of the regulations to be significant. Furthermore, part of the cost of making these reports is offset by the reporting fee which the law requires the VA to pay to educational institutions. The regulations will have no economic impact on other small entities such as small governmental units.

The information collection requirement of § 21.7530(a) has received OMB control number 2900–0154. The information collection requirement of § 21.7640 has areceived OMB control number 2900–0073. The information collection requirement of § 21.7654 has received OMB control number 2900–0354. The information collection requirement of § 21.7656 has received OMB control number 2900–0156.

The Catalog of Federal Domestic Assistance numbers for the program affected by this regulation are 12.609 and 64.124.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: April 29, 1988.

Thomas K. Turnage,

Administrator.

Approved: June 7, 1988.

A. Lukeman,

Lieutenant General, USMC, Deputy Assistant Secretary (Military Manpower & Personnel Policy).

Approved: August 12, 1988.

T.T. Matteson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Personnel and Training.

38 CFR Part 21, Vocational Rehabilitation and Education, is amended by adding a new Subpart L to read as follows:

Subpart L—Educational Assistance for Members of the Selected Reserve

Sec.

21.7500 Establishment and purpose of educational assistance program.

Definitions

21.7520 Definitions.

Claims and Applications

21.7530 Applications, claims and informal claims.
21.7532 Time limits.

Eligibility

21.7540 Eligibility for educational assistance.
21.7550 Ending dates of eligibility.
21.7551 Extended period of eligibility.

Entitlement

21.7570 Entitlement.
21.7576 Entitlement charges.

Counseling

21.7600 Counseling.
21.7603 Travel expenses.

Programs of Education

21.7610 Selection of a program of education.
21.7612 Programs of education combining two or more types of courses.
21.7614 Change of program.

Sec.

Courses

21.7620 Courses included in programs of education.
21.7622 Courses precluded.
21.7624 Overcharges-restrictions on enrollment.

Payments-Educational Assistance

21.7630 Educational assistance.
21.7631 Commencing dates.
21.7633 Suspension or discontinuance of payments.
21.7635 Discontinuance dates.
21.7636 Rates of payment.
21.7639 Conditions which result in reduced rates.
21.7640 Certifications and release of payments.
21.7642 Nonduplication of educational assistance.
21.7644 Overpayments.

Pursuit of Courses and Required Reports

21.7650 Pursuit.
21.7652 Certifications of enrollment and verification of pursuit.
21.7653 Progress and conduct.
21.7654 Certifications of attendance in courses not leading to a standard college degree.
21.7656 Other required reports from institutions of higher learning.
21.7658 False, late or missing reports.
21.7659 Reporting fee.

Course Assessment

21.7670 Measurement of courses leading to a standard college degree.
21.7672 Measurement of courses not leading to a standard college degree.
21.7674 Measurement of practical training courses.

State Approving Agencies

21.7700 State approving agencies.

Approval of courses

21.7720 Course approval.
21.7722 Courses and enrollments which may not be approved.

Administrative

21.7801 Delegation of authority.
21.7802 Finality of decisions.
21.7803 Revision of decisions.
21.7805 Conflicting interests.
21.7807 Examination of records.
21.7810 Civil rights.

Subpart L—Educational Assistance for Members of the Selected Reserve

(Authority: 10 U.S.C. Ch. 106; 38 U.S.C. 210)

§ 21.7500 Establishment and purpose of educational assistance program.

An educational assistance program for certain members of the Selected Reserve is established to encourage membership in the Selected Reserve of the Ready Reserve.

(Authority: 10 U.S.C. 2131(a); Pub. L. 98–525)

Definitions

§ 21.7520 Definitions.

For the purposes of regulations from § 21.7500 through § 21.7999 of this part, governing the administration and payment of educational assistance under 10 U.S.C. ch. 106, the Selected Reserve Educational Assistance Program, the following definitions apply.

(a) *Definitions of participants.*—(1) *Reservist.* The term "reservist" means a member of the Selected Reserve who is eligible for educational assistance under 10 U.S.C. ch. 106.

(2) *Selected Reserve.* The term "Selected Reserve" means the Selected Reserve of the Ready Reserve of any of the reserve components (including the Army National Guard of the United States and the Air National Guard of the United States) of the Armed Forces of the United States, as required to be maintained under section 268(b), 10 United States Code.

(Authority: 10 U. S.C. 2131; Pub. L. 98–525)

(b) *Other definitions*—(1) *Attendance.* The term "attendance" means the presence of a reservist—

(i) In the class at the institution of higher learning where the approved course in which he or she is enrolled is being taught, or

(ii) In any other place of instruction, training or study at that institution of higher learning at which the reservist is enrolled and is pursuing a program of education.

(Authority: 38 U.S.C. 2136(b), 1789(g); Pub. L. 98–525)

(2) *Audited course.* The term "audited course" has the same meaning as provided in § 1.4200(i) of this part.

(Authority: 10 U.S.C. 2136(b) 38 U.S.C. 1780(a); Pub. L. 98–525)

(3) *Deficiency course.* The term "deficiency course" means any secondary level course or subject not previously completed satisfactorily which is specifically required for pursuit of a post-secondary program of education.

(Authority: 10 U.S.C. 2136(b); Pub. L. 98–525)

(4) *Divisions of the school year.* The term "divisions of the school year" has the same meaning as provided in § 21.4200(b) of this part.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1780(a); Pub. L. 98–55)

(5) *Drop-add period.* The term "drop-add period" has the same meaning as provided in § 21.4200(l) of this part.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1780(a); Pub. L. 98–525)

(6) *Educational assistance.* The term "educational assistance" means the monthly payment made to members of the Selected Reserve for pursuit of a program of education.

(Authority: 10 U.S.C. 2131(b); Pub. L. 98–525)

(7) *Educational objective.* An approvable educational objective is one that leads to the awarding of an associated degree, a bachelor's degree or the equivalent.

(Authority: 38 U.S.C. 2131(b), 38 U.S.C.1780(a) Pub. L. 98–525)

(8) *Enrollment.* The term "enrollment" means the state of being on that roll or file of an educational institution which contains the names of active students.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1780(g); Pub. L. 98–525)

(9) *Enrollment period.* The term "enrollment period" has the same meaning as provided in § 21.4200(p) of this part.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1780(g); Pub. L. 98–525)

(10) *In residence on a standard quarter- or semester-hour basis.* The term "in residence on a standard quarter- or semester-hour basis" has the same meaning as provided in § 21.4200(r) of this part.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1788(c); Pub. L. 98–525)

(11) *Independent study.* The term "independent study" has the same meaning as provided in § 21.4280(c) of this part.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1788(c); Pub. L. 98–525)

(12) *Independent study-resident training.* The term "independent study-resident training" means:

(i) The state of being enrolled concurrently in one or more undergraduate courses or subjects offered by independent study as defined in paragraph (b)(11) of this section and one or more courses or subjects offered by resident training as defined by paragraph (b)(22) of this section, or

(ii) The state of being enrolled in one or more undergraduate level subjects which

(A) Do not meet the requirements of either paragraphs (b)(22)(i), (b)(22)(ii) or (b)(22)(iii) of this section,

(B) Have some weeks when standard class sessions are scheduled, and

(C) Consist of independent study as defined in paragraph (b)(11) of this section during those weeks when there are no regularly scheduled standard class sessions.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1788(c); Pub. L. 98–525)

(13) *Institution of higher learning.* The term "institution of higher learning" means

(i) A college, university or similar institution, including a technical or business school, offering postsecondary level academic instruction that leads to an associate or higher degree, if the educational institution is empowered by the appropriate State education authority under State law to grant an associate or higher degree.

(ii) When there is no state law to authorize the granting of a degree, an educational institution which

(A) Is accredited for degree programs by a recognized accrediting agency, or

(B) Is a recognized candidate for accreditation as a degree-granting school by one of the national or regional accrediting associations and has been licensed or chartered by the appropriate State authority as a degree-granting institution.

(iii) A hospital offering educational programs at the postsecondary level without regard to whether the hospital grants a postsecondary degree.

(iv) An educational institution which

(A) Is not located in a State,

(B) Offers a course leading to a standard college degree or the equivalent, and

(C) Is recognized as an institution of higher learning by the secretary of education (or comparable official) of the country in which the educational institution is located.

(Authority: 10 U.S.C. 2131; Pub. L. 98–525)

(14) *Mitigating circumstances.* Mitigating circumstances are circumstances beyond the reservist's control which prevent him or her from pursuing a program of education continuously. The following circumstances are representative of those which the VA considers to be mitigating. This list is not all-inclusive.

(i) An illness of the reservist,

(ii) An illness or death in the reservist's family,

(iii) An unavoidable change in the reservist's conditions of employment,

(iv) An unavoidable geographical transfer resulting from the reservist's employment,

(v) Immediate family or financial obligations beyond the control of the reservist which require him or her to suspend pursuit of the program of education to obtain employment,

(vi) Discontinuance of the course by the educational institution,

(vii) Unanticipated active duty military service, including active duty for training.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1780(a); Pub. L. 98–525)

(15) *Nonpunitive grade.* The term "nonpunitive grade" has the same meaning as provided in § 21.4200(j) of this part.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1780(a); Pub. L. 98–525)

(16) *Normal commuting distance.* The term "normal commuting distance" has the same meaning as provided in § 21.4200(m) of this part.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1780; Pub. L. 98–525)

(17) *Program of education.* A program of education is a combination of subjects or unit courses pursued at an institution of higher learning. The combination generally is accepted as necessary to meet requirements for a predetermined vocational, educational or professional objective. It may consist of subjects or courses which fulfill requirements for more than one objective if all objectives pursued are generally recognized as being related to a single career field.

(Authority: 10 U.S.C. 2131; Pub. L. 98–525)

(18) *Punitive grade.* The term "punitive grade" has the same meaning provided in § 21.4200(k) of this part.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1780(a); Pub. L. 98–525)

(19) *Pursuit.*

(i) The term "pursuit" means to work, while enrolled, toward the objective of a program of education. This work must be in accordance with approved institutional policy and regulations, and applicable criteria found in titles 10 and 38, United States Code; must be necessary to reach the program's objective; and must be accomplished through

(A) Resident courses, or

(B) Independent study courses combined with resident courses.

(ii) The VA will consider a reservist who qualifies for payment during an interval of school closing, or who qualifies for payment during a holiday vacation to be in pursuit of a program of education during the interval, school closing or holiday vacation.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1780(g); Pub. L. 98–525)

(20) *Refresher course.* The term "refresher course" means a course at the elementary or secondary level to review or update material previously covered in a course that has been satisfactorily completed.

(Authority: 10 U.S.C. 2136(b); Pub. L. 98–525)

(21) *Remedial course.* The term "remedial course" means a course designed to overcome a deficiency at the elementary or secondary level in a particular area of study, or a handicap, such as in speech.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1691(a)(2); Pub. L. 98–525)

(22) *Resident training.* The term "resident training" means—

(i) A course or subject, leading to a standard college degree, offered in residence on a standard quarter- or semester-hour basis;

(ii) A course of subject leading to a standard college degree at the undergraduate level which requires regularly scheduled, weekly classroom or laboratory sessions but does not require them in sufficient number to meet the provision of paragraph (23)(i) of this section,

(iii) A course or subject leading to standard college degree at the undergraduate level which

(A) Would qualify as a course under paragraph (b)(22)(i) of this section except that it does not have weekly class instruction,

(B) Requires pursuit of standard class sessions for each credit at a rate not less frequent than every 2 weeks,

(C) Requires monthly pursuit of a total number of standard class sessions which, during the month, is required by a course meeting the provisions of paragraph (b)(22)(i) of this section,

(D) Is considered by the institution offering it as fully equivalent to a course described in paragraph (b)(22)(i) of this section including payment of tuition and fees; the awarding of academic credit for the purpose of meeting graduation requirements; and the transfer of credits to a course meeting the provision of paragraph (b)(22)(i) of this section, and

(E) Together with all other similar courses offered by the institution of higher learning, has an enrollment representing less than 50 percent of persons at that institution receiving educational assistance under either chapter 31, 32, 34, 35 or 36 of title 38, United States Code,

(iv) The hospital or fieldwork phase of a course with the objective of registered professional nurse or registered nurses, including a course leading to a degree in nursing when—

(A) The hospital or fieldwork phase of the course is an integral part of the course,

(B) The completion of the hospital or fieldwork course is a prerequisite to the successful completion of the course,

(C) The student remains enrolled in the institution of higher learning during the hospital or fieldwork phase, and

(D) The training is under the direct supervision of the institution of higher learning.

(v) The clinical training portion of a course leading to the objective of practical nurse, practical trained nurse, or licensed practical nurse when—

(A) The clinical training is offered by an affiliated or cooperating hospital,

(B) The student is enrolled in and supervised by the institution of higher learning during the clinical training, and

(C) The course is accredited by a nationally recognized accrediting agency or meets the requirements of the licensing body of the State in which the institution of higher learning is located.

(vi) An off-campus job experience included in a course offered by an institution of higher learning is resident training only if the course is—

(A) Accredited by a nationally recognized accrediting agency or is offered by a school that is accredited by one of the regional accrediting agencies;

(B) A part of the approved curriculum of the institution of higher learning;

(C) Directly supervised by the institution of higher learning;

(D) Measured in the same unit as other courses;

(E) Required for graduation; and

(F) Has a planned program of activities described in the institution of higher learning's official publication which is approved by the State approving agency and which is institutional in nature as distinguished from training on-the-job. The description shall include at least a unit subject description; a provision for an assigned instructor; a statement that the planned program of activities is controlled by the institution of higher learning, not by the officials of the job establishment; a requirement that class attendance on at least a weekly basis be regularly scheduled to provide for interaction between instructor and student; a statement that appropriate assignments are required for completion of the course; a grading system similar to the system used for other resident subjects offered by the institution of higher learning; and a schedule of time required for the training which demonstrates that the student shall spend at least as much time in preparation and training as is normally required by the institution of higher learning for its other resident courses.

(vii) A course including student teaching, or

(viii) A flight training course when included as a creditable part of an undergraduate course leading to a standard college degree.

(Authority: 10 U.S.C. 2131(b); Pub. L. 98–525)

(23) *School, educational institution, institution.* The terms "school", "educational institution", and "institution" mean any business school, community or junior college, teachers' college, college, university or scientific or technical institution which confers undergraduate degrees.

(Authority: 10 U.S.C. 2131(a); Pub. L. 98–525)

(24) *School year.* The term "school year" means generally a period of 2 semesters or 3 quarters which is not less than 30 nor more than 39 weeks in total length.

(Authority: 10 U.S.C. 2136(b); Pub. L. 98–525)

(25) *Standard class session.* The term "standard class session" has the same meaning as provided in § 21.4200(g) of this part.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1788(c); Pub. L. 98–525)

(26) *Standard college degree.* The term "standard college degree" has the same meaning as provided in § 21.4200(e) of this part.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1788; Pub. L. 98–525)

(27) *State.* The term "State" has the same meaning as provided in § 21.1021(c) of this part.

(Authority: 38 U.S.C. 101(20); Pub. L. 98–525)

(28) *Vocational or professional objective.* A vocational or professional objective is one that leads to an occupation. It may include educational objectives essential to prepare for the chosen occupation, but not include any educational objectives beyond the bachelor's degree. When a program of education consists of series of courses not leading to an educational objective, these courses must be pursued at an institution of higher learning and must be required for attainment of a designated vocational or professional objective.

(Authority: 10 U.S.C. 2131(b); Pub. L. 98–525)

Claims and Applications

§ 21.7530 Applications, claims and informal claims.

(a) *Applications.* An individual must be file a claim for educational assistance with the VA. The claim must in the form prescribed by the Administrator.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1672; Pub. L. 98–525)

(b) *Informal claim.* The VA will consider any communication from an individual, an authorized representative or a Member of Congress to be an informal claim if it indicates an intent to apply for educational assistance. Upon receipt of an informal claim, if a formal claim has not been filed, the VA will provide an application form to the claimant. If the VA receives the application form within one year from the date the VA provided it, the VA will consider the claim to have been filed on the date the VA received the informal claim.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1671; Pub. L. 98–525)

(c) *Enrollment is not an informal claim.* The act of enrolling in an approved school does not in itself constitute an informal claim.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1671; Pub. L. 98–525)

(Information collection requirements contained in paragraph (a) were approved by the Office of Management and Budget under control number 2900–0154.)

§ 21.7532 Time limits.

(a) *Scope of this section.* The provisions of this section are applicable to original applications, formal or informal, and to reopened claims.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1671; Pub. L. 98–525)

(b) *Failure to complete claim.* The VA will consider a claim to be abandoned when the VA requests evidence in connection with the claim, and the claimant does not furnish the evidence within one year of the date of the request. After the expiration of one year, the VA will not take further action unless a new claim is received.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1671; Pub. L. 98–525)

(c) *New Claim.* When a claim has been abandoned, the VA will consider any subsequent communication which meets the requirements of an informal claim to be a new claim. The VA will consider the date of receipt of the subsequent communication to be the date of the new claim.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1671; Pub. L. 98–525)

(d) *Failure to furnish form or notice of time limit.* Failure by the VA to furnish the reservist any form or information concerning the right to file a claim or to furnish notice of the time limit for the filing of claim or for the completion of any action required will not extend the periods allowed for these actions.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1671; Pub. L. 98–525)

(e) *Time limit for filing a claim for an entended period of eligibility.* A claim for an extended period of eligibility as described in § 21.7551 of this part must

be received by the VA by the later of the following dates:

(1) One year from the date on which the reservist's original period of eligibility ended.

(2) One year from the last date on which the reservist's physical or mental disability ceased to prevent him or her from beginning or resuming the reservist's chosen program of education.

(Authority: 10 U.S.C. 2133(b)(2); Pub. L. 98-525)

Eligibility

§ 21.7540 Eligibility for educational assistance.

(a) *Establishing eligibility.* Except as provided in paragraph (b) of this section, an individual is determined by the Armed Forces to be eligible for educational assistance as provided in §§ 21.7636 and 21.7639 of this part when he or she—

(1) During the period beginning on July 1, 1985 and ending on June 30, 1988—

(i) Enlists, reenlists, or extends an enlistment as a Reserve for service in the Selected Reserve so that the total period of obligated, service is at least six years from the point of the enlistment, reenlistment or extension, or

(ii) Is appointed as, or is serving as, a reserve officer and agrees to serve in the Selected Reserve for a period of not less than six years in addition to any other period of obligated service in the Selected Reserve to which the person may be subject;

(2) Before completing the initial active duty for training receives a secondary school diploma (or an equivalency certificate);

(3) Completes his or her initial period of active duty for training;

(4) Completes 180 days service in the Selected Reserve; and

(5) Is participating satisfactorily in the Selected Reserve.

(Authority: 10 U.S.C. 2132; Pub. L. 98-525)

(b) *Limitations on establishing eligibility.* (1) Even if the requirements of paragraph (a) of this section are met, none of the following individuals can be provided educational assistance under 10 U.S.C. ch. 106 unless he or she elects to waiver benefits under 38 U.S.C. ch. 30:

(i) A reservist who is eligible for basic educational assistance provided under 38 U.S.C. ch. 30, and has established eligibility to that assistance partially through service in the Selected Reserve.

(ii) A member of the National Guard or Air National Guard who has established eligibility for basic educational assistance provided under 38 U.S.C. ch. 30 through activation under a provision of law other than 32 U.S.C. 316, 502, 503, 504 or 505, or

(iii) An individual who is receiving financial (scholarship) assistance under section 2107, title 10, U.S. Code, as Members of the Senior Reserve Officers' Training Corps Program.

(2) An individual who has established eligibility for basic educational assistance under 38 U.S.C. ch. 30 solely through service on active duty may establish eligibility for educational assistance under 10 U.S.C. ch. 106 by meeting the requirements of paragraph (a) of this section.

(Authority: 10 U.S.C. 2132(d), 2134; Pub. L. 98-525)

§ 21.7550 Ending dates of eligibility.

(a) *Time limit on eligibility.* Except as provided in § 21.7551 and paragraph (b) of this section, a reservist's period of eligibility expires effective the earlier of the following dates:

(1) The last day of the 10-year period beginning on the date the reservist becomes eligible for educational assistance; or

(2) The date the reservist is separated from the Selected Reserve.

(Authority: 10 U.S.C. 2133; Pub. L. 98-525)

(b) *Completion of term of program.* (1) If a reservist is enrolled in an educational institution regularly operated on the quarter or semester system, and the reservist's period of eligibility as defined in paragraph (a) of this section would expire during a quarter or semester, the period of eligibility shall be extended to the end of the quarter or semester.

(2) If a reservist is enrolled in an educational institution not regularly operated on the quarter or semester system, and the reservist's period of eligibility as defined in paragraph (a) of this section would expire after a major portion of the course is completed, the period of eligibility shall be extended until the earlier of the following occurs:

(i) The end of the course, or

(ii) 12 weeks from the date on which the reservist's eligibility otherwise would have expired.

(Authority: 10 U.S.C. 2133(b)(1); Pub. L. 98-525)

§ 21.7551 Extended period of eligibility.

(a) *Period of eligibility may be extended.* The VA shall grant an extension of a delimiting period determined by § 21.7550(a)(1) of this part provided:

(1) The individual applies for an extension within the time period specified in § 21.7532(e) of this part.

(2) The individual was prevented from initiating or completing the chosen program of education within the otherwise applicable eligibility period, because of a physical or mental disability, which is not the result of the reservist's own willful misconduct, and which was incurred in or aggravated by service in the Selected Reserve. Evidence must establish that such a program of education was medically infeasible. The VA will not grant a reservist an extension for a period of disability which was 30 days or less unless the evidence establishes that the reservist was prevented from enrolling or reenrolling in the chosen program, or was forced to discontinue attendance, because of the short disability.

(Authority: 10 U.S.C. 2133(b)(2), 38 U.S.C 1431(d); Pub. L. 98-525)

(b) *Commencing date.* The reservist shall elect the commencing date of an extended period of eligibility. The date chosen—

(1) Must be on or after the original date of expiration of eligibility as determined by § 21.7550(a)(1) of this part, and

(2) Must either be—

(i) On or before the 90th day following the date on which the reservist's application for an extension was approved by the VA if the reservist is training during the extended period of eligibility in a course not organized on a term, quarter or semester basis, or

(ii) On or before the first day of a term, quarter or semester within an ordinary school year following the 90th day after the reservist's application for an extension was approved in the VA, if the reservist is training during the extended period of eligibility in a course organized on a term, quarter or semester basis.

(Authority: 10 U.S.C. 2133(b)(2), 38 U.S.C. 1431(d); Pub. L. 98-525)

(c) *Length of extended period of eligibility.* A reservist's extended period of eligibility shall be for the length of time that the reservist was prevented from initiating or completing his or her chosen program of education, except that it must end when the reservist is separated from the Selected Reserve. The VA shall determine the length of time the reservist was prevented from initiating or completing his or her chosen program of education as follows:

(1) If the reservist is in training in a course organized on a term, quarter or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the reservist's original eligibility period that his or her training became medically infeasible to the earliest of the following dates:

(i) The commencing date of the ordinary term, quarter or semester following the day the reservist's training became medically infeasible,

(ii) The last date of the reservist's delimiting date as determined by § 21.7550(a)(1) of this part, or

(iii) The date the reservist resumed training.

(2) If the reservist is training in a course not organized on a term, quarter or semester basis, his or her extended period of eligibility shall contain the same number of days as the number of days from the date during the reservist's original delimiting period that his or her training became medically infeasible to the earlier of the following dates:

(i) The date the reservist's training became medically feasible, or

(ii) The reservist's delimiting date as determined by § 21.7550(a)(1) of this part.

(Authority: 10 U.S.C. 2133(b)(2), 38 U.S.C. 1431(d); Pub. L. 98-525)

Entitlement

§ 21.7570 Entitlement.

Each reservist is entitled to a maximum of 36 months of educational assistance (or its equivalent in part-time educational assistance) under this program, but is also subject to the provisions of § 21.4020 (a) and (b) of this part.

(Authority: 10 U.S.C. 2131(c); Pub. L. 98-525)

§ 21.7576 Entitlement charges.

(a) *Overview.* The VA will make charges against entitlement as stated in this section. Charges are based upon the principle that a reservist who trains full time for one day should be charged one day of entitlement.

(Authority: 10 U.S.C. 2133(c)(2), Pub. L. 98-525)

(b) *Determining entitlement charge.* (1) The VA will make a charge against entitlement—

(i) On the basis of total elapsed time (one day for each day or part of a day of pursuit for which the reservist is paid educational assistance) if the reservist is pursuing the program of education on a full-time basis).

(ii) On the basis of a proportionate rate of elapsed time, if the reservist is pursuing the program of education on a three-quarter or one-half-time basis.

(2) The VA will compute elapsed time from the commencing date of the award of educational assistance to date of discontinuance. If the reservist changes his or her training time after the commencing date of enrollment, the VA will

(i) Divide the enrollment period into separate periods of time during which the reservist's training time remains constant, and

(ii) Compute the elapsed time separately for each time period.

(Authority: 10 U.S.C. 2131(c); Pub. L. 98-525)

(c) *Overpayment cases.* The VA will make a charge against entitlement for an overpayment only if the overpayment is discharged in bankruptcy; is waived and is not recovered; or is compromised.

(1) If the overpayment is discharged in bankruptcy or is waived and is not recovered, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(2) If the overpayment is compromised and the compromise offer is less than the amount of interest, administrative costs of collection, court costs and marshal fees, the charge against entitlement will be at the appropriate rate for the elapsed period covered by the overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees).

(3) If the overpayment is compromised and the compromise offer is equal to or greater than the amount of interest administrative costs of collection, court costs and marshal fees, the charge against entitlement will be determined by—

(i) Subtracting from the sum paid in the compromise offer the amount attributable to interest, administrative costs of collection, court costs and marshal fees,

(ii) Subtracting the remaining amount of the overpayment balance determined in paragraph (c)(3)(i) of this section from the amount of the original overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees),

(iii) Dividing the result obtained in paragraph (c)(3)(i) of this section by the amount of the original overpayment (exclusive of interest, administrative costs of collection, court costs and marshal fees), and

(iv) Multiplying the percentage obtained in paragraph (c)(3)(iii) of this section by the amount of the entitlement otherwise chargeable for the period of the original overpayment.

(Authority: 10 U.S.C. 2133(c); Pub. L. 98-525)

(d) *Interruption to conserve entitlement.* A reservist may not interrupt a certified period of enrollment for the purpose of conserving entitlement. An institution of higher learning may not certify a period of enrollment for a fractional part of the normal term, quarter or semester if the reservist is enrolled for the entire term, quarter or semester. The VA will make a charge for the entire period of certified enrollment, if the reservist is otherwise eligible for educational assistance, except when educational assistance is interrupted under any of the following conditions:

(1) Enrollment is terminated;

(2) The reservist cancels his or her enrollment, and does not negotiate an educational assistance check for any part of the certified period of enrollment;

(3) The reservist interrupts his or her enrollment at the end of any term, quarter or semester within the certified period of enrollment, and does not negotiate a check for educational assistance for the succeeding term, quarter or semester; and

(4) The reservist requests interruption or cancellation for any break when an institution of higher learning was closed during a certified period of enrollment, and the VA continued payments under an established policy based upon an Executive Order of the President or an emergency situation. In such a case entitlement will be restored unless the reservist negotiated a check for educational assistance for the certified period and does not repay the amount received.

(Authority: 10 U.S.C. 2133(c); Pub. L. 98-525)

Counseling

§ 21.7600 Counseling.

A reservist may receive counseling from the VA before beginning training and during training.

(a) *Purpose.* The purpose of counseling is—

(1) To assist in selecting an objective;

(2) To develop a suitable program of education;

(3) To select an institution of higher learning appropriate for the educational or training objective;

(4) To resolve any personal problems which are likely to interfere with the successful pursuit of a program; and

(5) To select an employment objective for the reservist that would be likely to provide the reservist with satisfactory employment opportunities in light of his or personal circumstances.

(Authority: 38 U.S.C. 2136(b), 1633; Pub. L. 98-525)

(b) *Counseling not required.* Counseling never is required for those individuals eligible for educational assistance established under 10 U.S.C. ch. 106.

(Authority: 10 U.S.C. 2136(b), 1663; Pub. L. 98–525)

(c) *Availability of counseling.* Counseling is available for

(1) Identifying and removing reasons for academic difficulties which may result in interruption of discontinuance of training, or

(2) Considering changes in career plans and making sound decisions about the changes.

(Authority: 10 U.S.C. 2136(b), 1663; Pub. L. 98–525)

(d) *Requested counseling.* The VA shall provide counseling as needed for the purposes identified in paragraphs (a) and (c) of this section upon request of the reservist. The VA shall take appropriate steps (including individual notification where feasible) to acquaint reservists with the availability and advantages of counseling services.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1663; Pub. L. 98–525)

§ 21.7603 Travel expenses.

The VA will not pay for any costs of travel to and from the place of counseling for anyone who requests counseling under 10 U.S.C. ch. 106.

(Authority: 38 U.S.C. 111)

Programs of Education

§ 21.7610 Selection of a program of education.

(a) *General requirement.* An individual must be pursuing an approved program of education in order to receive educational assistance.

(Authority: 10 U.S.C. 2131; Pub. L. 98–525)

(b) *Approval of a program of education.* The VA will approve a program of education selected by a reservist for payment of educational assistance under 10 U.S.C. ch. 106 if—

(1) The program accords with the definition of a program of education found in § 21.7520(b)(17) of this part,

(2) It has an educational, professional or vocational objective (as defined in §§ 21.7520(b) (7) and (28) of this part), and

(3) The courses and subjects in the program are approved for VA purposes as provided in § 21.7720 of this part.

(4) The reservist is not already qualified for the objective of the program.

(Authority: 10 U.S.C. 2136(b), 1671; Pub. L. 98–525)

§ 21.7612 Programs of education combining two or more types of courses.

An approved program may consist of courses offered by two institutions of higher learning concurrently, or courses offered through class attendance and by television concurrently. An institution of higher learning may contract the actual training to another institution of higher learning, provided the course is approved by the State approving agency having approval jurisdiction of the institution of higher learning which actually provides the training.

(a) *Concurrent enrollment.* When a reservist cannot schedule his or her complete program at one institution of higher learning, the VA may approve a program of concurrent enrollment. When requesting such a program, the reservist must show that his or her complete program of education is not available at the institution of higher learning in which he or she will pursue the major portion of his or her program (the primary institution of higher learning), or that it cannot be scheduled within the period in which he or she plans to complete his or her program.

(Authority: 10 U.S.C. 2136(b); 38 U.S.C. 1780(g); Pub. L. 98–525)

(b) *Television.* In determining whether a reservist may pursue part of a program of education under 10 U.S.C. ch. 106 by television, the VA will apply the provisions of § 21.4233(c) of this part in the same manner as they are applied in making similar determinations for people training under 38 U.S.C. ch. 34.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1673(c); Pub. L. 98–525)

§ 21.7614 Change of program.

In determining whether a reservist may change his or her program of education under 10 U.S.C. ch. 106, the VA will apply the provisions of § 21.4234 of part in the same manner as they are applied in making similar determinations for veterans training under 38 U.S.C. ch. 34.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1791; Pub. L. 98–525)

Courses

§ 21.7620 Courses included in programs of education.

(a) *General.* Generally, the VA will approve, and will authorize payment of educational assistance for the reservist's enrollment in any course or subject which a State approving agency has approved as provided in § 21.7720 of this part, and which forms a part of a program of education as defined in § 21.7520(n) of this part. Restrictions on this general rule are stated in the other paragraphs in this section and in § 21.7722(b) of this part, however.

(Authority: 10 U.S.C. 2131; Pub. L. 98–525)

(b) *Flight training.* The VA may pay educational assistance for a flight training course only if the course is offered at an institution of higher learning toward a standard college degree the reservist is pursuing.

(Authority: 10 U.S.C. 2131(c)(1); Pub. L. 98–525)

(c) *Independent study.* The VA will pay educational assistance for an enrollment in a course or subject offered by independent study only if—

(1) The reservist is concurrently enrolled in at least one course or subject offered by resident training during the entire period for which payment is being made for independent study;

(2) The independent study course or subject leads to a standard college degree; and

(3) The combined training time for the courses is at least one-half-time training. See § 21.7639(e) of this part.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1788(b); Pub. L. 98–525)

§ 21.7622 Courses precluded.

(a) *Unapproved courses.* The VA will not pay educational assistance for an enrollment in any course which has not been approved by a State approving agency or by the VA when that agency acts as a State approving agency. The VA will not pay educational assistance for a new enrollment in a course when a State approving agency has suspended the approval of the course for new enrollments, nor for any period within any enrollment after the date that the State approving agency disapproves a course. See § 21.7720 of this part.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1772; Pub. L. 98–525)

(b) *Courses not part of a program of education.* The VA will not pay educational assistance for an enrollment in any course which is not part of a program of education.

(Authority: 38 U.S.C. 2131; Pub. L. 98–525)

(c) *Erroneous, deceptive, misleading practices.* The VA will not pay educational assistance for an enrollment in any course offered at an institution of higher learning which uses advertising, sales, or enrollment practices which are erroneous, deceptive or misleading by actual statement, omission or intimation. The VA will apply the provisions of § 21.4252(h) of this part in making these decisions with regard to enrollments under 10 U.S.C. ch. 106 in the same manner provided in making similar decisions with regard to enrollments under 38 U.S.C. ch. 34.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1796; Pub. L. 98–525)

(d) *Avocational and recreational.* (1) The VA will not pay educational assistance for an enrollment in any course—

(i) Which is avocational or recreational in character, or

(ii) The advertising for which contains significant avocational or recreational themes.

(2) The VA presumes that the following courses are avocational or recreational in character unless the reservist justifies their pursuit to the VA as provided in paragraph (3) of this section. The courses are:

(i) Any photography course or entertainment course; or

(ii) Any music course, instrumental or vocal, public speaking course, or course in dancing, sports or athletics, such as horseback riding, swimming, fishing, skiing, golf, baseball, tennis, bowling, sports officiating, or other sport or athletic courses, except courses of applied music, physical education, or public speaking which are offered by institutions of higher learning for credit as an integral part of a program leading to an educational objective; or

(iii) Any other type of course which the VA determines to be avocational or recreational.

(3) To overcome a presumption that a course is avocational or recreational in character, the reservist must establish that the course will be of bona fide use in the pursuit of his or her present or contemplated business or occupation.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1673(d); Pub. L. 98–525)

(e) *Mitigating circumstances.* The reservist is not entitled to receive payment of educational assistance from the VA for a course from which the reservist withdraws or receives a nonpunitive grade which is not used in computing the requirements for graduation unless—

(1) There are mitigating circumstances, and

(2) The reservist submits the circumstances in writing to the VA within 1 year from the date the VA notifies the reservist that he or she must submit the mitigating circumstances.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1780(a); Pub. L. 98–525)

(f) *Other courses.* The reservist is not entitled to receive payment of educational assistance from the VA for—

(1) An enrollment in a course leading to any degree or certificate above the baccalaureate level,

(2) An enrollment in a course not offered by an institution of higher learning,

(3) An audited course (see § 21.4252(i) of this part),

(4) New enrollments in a course during periods when approval has been suspended by a State approving agency,

(5) Certain courses being pursued by nonmatriculated students as provided in § 21.4252(l) of this part,

(6) Enrollment in a course pursued after the reservist has completed the course of instruction required for the award of a baccalaureate degree or the equivalent evidence of completion of study,

(7) Correspondence courses,

(8) An enrollment in a course offered by a proprietary school when the reservist is an official of the school authorized to sign certificates of enrollment or monthly certificates of attendance under 10 U.S.C. ch. 106, an owner or an operator, or

(9) A new enrollment in a course which does not meet the veteran-nonveteran ratio requirement, as computed under § 21.4201 of this part.

(Authority: 10 U.S.C. 2131(c), 2136(b); 38 U.S.C. 1772(a), 1780(a); Pub. L. 98–525)

§ 21.7624 Overcharges-restrictions on enrollments.

(a) *Overcharges.* The VA may disapprove an institution of higher learning for further enrollments, when the institution of higher learning charges or receives from a reservist tuition and fees that exceed the established charges which the institution of higher learning requires from similarly circumstanced nonreservists enrolled in the same course.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1790; Pub. L. 98–525)

(b) *Restriction on enrollments.* In determining whether restrictions on approval of enrollments should exist at an institution of higher learning, the VA will apply the provisions of § 21.4202(b) of this part in the same manner as they are applied in the administration of 38 U.S.C. 34 and 36.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1790(b); Pub. L. 98–525)

Payments—Educational Assistance

§ 21.7630 Educational assistance.

The VA will pay educational assistance pursuant to 10 U.S.C. ch 106 to an eligible reservist while he or she is pursuing approved courses in a program of education at the rates specified in § 21.7636 and § 21.7639.

(Authority: 10 U.S.C. 2131(b); Pub. L. 98–525)

§ 21.7631 Commencing dates.

The commencing date of an award or increased award of educational assistance will be determined under this section.

(a) *Entrance or reentrance including training time change, change of program or educational institution.* When an eligible reservist enters or reenters into training or increases his or her rate of training, the commencing date of his or her award of educational assistance shall be the latest of the following dates—

(1) The date the institution of higher learning certifies under paragraph (b) or (c) of this section.

(2) The date one year before the date the VA receives the reservist's application or enrollment certification, whichever is later. (See § 21.7532 of this part.)

(3) The effective date of the approval of the course, or one year before the date the VA receives the approval notice, whichever is later.

(4) The date of reopened application under paragraph (d) of this section.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1772; Pub. L. 98–525)

(b) *Certification by the institution of higher learning—the course or subject leads to a standard college degree.* (1) When the student enrolls in any course or subject other than one described in paragraph (b) (2) and (3) of this section, the commencing date of the award or increased award of educational assistance will be—

(i) The date of registration in the term, quarter or semester.

(ii) The date of reporting when the individual is required by the published standards of the educational institution to report in advance of registration.

(2) When the student enrolls in a resident course or subject leading to a standard college degree and the first day of classes does not occur before the end of the first regularly scheduled calendar week of classes during a term, quarter or semester, the commencing date of the award or increased award of educational assistance will be the first day of classes.

(3) When the student enrolls in a resident course or subject leading to a standard college degree and the first day of classes is more than 14 days after the date of registration, the commencing date of the award or the increased award of educational assistance will be the first day of classes.

(Authority: 38 U.S.C. 1414, 1423; Pub. L. 98–525)

(c) *Certification by institution of higher learning-course does not lead to a standard college degree.* When a reservist enrolls in a course not leading to a standard college degree, the

commencing date of the award of educational assistance shall be the first date of the reservist's class attendance.

(Authority: 38 U.S.C. 1414, 1423; Pub. L. 98–525)

(d) *Reopened application after abandonment (§ 21.7532).* When the reservist reopens his or her claim after abandoning it, the commencing date of the award of educational assistance shall be the date the VA receives the reservist's application or enrollment certificate, whichever is later.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1671; Pub. L. 98–525)

(e) *Liberalizing laws and VA issues.* When a liberalizing law or VA issue affects the commencing date of a reservist's award of educational assistance, that commencing date shall be in accordance with facts found, but not earlier than the effective date of the act or administrative issue.

(Authority: 38 U.S.C. 3012(b), 3013; Pub. L. 98–525)

(f) *Individuals in a penal institution.* If a reservist is paid a reduced rate of educational assistance under § 21.7639 (d), (e), (f), (g) and (h) of this section, the rate will be increased or assistance will commence effective the earlier of the following dates:

(1) The date the tuition and fees are no longer being paid under another Federal program or a State or local program, or

(2) The date of the release from the prison or jail.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1682(g); Pub. L. 98–525)

§ 21.7633 Suspension or discontinuance of payments.

The VA may suspend or discontinue payments to reservists of educational assistance under the Selected Reserve Educational Assistance Program, and in such cases, the VA will apply §§ 21.4133, 21.4134 and 21.4207 of this part in the same manner as they are applied in the administration of chapters 34 and 36.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1790; Pub. L. 98–525)

§ 21.7635 Discontinuance dates.

The effective date of reduction or discontinuance of educational assistance will be as stated in this section. If more than one type of reduction or discontinuance is involved, the earliest date will control.

(a) *Death of reservist.* When a reservist dies, the effective date of discontinuance of educational assistance shall be the last date of attendance.

(Authority: 10 U.S.C. 2131; Pub. L. 98–525)

(b) *Course discontinued—course interrupted—course terminated—course not satisfactorily completed or withdrawn from.*

(1) If the reservist withdraws from all courses or receives all nonpunitive grades, and in either case there are no mitigating circumstances, the VA will terminate or reduce educational assistance effective the first date of the term in which the withdrawal occurs or the first date of the term for which grades are assigned.

(2) If the reservist withdraws from all courses with mitigating circumstances or withdraws from all courses such that a punitive grade is or will be assigned for those courses, the VA will terminate educational assistance for—

(i) Residence training: last date of attendance; and

(ii) Independent study: official date of change in status under the practices of the institution of higher learning.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1780(a); Pub. L. 98–525)

(c) *Reduction in the rate of pursuit of the course.* (1) If the reservist reduces training by withdrawing from part of a course with mitigating circumstances, but continues training at least one-half-time in part of the course, the VA will reduce the reservist's educational assistance at the end of the month or the end of the term in which the withdrawal occurs, whichever is earlier; except, the VA will reduce educational assistance effective the first date of the term in which the reduction occurs, if the reduction occurs on that date.

(2) If the reservist reduces training by withdrawing from a part of a course, without mitigating circumstances, while continuing to train at least one-half-time, the VA will reduce the reservist's educational assistance effective the first date of the enrollment in which the reduction occurs.

(3) If the reservist reduces training by withdrawing from part of a course with mitigating circumstances, but continues less than one-half-time training in part of the course, the VA will terminate the reservist's educational assistance at the end of the month or the end of the term in which the withdrawal occurs, whichever is earlier; except the VA will terminate educational assistance effective the first date of the term in which the reduction occurs, if the reduction occurs on that date.

(4) If the reservist reduces training by withdrawing from a part of a course without mitigating circumstances while continuing to train less than one-half-time, the VA will terminate the reservist's educational assistance effective the first date of the enrollment in which the reduction occurs.

(5) A reservist, who enrolls in several subjects and reduces his or her rate of pursuit by completing one or more of them while continuing training in the others, may receive an interval payment based on the subjects completed if the requirements of § 21.7640(b) of this part are met. If those requirements are not met, the VA will reduce the reservist's educational assistance effective the date the subject or subjects were completed.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1780; Pub. L. 98–525)

(d) *Nonpunitive grade.* (1) If the reservist does not withdraw, but nevertheless receives a nonpunitive grade in a particular course, the VA will take the following action when no mitigating circumstances are found:

(i) The VA will reduce his or her educational assistance effective the first date of enrollment for the term in which the grade applies, if the courses for which the reservist did not receive a nonpunitive grade constitute at least one-half time training.

(ii) The VA will terminate his or her educational assistance effective the first date of enrollment for the term in which the grade applies, if the courses for which the reservist did not receive a nonpunitive grade constitute less than one-half-time training.

(2) If a reservist receives a nonpunitive grade through nonattendance in a particular course, the VA will take the following action when mitigating circumstances are found:

(i) The VA will reduce the reservist's educational assistance effective the last date of attendance, when the courses for which the reservist did not receive a nonpunitive grade, and from which he or she did not withdraw constitute at least one-half-time training.

(ii) The VA will terminate the reservist's educational assistance effective the last date of attendance, when the courses for which the reservist did not receive a nonpunitive grade, and from which he or she did not withdraw constitute less than one-half-time training.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1780; Pub. L. 98–525)

(e) *Discontinued by VA.* If the VA discontinues payment to a reservist following the procedures stated in § 21.4207 of this part, the date of discontinuance of payment of educational assistance will be—

(1) The date on which payments first were suspended by the Director of a VA field station as provided in § 21.4134 of this part, if the discontinuance was preceded by suspension.

(2) The end of the month in which the decision to discontinue, made by the VA under § 21.7633 or § 21.4207 of this part, is effective, if the Director of a VA field station did not suspend payments before the discontinuance.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1790; Pub. L. 98–525)

(f) *Disapproved by State approving agency.* If a State approving agency disapproves a course in which a reservist is enrolled, the date of discontinuance of payment of educational assistance will be—

(1) The date on which payments first were suspended by the Director of a VA field station as provided in § 21.4134 of this part if disapproval was preceded by such a suspension.

(2) The end of the month in which disapproval is effective or the VA receives notice of the disapproval, whichever is later, provided that the Director of a VA field station did not suspend payments before the disapproval.

(Authority: 10 U.S.C. 2131(b), 38 U.S.C. 1772(a), 1790; Pub. L. 98–525)

(g) *Disapproval by VA.* If the VA disapproves a course in which a reservist is enrolled, the effective date of discontinuance of payment of educational assistance will be—

(1) The date on which the Director of a VA field station first suspended payments, as provided in § 21.4134 of this part, if such a suspension preceded the disapproval.

(2) The end of the month in which the disapproval occurred, provided that the Director of a VA field station did not suspend payments before the disapproval.

(Authority: 10 U.S.C. 2131(b), 38 U.S.C. 1771(b), 1772(a), 1790; Pub. L. 98–525)

(h) *Unsatisfactory progress.* If a reservist's progress is unsatisfactory, his or her educational assistance shall be discontinued effective the earlier of the following:

(1) The date the educational institution discontinues the reservist's enrollment, or

(2) The date on which the reservist's progress becomes unsatisfactory according to the educational institution's regularly established standards of progress.

(Authority: 10 U.S.C. 2131(b), 38 U.S.C. 1674; Pub. L. 98–525)

(i) *False or misleading statements.* If educational assistance is paid as the result of false or misleading statements, see § 21.7658 of this part.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1790; Pub. L. 98–525)

(j) *Conflicting interests (not waived).* If an institution of higher learning and the VA have conflicting interests as provided in § 21.4005 and § 21.7805 of this part, and the VA does not grant the waiver, the date of discontinuance shall be 30 days after the date of the letter notifying the reservist.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1783; Pub. L. 98–525)

(k) *Incarceration in prison or penal institution for conviction of a felony.* (1) The provisions of this paragraph apply to a reservist whose educational assistance must be discontinued or who becomes restricted to payment of educational assistance at a reduced rate under § 21.7639(d) of this part.

(2) The reduced rate or discontinuance will be effective the latest of the following dates:

(i) The first day on which all or part of the reservist's tuition and fees were paid by a Federal, State or local program,

(ii) The date the reservist is incarcerated in prison or penal institution, or

(iii) The commencing date of the award as determined by § 21.7631 of this part.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1682(g); Pub. L. 98–525)

(l) *Exhaustion of entitlement.* If a reservist exhausts his or her 36 months of entitlement, the discontinuance date shall be the date the entitlement is exhausted.

(Authority: 10 U.S.C. 2131(c); Pub. L. 98–525)

(m) *End of eligibility period.* If the reservist's eligibility period ends while the reservist is receiving educational assistance, the date of discontinuance shall be the date on which eligibility ends as determined by § 21.7550 and § 21.7551 of this part.

(Authority: 10 U.S.C. 2133; Pub. L. 98–525)

(n) *Required certifications not received after certification of enrollment.* (1) If the VA does not timely receive a required certification of attendance for a reservist enrolled in a course not leading to a standard college degree, the VA will terminate payments effective the last date of the last period for which a certification of the reservist's attendance was received. If the VA later receives the certification, the VA will make any adjustment on the basis of facts found.

(2) In the case of an advance payment, if the VA does not receive verification of enrollment and certificate of delivery of the check within 60 days of the first day of the term, quarter, semester, or course for which the advance payment was made, the VA will determine the actual facts and make an adjustment, if required. If the reservist failed to enroll, termination will be effective the beginning date of the enrollment period.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1780(d); Pub. L. 98–525)

(o) *Receipt of financial assistance under 10 U.S.C. 2107.* If the reservist receives financial assistance under 10 U.S.C. 2107, the effective date for discontinuance of payment of educational assistance shall be the first date for which the reservist receives such assistance.

(Authority: 10 U.S.C. 2134; Pub. L. 98–525)

(p) *Failure to participate satisfactorily in required training in Selected Reserve.* If the reservist fails to participate satisfactorily in required training in the Selected Reserve, the VA will discontinue payment of educational assistance allowance effective the first date certified by the Department of Defense or the Department of Transportation as the date on which the reservist fails to participate satisfactorily as a member of the Selected Reserve.

(Authority: 10 U.S.C. 2134; Pub. L. 98–525)

(q) *Error-payee's or administrative.* (1) When an act of commission or omission by a payee or with his or her knowledge results in an erroneous award of educational assistance, the effective date of the reduction or discontinuance will be the effective date of the award, or the day before the act, whichever is later, but not before the last date on which the reservist was entitled to payment of educational assistance.

(2) When an administrative error or error in judgment by the VA, the Department of Defense, or the Department of Transportation is the sole cause of an erroneous award, the award will be reduced or terminated effective the date of last payment.

(Authority: 38 U.S.C. 3012(b), 3013; Pub. L. 98–525)

(r) *Completion of baccalaureate instruction.* If the reservist completes a course of instruction required for the award of a baccalaureate degree or the equivalent evidence of completion of study, the VA will discontinue educational assistance effective the day after the date upon which the required course of instruction was completed.

(Authority: 10 U.S.C. 2131(c); Pub. L. 98–525)

(s) *Forfeiture for fraud.* If a reservist must forfeit his or her educational assistance due to fraud, the date of discontinuance of payment of

educational assistance will be the later of—

(1) The effective date of the award, or

(2) The day before the date of the fraudulent act.

(Authority: 38 U.S.C. 3503, Pub. L. 98–525)

(t) *Forfeiture for treasonable acts or subversive activities.* If a reservist must forfeit his or her educational assistance due to treasonable acts or subversive activities, the date of discontinuance of payment of educational assistance will be the later of—

(1) The effective date of the award, or

(2) The day before the date the reservist committed the treasonable act or subversive activities for which he or she was convicted.

(Authority: 38 U.S.C. 3504, 3505; Pub. L. 98–525)

(u) *Change in law or VA issue or interpretation.* If there is a change in applicable law or VA issue, or in the Veterans Administration's application of the law or VA issue, the VA will use the provisions of § 3.114(b) of this chapter to determine the date of discontinuance of the reservist's educational assistance.

(Authority: 38 U.S.C. 3012, 3013; Pub. L. 98–525)

(v) *Except as otherwise provided.* If the reservist's educational assistance must be discontinued for any reason other than those stated in the other paragraphs of this section, the VA will determine the date of discontinuance of payment of educational assistance on the basis of facts found.

(Authority: 38 U.S.C. 3012(a), 3013; Pub. L. 98–525)

§ 21.7636 Rates of payment.

(a) *Monthly rates of educational assistance.* Except as provided in § 21.7639 of this part the monthly rate of educational assistance payable to a reservist is:

(1) $140 per month for each month of full-time pursuit of a program of education;

(2) $105 per month for each month of three-quarter-time pursuit of a program of education; and

(3) $70 per month for each month of half-time pursuit of a program of education.

(Authority: 10 U.S.C. 2131(b); Pub. L. 98–525)

(b) *Limitations on payments.* (1) No payments may be made to a reservist who is pursuing his or her program of education at less than the one-half-time rate.

(2) No payments may be made to a reservist who is pursuing independent study if he or she is not concurrently pursuing at one or more courses offered through resident training which when combined with independent study as provided in § 21.7520(b)(11) of this part, results in a training time of one-half-time or greater.

(3) The VA may withhold final payment until the VA receives proof of continued enrollment and adjusts the reservist's account.

(4) A reservist may not receive educational assistance for any period for which he or she receives financial assistance under 10 U.S.C. 2107 as a member of the Senior Reserve Officers' Training Corps scholarship program.

(5) A reservist may not receive educational assistance if he or she has completed the course of instruction required for the award of a baccalaureate degree or the equivalent evidence of completion of study.

(6) A reservist may only receive educational assistance for instruction in a program of education which is offered at an institution of higher learning. While the instruction does not have to lead to a standard college degree, it must lead to an identifiable educational, professional or vocational objective.

(Authority: 10 U.S.C. 2131(b), 2136(b), 38 U.S.C. 1780; Pub. L. 98–525)

§ 21.7639 Conditions which result in reduced rates.

The payment of educational assistance at the monthly rates established in § 21.7636 of this part shall be subject to reduction, whenever the circumstances described in this section arise.

(a) *Absences.* A reservist enrolled in a course not leading to a standard college degree will have his or her educational assistance reduced for any day of absence which exceeds the maximum allowable absences permitted in this paragraph.

(1) Absence will be charged for a full day when the reservist did not attend any scheduled class on that day. A partial day of absence will be charged for any period of absence during or at the end of a day. Partial days of absence during a month will be converted to full days in accordance with the following formula.

(i) The average hours of daily attendance will be computed by dividing the hours of required attendance per week by the days of required attendance per week.

(ii) The absences of less than a full day which occurred during the month will be totaled.

(iii) The total hours of absence for the month as determined by paragraph (a)(1)(ii) of this section will be divided by the average hours of daily attendance as determined by paragraph (a)(1)(i) of this section to determine the reservist's full days of absence. A fractional day in the result will be dropped if it is one-half day or less and increased to the next whole day if more than one-half day.

(iv) An occasional period of nonattendance (not more than two per week) of one-half hour or less will not be counted if it is excused by the institution of higher learning. Any period of nonattendance which is not excused and a period of nonattendance of more than one-half hour, whether excused or not, will be counted as 1 or more hours of absence. Except for an occasional period of nonattendance of one-half hour or less which is excused by the institution of higher learning any absence of less than an hour will be counted as a full hour of absence.

(2) Maximum allowable absences are as follows:

(i) For a 12 month course requiring attendance for 5 or more days per week, 30 days.

(ii) For a 12 month course requiring attendance for less than 5 days per week, the pro rata part of 30 days which the number of days per week of scheduled attendance bears to 5.

(iii) If the length of the course is not 12 months or a multiple of 12, allowable absences will be figured separately for each 12-month period and pro rata for any period which is less than 12 months.

(iv) In computing pro rata allowable absences a fraction of one-half day or less will be disregarded. A fraction greater than one-half day will be counted as 1 day.

(v) Unused allowable absences may not be carried over from one 12-month period to another, or from one school year to another.

(3) Absences will be charged for—

(i) Days when the reservist is scheduled to attend (including Saturday and Sunday if classes are normally scheduled for those days), but he or she does not attend.

(ii) Days when the institution of higher learning is closed for local and school holidays.

(iii) Days which are part of intervals between terms, quarters and semesters, if the institution of higher learning is organized on a term, quarter or semester basis and has reported enrollment on an ordinary school year basis or for the complete course.

(iv) Days which are part of intervals between consecutive terms within the school year when the reservist transfers from one institution of higher learning to another, and receives payment for the interval.

(v) Days during a vacation period or days between periods of instruction when the institution of higher learning is organized on a year-round basis, and the vacation period is not one of those listed in paragraph (a)(4)(ii) of this paragraph.

(4) Absences will not be charged for—

(i) Days when the institution of higher learning is closed for a weekend period provided classes normally are not scheduled for Saturday or Sunday.

(ii) Days when the institution of higher learning is closed for Federal or State legal holidays or customary, reasonable vacation periods connected with them which are identified as a holiday vacation in the institution of higher learning's approved literature. Generally, the VA will interpret a reasonable period as not more than one calendar week at Christmas and one calendar week at New Year's and shorter periods of time in connection with other legal holidays.

(iii) Days (not to exceed five in any 12-month period) when the institution of higher learning is not in session because of teacher conferences or teacher training sessions.

(iv) At the discretion of the Director of the VA field station of jurisdiction, days of nonattendance within a certified period of enrollment during which the institution of higher learning is closed under an Executive Order of the President or due to an emergency situation.

(5) The reduction in educational assistance payable will be determined by deducting from the month's educational assistance due the reservist that portion of the educational assistance otherwise payable as determined by the following table:

Days of scheduled attendance per week	Rate of reduction for each day of excessive absence
5 or more	1/25th.
4	1/20th.
3	1/15th.
2	1/10th.
1	1/5th.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1780; Pub. L. 98-525)

(b) *Withdrawals and nonpunitive grades.* Withdrawal from a course or receipt of a nonpunitive grade may reduce the amount of educational assistance paid to reservist. The VA is not authorized to pay benefits to a reservist for a course from which the reservist receives a nonpunitive grade which is not used in computing the requirements for graduation or from which he or she withdraws unless—

(1) There are mitigating circumstances, and

(2) The reservist submits the mitigating circumstances in writing to the VA within one year from the date the VA notifies the reservist that he or she must submit the mitigating circumstances.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1780(a); Pub. L. 98-525)

(c) *No education assistance for some incarcerated reservists.* As is the case with reservists who are not incarcervists, the VA will pay no educational assistance to reservists who are incarcerated and who are training less than one-half time. In addition, the VA will pay no educational assistance to a reservist who—

(1) Is incarcerated in Federal, State or local penal institution for conviction of a felony, and

(2) Is enrolled in a course—

(i) For which there are no tuition and fees, or

(ii) For which tuition and fees are being paid by a Federal program (other than one administered by the VA) or by a State or local program, and

(3) Is incurring no charge for the books, supplies and equipment necessary for the course.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1682(g); Pub. L. 98-525)

(d) *Reduced educational assistance for some incarcerated reservists.* (1) The VA will pay reduced educational assistance to a reservist who—

(i) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, and

(ii) Is enrolled in a course—

(A) For which the reservist pays some (but not all) of the charges for tuition and fees, or

(B) For which a Federal program (other than one administered by the VA) or a State or local program pays all the charges for tuition and fees, but for which the reservist must pay for books, supplies and equipment.

(2) The monthly rate of educational assistance payable to such a reservist is the lesser of the following:

(i) The monthly rate of the portion of tuition and fees that are not paid by a Federal program (other than one administered by the VA) or a State or local program plus the monthly rate of any charges to the reservist for the cost of necessary supplies, books and equipment, or

(ii) The monthly rate as stated in § 21.7636 of this part.

(3) In determining the monthly rate stated in paragraph (d)(2)(i) of this paragraph, the VA will—

(i) Add the portion of tuition and fees that are not paid by a Federal program (other than one administered by the VA) for the reservist's enrollment period to the total cost to the reservist for the cost of necessary supplies, books and equipment, and

(ii) Divide the figure obtained in paragraph (d)(3)(i) of this paragraph by the number of months and fractions of a month in the reservist's enrollment period.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1682(g); Pub. L. 98-525)

(e) *Payment for independent study-resident training.* A reservist who is pursuing independent study-resident training shall be paid based on the training time as determined in § 21.7672(a) of this part.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1788(b); Pub. L. 98-525)

(f) *Completion of baccalaureate requirements.* No educational assistance may be paid to a reservist who has completed a course of instruction required for baccalaureate degree or the equivalent evidence of completion of study. Equivalent evidence of completion of study may include, but is not limited to, a copy of the reservist's transcript showing that he or she has received passing grades in all courses needed to obtain a baccalaureate degree at the institution of higher learning which he or she has been attending.

(Authority: 10 U.S.C. 2131; Pub. L. 98-525)

§ 21.7640 Certifications and release of payments.

(a) *Payments are dependent upon certifications.* The VA will pay educational assistance to a reservist only after—

(1) The institution of higher learning has certified his or her enrollment, and

(2) In the case of a reservist pursuing a course not leading to a standard college degree, the VA receives a report from the reservist of each day of absence from scheduled attendance. The report will be endorsed by the educational institution.

(Authority: 10 U.S.C. 2131; Pub. L. 98-525)

(b) *Payment for intervals between terms.* (1) In administering 10 U.S.C. ch. 106, the VA will apply the provisions of § 21.4138(f) of this part in the same manner as they are applied in the administration of 38 U.S.C. ch. 34 when determining whether a reservist is entitled to payment for an interval between terms. References to § 21.4205

and § 21.4138(f) of this part shall be deemed to refer to § 21.7636.

(2) The Director of the VA field station of jurisdiction may authorize payment to be made for breaks, including intervals between terms within a certified period of enrollment, during which the educational institution is closed under an established policy based upon an order of the President or due to an emergency situation.

(i) If the Director has authorized payment due to an emergency school closing resulting from a strike by the faculty or staff of the educational institution, and the closing lasts more than 30 days, the Director, Vocational Rehabilitation and Education Service, will decide if payments may be continued. The decision will be based on a full assessment of the strike situation. Further payments will not be authorized if in his or her judgment the school closing will not be temporary.

(ii) An educational institution which disagrees with a decision made under this subparagraph by a Director of a VA field station, has 1 year from the date of the letter notifying the educational institution of the decision to request that the decision be reviewed. The request must be submitted in writing to the Director of the VA field station where the decision was made. The Director, Vocational Rehabilitation and Education Service shall review the evidence of record and any other pertinent evidence the educational institution may wish to submit. The Director, Vocational Rehabilitation and Education Service has the authority either to affirm or reverse a decision of the Director of a VA field station.

(3) A reservist, who is pursuing a course leading to a standard college degree, may transfer between consecutive school terms from one approved institution of higher learning to another for the purpose of enrolling in, and pursuing, a similar course at the second institution of higher learning. If the interval between terms does not exceed 30 days, the VA shall, for the purpose of paying educational assistance, consider the reservist to be enrolled in the first institution of higher learning during the interval.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1780; Pub. L. 98–525)

(c) *Payee.* (1) The VA will make payment to the reservist or to a duly appointed fudiciary. The VA will make direct payment to the reservist even if he or she is a minor.

(2) The assignment of educational assistance is prohibited. In administering this provision, the VA will apply the provisions of §§ 21.4146 (a), (b), (c) and (e) of this part to 10 U.S.C. ch. 106 in a manner not inconsistent with the way in which they are applied in the administration of 38 U.S.C. chs. 34 and 36.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1780, 3101(a); Pub. L. 98–525)

(d) *Advance payments.* The VA shall pay educational assistance in advance when the requirements of this paragraph are met.

(1) The reservist must request an advance payment. The request must be endorsed by the institution of higher learning, and must be accompanied by the enrollment certification or other document submitted by the institution of learning. That enrollment certification or other document must contain a certification showing the following information:

(i) The reservist is eligible for educational assistance;

(ii) He or she has been accepted by the educational institution or is eligible to continue his or her training there;

(iii) He or she has notified the educational institution of his or her intention to attend that institution or to reenroll in it;

(iv) The number of credit hours the reservist intends to pursue; and

(v) The beginning and ending dates of the enrollment period.

(2) The VA may pay educational assistance in advance only if

(i) The reservist specifically requests such a payment;

(ii) The educational institution at which the reservist is accepted has agreed to, and can satisfactorily carry out the provisions of 38 U.S.C. 1780(d)(4)(B) and (C) and (5) pertaining to receipt, delivery or return of advance checks and certifications of delivery and enrollment, and

(iii) The Director of the VA field station of jurisdiction has not ruled under paragraph (d)(3) of this section that advance payments should not be made.

(3) The Director of a VA field station of jurisdiction may direct that advance payments not be made to reservists enrolled at an educational institution if—

(i) The educational institution demonstrates an inability to comply with the requirements of paragraph (d)(4) of this section, or

(ii) The educational institution fails to provide adequately for the safekeeping of the payment checks before delivery to the reservist or return to the VA, or

(iii) He or she determines, based upon compelling evidence, that the educational institution demonstrates its inability to discharge its responsibilities under advance payment program.

(4) The VA shall mail the advance payment check, made payable to the reservist, to the educational institution for delivery to the reservist upon registration. The educational institution shall not deliver the advance payment check to the reservist more than 30 days in advance of the commencement of his or her program. If delivery is not made within 30 days after the commencement of the program, the educational institution shall return the check to the VA.

(5) The advance payment shall be in an amount not to exceed the educational assistance due for the month or fraction thereof in which the course will begin plus the educational assistance for the following month.

(6) The VA will authorize advance payment only at the beginning—

(i) Of an ordinary school year, or

(ii) Of any other enrollment period which begins after a break of 30 days or more, provided the reservist is not eligible for payment for the break.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1780(d); Pub. L. 98–525)

(e) *Frequency of payment.* Except as provided in paragraph (d) of this section, the VA shall pay educational assistance in the month following the month for which training occurs. The VA may withhold payment to a reservist who is enrolled in a course not leading to a standard college degree for any month until the reservist's attendance has been reported for that month. The VA may withhold final payment in all cases until it both receives certification that the reservist pursued his or her course, and makes any necessary adjustments.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1780(g); Pub. L. 98–525)

(f) *Apportionments prohibited.* The VA will not apportion educational assistance.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1780; Pub. L. 98–525)

(Approved by Office of Management and Budget under control number 2900–0073.)

§ 21.7642 Nonduplication of educational assistance.

(a) *Payments of educational assistance shall not be duplicated.* A reservist eligible to receive educational assistance under 38 U.S.C. ch. 30 is barred from receiving educational assistance concurrently under 10 U.S.C. ch. 106.

(Authority: 38 U.S.C. 1433(a), 1795; Pub. L. 98–525)

(b) *Election of benefits.* When paragraph (a) of this section applies, the reservist must elect in writing which benefit he or she wishes to receive. The reservist may make a new election at any time, but may not elect more than once in any calendar month.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1795; Pub. L. 98-525)

(c) *Senior Reserve Officers' Training Corps scholarship program.* Educational assistance may not be provided to a reservist receiving financial assistance under 10 U.S.C. 2107 as a member of the Senior Reserve Officers' Training Corps scholarship program.

(Authority: 10 U.S.C. 2134; Pub. L. 98-525)

(d) *Nonduplication—Federal program.* Payment of educational assistance is prohibited to an otherwise eligible reservist—

(1) For a unit course or courses which are being paid for entirely or partly by the Armed Forces during any period he or she is on active duty;

(2) For a unit course or courses which are being paid for entirely or partly by the Department of Health and Human Services during any period that he or she is on active duty with the Public Health Service; or

(3) For a unit course or courses which are being paid for entirely or partly by the United States under the Government Employees' Training Act during any period that full salary is being paid to him or her as an employee of the United States.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1781; Pub. L. 98-525)

§ 21.7644 Overpayments.

(a) *Prevention of overpayments.* In administering benefits payable under 10 U.S.C. ch. 106, the VA will apply the provisions of §§ 21.4008 and 21.4009 of this part in the same manner as they are applied in the administration of 38 U.S.C. chs. 34 and 36. See § 21.7633.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1790(b); Pub. L. 98-525)

(b) *Penalties are not overpayments.* The Secretary concerned may require a refund from an individual who fails to participate satisfactorily in required training as a member of the Selected Reserve. This refund is subject to waiver by the Secretary. However, this refund—

(1) Is not an overpayment for VA purposes, and

(2) Is not subject to waiver by the VA under § 1.957 of this chapter.

(Authority: 10 U.S.C. 2135; Pub. L. 98-525)

(c) *Liability for overpayments.* (1) The amount of the overpayment of educational assistance paid to a reservist constitutes a liability of that reservist unless—

(i) The overpayment is waived as provided in § 1.957 of this chapter, or

(ii) The overpayment results from an administrative error or an error in judgment. See § 21.7635(o) of this part.

(2) The amount of the overpayment of educational assistance paid to a reservist constitutes as liability of the educational institution if the VA determines that the overpayment was made as the result of—

(i) Willful or negligent false certification by the educational institution, or

(ii) Willful or negligent failure to certify excessive absences from a course, or discontinuance or interruption of a course by the reservist.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1785; Pub. L. 98-525)

(d) *Waiver of recovery of overpayments.* (1) Except as stated in paragraph (b) of this section in determining whether an overpayment should be waived or recovered from a reservist, the VA will apply the provisions of § 1.957 of this chapter.

(2) In determining whether an overpayment should be recovered from an educational institution, the VA will apply the provisions of § 21.4009(a) (2), (3), (4), and (5), (b), (c), (d), (e), (f), (g), (h), (i), and (j) of this part to overpayments of educational assistance under 10 U.S.C. ch. 106 in the same manner as they are applied to overpayments of educational assistance allowance under 38 U.S.C. chs. 34 and 36.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1785, 3102; Pub. L. 98-525)

Cross-Reference: Entitlement charges. See § 21.7576(c) of this part offering training to veterans and servicemembers under 38 U.S.C. ch. 34.

Pursuit of Course and Required Reports

§ 21.7650 Pursuit.

The reservist is entitled to educational assistance only for actual pursuant of a program of educational. Verification is accomplished by various certifications.

(Authority: 10 U.S.C. 2131(a); Pub. L. 98-525)

§ 21.7652 Certification of enrollment and verification of pursuit.

As stated in § 21.7640 of this part, the educational institution must certify the reservist's enrollment before he or she may receive educational assistance. Nothing in this section or in any section in Part 21 shall be construed as requiring any institution of higher learning to maintain daily attendance records for any course leading to a standard college degree.

(a) *Content of certification of entrance or reentrance.* The certification of entrance or reentrance must clearly specify:

(1) The course;

(2) The starting and ending dates of the enrollment period;

(3) The credit hours or clock hours being pursued by the reservist;

(4) The amount of tuition, fees and the cost of books, supplies and equipment charged to a reservist who is incarcerated in a Federal, State or local prison or jail for conviction of a felony; and

(5) Such other information as the Administrator may find is necessary to determine the reservist's monthly rate of educational assistance.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1682(g), 1780; Pub. L. 98-525)

(b) *Length of the enrollment period covered by the enrollment certification.* (1) Educational institutions organized on a term, quarter or semester basis generally shall report enrollment for the term, quarter, semester, ordinary school year or ordinary school year plus summer term. If the certification covers two or more terms, the educational institution will report the dates for the break between terms if a term ends and the following term does not begin in the same or the next calendar month, or if the reservist elects not to be paid for the intervals between terms. The educational institution must submit a separate enrollment certification for each term, quarter or semester when the certification is for a reservist who is incarcerated in a Federal, State or local prison or jail for conviction of a felony.

(2) Educational institutions organized on a year-round basis will report enrollment for the length of the course. The certification will include a report of the dates during which the educational institution closes for any interval designated in its approval data as breaks between school years.

(3) When a reservist enrolls in independent study leading to a standard college degree concurrently with resident training, the educational institution's certification will include—

(i) The enrollment date, and

(ii) The ending date for the period being certified. If the educational institution has not prescribed maximum time for completion of the independent study portion of the enrollment, the certification must include an ending date for the independent study based on the educational institution's estimate for completion.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1784; Pub. L. 98–525)

(c) *Verification of pursuit.* (1) A reservist who is pursuing a course leading to a standard college degree must have his or her continued enrollment in and pursuit of the course verified for the entire enrollment period. Verification of continued enrollment will be made at least once a year and in the last month of enrollment if the enrollment period ends more than 3 months after the last verification. In the case of a reservist who completed, interrupted or terminated his or her course, any communication from the reservist or other authorized person notifying the VA of the reservist's completion of a course as scheduled or an earlier termination date, will be accepted to terminate payments accordingly.

(2) The verification of pursuit will also include a report on the following items when applicable:

(i) Continued enrollment in and pursuit of the course,

(ii) Absences (See § 21.7654),

(iii) Conduct and progress (See § 21.7653(c)),

(iv) Date of interruption or termination of training (See § 21.7656(a)),

(v) Changes in number of credit hours or clock hours of attendance (See § 21.7656(a)), and

(vi) Any other changes of modifications in the course as certified at enrollment.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1780(g); Pub. L. 98–525)

§ 21.7653 Progress and conduct.

(a) *Satisfactory pursuit of program.* In order to receive educational assistance for pursuit of a program of education, a reservist must maintain satisfactory progress. Progress is unsatisfactory if the reservist does not satisfactorily progress according to the regulatory prescribed standards of the educational institution he or she is attending.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1674; Pub. L. 98–525)

(b) *Satisfactory conduct.* In order to receive educational assistance for pursuit of a program of education, a reservist must maintain satisfactory conduct according to the regularly prescribed standards and practices of the educational institution in which he or she is enrolled. If the reservist will no longer be retained as a student or will not be readmitted as a student by the educational institution in which he or she is enrolled, the VA will discontinue educational assistance, unless further development establishes that the educational institution's action is retaliatory.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1674; Pub. L. 98–525)

(c) *Reports.* At times the unsatisfactory progress or conduct of a reservist is caused by or results in his or her interruption or termination of training. If this occurs, the interruption or termination shall be reported in accordance with § 21.7656(a) of this part. If the reservist continues in training despite making unsatisfactory progress, the fact of his or her unsatisfactory progress must be reported to the VA, within the time allowed by paragraphs (c) (1) and (2) of this section.

(1) A reservist's progress may become unsatisfactory as a result of the grades he or she receives. The institution of higher learning shall report such unsatisfactory progress to the VA in time for the VA to receive it before the earlier of the following dates is reached:

(i) Thirty days from the date on which the school official, who is responsible for determining whether a student is making progress, first received the final grade report which establishes that the reservist either is not progressing satisfactorily, or

(ii) Sixty days from the last day of the enrollment period during which the reservist earned the grades that caused him or her to meet the unsatisfactory progress standards.

(2) If the unsatisfactory progress or conduct of the reservist is caused by any factors other than the grades which he or she receives, the institution of higher learning shall report the unsatisfactory progress or conduct to the VA in time for the VA to receive it within 30 days of the date on which the progress or conduct of the reservist becomes unsatisfactory.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1674; Pub. L. 98–525)

(d) *Reentrance after discontinuance.* (1) A reservist may be re-entered following discontinuance because of unsatisfactory conduct or progress only when the following conditions exist:

(i) The cause of unsatisfactory conduct or progress has been removed, and

(ii) The VA determines that the program which the reservist now proposes to pursue is suitable to his or her aptitudes, interests and abilities.

(2) Reentrance may be for the same program, for a revised program, or for an entirely different program depending on the cause of the discontinuance and the removal of that cause.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1674; Pub. L. 98–525)

§ 21.7654 Certifications of attendance in courses not leading to a standard college degree.

When the reservist is enrolled in a course or courses which do not lead to a standard college degree, he or she must report each day of absence from scheduled attendance. Only those days defined as absences in § 21.7639(a) of this part will be reported. If the reservist is enrolled concurrently in two or more institutions of higher learning, a certification of attendance must be received from each institution of higher learning. The institution of higher learning will—

(a) Convert partial days of absence to full days of absence as provided in § 21.7639(a) of this part,

(b) Verify the full days of absence reported, and

(c) Endorse the report.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1780(a); Pub. L. 98–525)

(Approved by the Office of Management and Budget under control number 2900–0354.)

§21.7656 Other required reports from institutions of higher learning.

Each institution of higher learning and reservist must report without delay the entrance, reentrance, change in hours of credit or attendance, pursuit, interruption and termination of attendance of each reservist enrolled in an approved course.

(a) *Interruptions, terminations and changes in hours of credit or attendance.* When a reservist interrupts or terminates his or her training for any reason, including unsatisfactory conduct or progress, or when he or she changes the number of hours of credit or attendance, the educational institution must report this fact to the VA.

(1) If the change in status or change in number of hours of credit or attendance occurs on a day other than one indicated by paragraph (a) (2) or (3) of this section, the educational institution will initiate a report of the change in time for the VA to receive it within 30 days of the date on which the change occurs.

(2) If the educational institution has certified the reservist's enrollment for more than one term, quarter or semester and the reservist interrupts his or her training at the end of a term, quarter or semester within the certified enrollment period, the educational institution shall report the change in status to the VA in time for the VA to receive the report within 30 days of the last officially scheduled registration date for the next term, quarter or semester.

(3) If the change in status or change in the number of hours of credit or

attendance occurs during the 30 days of a drop-add period, the educational institution must report the change in status or change in the number of hours of credit or attendance to the VA in time for the VA to receive the report within 30 days from the last date of the drop-add period or 60 days from the first day of the enrollment period, whichever occurs first.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1784; Pub. L. 98–525)

(b) *Nonpunitive grades.* An educational institution may assign a nonpunitive grade for a course or subject in which the reservist is enrolled even though the reservist does not withdraw from the course or subject. When this occurs, the educational institution must report the assignment of the nonpunitive grade in time for the VA to receive it before the earlier of the following dates is reached:

(1) 30 days from the date on which the educational institution assigns the grade, or

(2) 60 days from the last day of the enrollment period for which the nonpunitive grade is assigned.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1784; Pub. L. 98–525)

(Approved by the Office of Management and Budget under control number 2900–0156.)

§ 21.7658 False, late or missing reports.

(a) *Reservist.* Payments may not be based on false or misleading statements, claims or reports. The VA will apply the provisions of §§ 21.4006 and 21.4007 of this part to a reservist or any other person who submits false or misleading claims, statements or reports in connection with benefits payable under 10 U.S.C. ch. 106 in the same manner as they are applied to people who make similar false or misleading claims for benefits payable under 38 U.S.C. ch. 34 or 36.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1780, 1790, 3503; Pub. L. 98–525)

(b) *Educational institution.* (1) The VA may hold an educational institution liable for overpayments which result from a willful or negligent

(i) Failure of the institution of higher learning to report, excessive absences from a course or discontinuance or interruption of a course by a reservist, or

(ii) False certification by the educational institution. See § 21.7644(b) of this part.

(2) When an educational institution willfully and knowingly submits a false report or certification, the VA may disapprove a course for further enrollments and may discontinue educational assistance to reservists already enrolled. The VA will apply the provisions of § 21.4202(b), § 21.4207 and § 21.4208 of this part in the same manner as they are applied in making similar determinations regarding enrollments under 38 U.S.C. ch. 34.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1790; Pub. L. 98–525)

§ 21.7659 Reporting fee.

In determining the amount of the reporting fee payable to institutions of higher learning for furnishing required reports, the VA will apply the provisions of the introductory portion of § 21.4206 and § 21.420 (a), (c), (d), and (e) of this part in the same manner as they are applied in the administration of 38 U.S.C. chs. 34 and 36.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1784; Pub. L. 98–525)

Course Assessment

§ 21.7670 Measurement of courses leading to a standard college degree.

Except as provided in §21.7672 of this part the VA will measure a reservist's courses as stated in this section.

(a) *Fourteen semester hours are full time.* Unless 12 or 13 semester hours are full time as provided in paragraphs (b) and (c) of this section, or unless paragraphs (d) or (e) of this section apply to measurement of the reservist's enrollment the VA will measure a reservist's enrollment as follows:

(1) 14 or more semester hours or the equivalent are full-time training,

(2) 10 through 13 semester hours or the equivalent are three-quarter-time training, and

(3) 7 through 9 semester hours or the equivalent are half-time training.

(Authority: 10 U.S.C. 2131(b), 38 U.S.C. 1788(a); Pub. L. 98–525)

(b) *Thirteen semester hours are full time.* (1) The VA will consider that 13 semester hours or the equivalent are full-time training when the educational institution certifies that all undergraduate students enrolled for 13 semester hours or the equivalent are

(i) Charged full-time tuition, or

(ii) Considered full-time for other administrative purposes.

(2) When 13 semester hours or the equivalent are full-time training—

(i) 10 through 12 semester hours or the equivalent are three-quarter-time training, and

(ii) 7 through 9 semester hours or the equivalent are half-time training.

(Authority: 10 U.S.C. 1031(b), 38 U.S.C. 1788(a); Pub. L. 98–525)

(c) *Twelve semester hours are full time.* (1) The VA will consider that 12 semester hours or the equivalent are full-time training when the educational institution certifies that all undergraduate students enrolled for 12 semester hours or the equivalent are—

(i) Charged full-time tuition, or

(ii) Considered full time for other administrative purposes.

(2) When 12 semester hours or the equivalent are full-time training—

(i) 9 through 11 semester hours or the equivalent are three-quarter-time training, and

(ii) 6 through 8 semester hours or the equivalent are half-time training.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1788(a); Pub. L. 98–525)

(d) *Course measurement: combined independent study-resident training.* (1) Notwithstanding the provisions of paragraph (a), (b) or (c) of this section if a reservist pursues independent study concurrently with resident training, the VA will determine training time as follows:

(i) If the credit hours of independent study would equal one-half time or more, according to paragraph (a), (b), or (c) of this section, as appropriate, the VA shall convert them to one hour less than the lowest number of credit hours considered to be one-half-time training. If the credit hours of independent study are less than one-half time according to paragraph (a), (b), or (c) of this section, as appropriate, they shall not be converted. If the independent study is not measured on a credit-hour basis, the VA will assign a credit-hour evaluation to independent study of one hour less than the lowest number of credit hours that constitute one-half-time training.

(ii) The VA will add the number of independent study credit hours as determined in paragraph (d)(1)(i) of this section to the number of credit hours of resident training.

(iii) The VA will use the total credit hours computed in paragraph (d)(1)(ii) of this section to determine the training time based on the measurement criteria found in paragraph (a), (b), or (c) of this section, as appropriate.

(2) When the reservist pursues a course or subject of independent study and resident training sequentially,

(i) The VA will treat the course or subject as independent study, and will not pay any educational assistance, during any week in which the course or subject meets the definition of independent study found in § 21.7520(b)(11) of this part, and

(ii) The VA will treat the course or subject as resident training during weeks in which regularly scheduled classroom sessions meet.

(Authority: 10 U.S.C. 1788(b); Pub. L. 98–525)

(e) *Concurrent enrollment.* If the reservist is enrolled concurrently in two or more institutions of higher learning and some of his or her courses are measured on a credit-hour basis and some are measured on a clock-hour basis as provided in § 21.7672 of this part, the VA will measure his or her courses by converting the clock hours to credit hour equivalents as follows.

(1) The VA will divide the number of credit hours considered full-time at the institution of higher learning which is measuring the reservist's training on a credit-hour basis (as provided in paragraphs (a), (b) and (c) of this section) by the number of clock hours which is full-time at the institution of higher learning which is measuring the reservist's course on a clock-hour basis.

(2) The VA will multiply the figure obtained in paragraph (e)(1) of this section by the number of clock hours in which the reservist is enrolled.

(3) The VA will add the figure obtained in paragraph (e)(2) of this section to the number of credit hours in which the reservist is enrolled.

(4) The VA will apply the provisions obtained in paragrpah (e)(3) of this section to the provisions of paragraphs (a), (b) or (c) of this section, as appropriate.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1788(b); Pub. L. 98–525)

(f) *Other requirements.* Notwithstanding any other provision of this section in administering benefits payable under 10 U.S.C. ch. 106, the VA shall apply the provisions of § 21.4272 (a), (b), (d), (e) (except paragraph (4)), (f), (g) and (k) of this part in the same manner as they are applied in the administration of 38 U.S.C. chs. 34 and 36.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1788(b); Pub. L. 98–525)

§ 21.7672 Measurement of courses not leading to a standard college degree.

(a) *Nonaccredited.* The VA shall measure a nonaccredited course not leading to a standard college degree as follows. For the purposes of this paragraph clock hours and class sessions mean clock hours and class sessions per week.

(1) Except as provided in paragraph (a)(3) of this section, if shop practice is an integral part of the course

(i) Full-time training shall be 30 clock hours attendance with not more than 2½ hours rest period allowance and not more than 5 hours of supervised study,

(ii) Three-quarter-time training shall be 22 through 29 clock hours attendance with not more than 2 hours rest period allowance and not more than 3¾ hours of supervised study,

(iii) Half-time training shall be 15 through 21 clock hours attendance with not more than 1¼ hours rest period allowance and not more than 2½ hours of supervised study.

(2) Except as provided in paragraph (a)(3) of this section, if theory and classroom instruction predominates in a course

(i) Full-time training is 25 clock hours net instruction and not more than 5 hours of supervised study,

(ii) Three-quarter-time training is 18 through 24 clock hours net instruction and not more than 3¾ hours of supervised study, and

(iii) Half-time training is 12 through 17 hours net instruction and not more than 2½ hours of supervised study. In measuring net instruction for the purposes of this paragraph there will be included customary intervals not exceeding 10 minutes between classes.

(3) An institution of higher learning offering courses not leading to a standard college degree may measure those courses on a quarter- or semester-hour basis as indicated for collegiate courses in § 21.7670 of this part provided

(i) The academic portions of the courses require outside preparation and be measured on a minimum of 50 minutes net of instruction per week for each quarter or semester hour of credit,

(ii) The laboratory portions of the courses are measured on a minimum of 2 hours of attendance per week for each quarter or semester hour of credit,

(iii) the shop portion of the courses are measured on a minimum of 3 hours of attendance per week for each quarter or semester hour of credit. In no event shall the courses be considered a full-time course when less than 22 hours per week of attendance is required. Not more than 2 hours rest period shall be allowed per week for courses in which shop practice is an integral part of full-time courses; 1½ hours for three-quarter-time courses of 16–21 clock hours; 1 hour for one-half-time courses of 11–15 clock hours.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1788; Pub. L. 98–525)

(b) *Accredited courses.* Accredited courses not leading to a standard college degree shall be measured as follows:

(1) Except as provided in paragraph (b)(3) of this section, if shop practice is an integral part of the course

(i) Full-time training shall be 22 clock hours attendance with not more than 2½ hours rest period allowance,

(ii) Three-quarter-time training shall be 16 through 21 clock hours attendance with not more than 2 hours rest period allowance,

(iii) Half-time training shall be 11 through 15 clock hours attendance with not more than 1¼ hours rest period allowance. Supervised study shall be excluded from measurement of all courses to which this paragraph applies.

(2) If theory and class instruction predominates

(i) Full-time training is 18 clock hours net instruction,

(ii) Three-quarter-time training is 13 through 17 clock hours net instruction, and

(iii) Half-time training is 9 through 12 clock hours net instruction. In measuring net instruction for this subparagraph there will be included customary intervals not to exceed 10 minutes between classes; however, supervised study must be excluded.

(3) An institution of higher learning offering courses not leading to a standard college degree may measure those courses on a quarter- or semester-hour basis as indicated for collegiate courses in § 21.7670 of this part provided

(i) The academic portions of the courses must require outside preparation and be measured on a minimum of 50 minutes net of instruction per week for each quarter or semester hour of credit,

(ii) The laboratory portions of such courses are measured on a minimum of 2 hours of attendance per week for each quarter or semester hour of credit.

(iii) The shop portions of such courses must be measured on a minimum of 3 hours of attendance per week for each quarter or semester hour of credit. In no event shall these courses be considered a full-time course when less than 22 hours per week of attendance is required. Not more than 2 hours rest period shall be allowed per week for courses in which shop practice is an integral part of full-time courses; 1½ hours for three-quarter-time courses of 16–21 clock hours; and 1 hour for one-half-time courses of 11–15 clock hours.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1788; Pub. L. 98–525)

§ 21.7674 Measurement of practical training courses.

(a) *Nursing courses.* (1) Courses for the objective of registered nurse or registered professional nurse will be measured on the basis of credit hours or clock hours of attendance, whichever is appropriate. The clock hours of attendance may include academic class time, clinical training, and supervised study periods.

(2) Courses offered by institutions of higher learning which lead to the objective of practical nurse, practical trained nurse, or licensed practical nurse will be measured on credit hours or clock hours of attendance per week whichever is appropriate.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1788; Pub. L. 98-525)

(b) *Medical and dental assistants courses for VA.* Programs approved in accordance with the provisions of § 21.7720(b)(3) of this part will be measured on a clock-hour basis as provided in § 21.7672 of this part. However, the program will be regarded as full-time institutional training, provided the combined total of the classroom and other formal instruction portion of the program and the on-the-job portion of the program requires 30 or more clock hours of attendance per week.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1788; Pub. L. 98-525)

(c) *Other practical training courses.* These courses will be measured in semester hours of credit or clock hours of attendance per week, whichever is appropriate, if approved under § 21.7720(b)(4) of this part.

(Authority 10 U.S.C. 2136(b) 38 U.S.C. 1788; Pub. L. 98-525

State Approving Agencies

§ 21.7700 State approving agencies.

The VA and State approving agencies have the same general responsibilities for approving courses for training under 10 U.S.C. ch. 106 as they do for approving courses for training under 38 U.S.C. ch. 34. Accordingly, in administering 10 U.S.C. ch. 106, the VA will apply the provisions of the following sections and paragraphs in the same manner as they are applied for the administration of 38 U.S.C. chs. 34 and 36:

(a) § 21.4150 (except paragraph (e))—Designation,

(b) § 21.4151—Cooperation,

(c) § 21.4152—Control by agencies of the United States,

(d) § 21.4153—Reimbursement of expenses,

(e) § 21.4154—Report of activites, and

(f) § 21.4280(j)(h) (except in those instances described in § 21.7720).

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1770, 1771, 1772, 1774; Pub. L. 98-525)

Approval of Courses

§ 21.7720 Course approval.

(a) *Courses must be approved.* (1) A course of education offered by an institution of higher learning must be approved by—

(i) The State approving agency for the State in which the institution of higher learning is located, or

(ii) The State approving agency which has appropriate approval authority, or

(iii) The VA, where appropriate. In determining when it is appropriate for the VA to approve a course, the VA will apply the provisions of § 21.4250(b)(3) and (c)(2)(i), (ii), (iii), and (iv) of this part.

(2) A course approved under 38 U.S.C. ch. 36 is approved for the purposes of 10 U.S.C. ch. 106 provided it is offered by an institution of higher learning.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1772; Pub. L. 98-525)

(b) *Course approval criteria.* (1) In administering benefits payable under 10 U.S.C. ch. 106, the VA and, where appropriate, the State approving agencies, shall apply the following sections in the same manner as they are applied for the administration of 38 U.S.C. chs. 34 and 36:

(i) § 21.4250 (except paragraphs (c)(1) and (c)(2)(v))—Approval of courses,

(ii) § 21.4251—Period of operation of course,

(iii) § 21.4253 (except those portions of paragraphs (b) and (f) that permit approval of a course leading to a high school diploma)—Accredited courses,

(iv) § 21.4254—Nonaccredited courses,

(v) § 21.4255—Refund policy—nonaccredited courses,

(vi) § 21.4258 (except paragraph (c))—Notice of approval,

(vii) § 21.4259—Suspension or disapproval,

(viii) § 21.4260—Courses in foreign countries,

(ix) § 21.4266—Courses offered at subsidiary branches or extensions.

(2) The following criteria apply to approval of nursing courses.

(i) Courses for the objective of registered nurse or registered professional nurse will be approved when they are provided by institutions of higher learning. The hospital or fieldwork phase of a nursing course, including a course leading to a degree in nursing, will be included in the approval when—

(A) The hospital or fieldwork phase is an integral part of the course,

(B) Completion of the hospital or fieldwork phase of the course is a prerequisite to the successful completion of the course,

(C) The student remains enrolled in the institution of higher learning during the hospital or fieldwork phase of the course, and

(D) The training is under the direction and supervision of the institution of higher learning.

(ii) Both the clinical training and the academic subjects of a course which leads to the objective of practical nurse, practical trained nurse, or licensed practical nurse may be approved when—

(A) The clinical training is offered by an affiliated or cooperating hospital,

(B) The student is enrolled in and supervised by the institution of higher learning during the period of clinical training, and

(C) The course is accredited by a nationally recognized accrediting agency or meets the requirements of the licensing body of the State in which the institution of higher learning is located.

(3) A course prescribed by the Administrator under 38 U.S.C. 4114(e) for full-time physicians' assistants or for full-time expanded-function dental auxiliaries (formerly referred to as dental assistants) may be approved if the course is conducted by an institution of higher learning at VA facilities or in facilities operated by hospitals, medical schools or in medical installations pursuant to a contract with the VA.

(4) An off-campus job experience included in a course offered by an institution of higher learning may be approved only when it meets the requirements for resident training found in § 21.7520(b)(22)(vi) of this part.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1676, 1772, 1775, 1776, 1778, 1779, 1789, 1789(c), 4004(e); Pub. L. 98-525)

§ 21.7722 Courses and enrollments which may not be approved.

The Administrator may not approve an enrollment by a reservist in, and a State approving agency may not approve for training under 10 U.S.C. ch. 106 in—

(a) A bartending or personality development course;

(b) A flight training course unless the course is offered by an institution of higher learning for credit toward a standard college degree;

(c) A course offered by radio;

(d) A correspondence course;

(e) A course, or combination of courses to the extent that they consist of instruction offered by an educational institution alternating with instruction in a business or industrial establishment, commonly called a cooperative course;

(f) A course, or a combination of courses consisting of institutional agricultural courses and concurrent agricultural employment, commonly called a farm cooperative course;

(g) An apprenticeship or other program of on-job training;

(h) A course offered by an entity which is not an institution of higher learning;

(i) A course offered by a graduate school leading toward a graduate degree or a graduate certificate;

(j) A medical, dental, or an osteopathic internship or residency;

(k) A nursing course offered by an autonomous school of nursing;

(l) A medical or dental specialty course unless it is offered by a hospital which qualifies as an institution of higher learning;

(m) A refresher, remedial, or deficiency course;

(n) A course or combination of courses consisting solely of independent study; or

(o) An institutional course for the objective of nurse's aid or a nonaccredited nursing course which does not meet the licensing requirements in the State where the course is offered.

(Authority: 10 U.S.C. 2131, 2136(b), 38 U.S.C. 1673; Pub. L. 98-525)

Administrative

§ 21.7801 Delegation of authority.

(a) *General delegation of authority.* Except as otherwise provided, authority is delegated to the Chief Benefits Director of the VA, and to supervisory or adjudication personnel within the jurisdiction of the Vocational Rehabilitation and Education Service of the VA designated by the Chief Benefits Director to make findings and decisions under 10 U.S.C. ch. 106 and the applicable regulations, precedents and instructions concerning the program authorized by that chapter to the extent that the program is administered by the VA.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 212(a); Pub. L. 98-525)

(b) *Other delegations of authority.* In administering benefits payable under 10 U.S.C. ch. 106, the VA shall apply § 21.4001(b), (c) (1), (2), and (3) (in part), and (f) of this part in the same manner as those paragraphs are applied in the administration of 38 U.S.C. ch. 34.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 212(a); 1796; Pub. L. 98-525)

§ 21.7802 Finality of decisions.

(a) *Agency decisions generally are binding.* The decision of VA field station original jurisdiction on which an action is based—

(1) Will be final,

(2) Will be binding upon all field stations of the VA as to conclusions based on evidence on file at that time, and

(3) Will not be subject to revision on the same factual grounds except by duly constituted appellate authorities or except as provided in § 21.7803 of this part. (See § § 19.192 and 19.193 of this Chapter).

(Authority: 38 U.S.C. 211)

(b) *Decisions of an Activity within the VA.* Current determinations of pertinent elements of eligibility for a program of education made by a VA adjudicative activity by application of the same criteria and based on the same facts are binding one upon the other in the absence of clear and unmistakable error.

(Authority: 38 U.S.C. 211)

(c) *Determinations of satisfactory participation.* A determination made by a competent military or naval authority or by the Coast Guard as to whether or not an individual is participating satisfactorily in required training as a member of the Selected Reserve is binding upon the VA.

(Authority: 10 U.S.C. 2134; Pub. L. 98-525)

§ 21.7803 Revision of decisions.

The revision of a decision on which an action was predicated is subject to the following sections:

(a) Clear and unmistakable error, § 3.105(a) of this chapter; and

(b) Difference of opinion, § 3.105(b) of this chapter.

(Authority: 38 U.S.C. 211)

§ 21-7805 Conflicting interests.

In administering benefits payable under 10 U.S.C. ch. 106, the VA will apply the provisions of § 21.4005 of this part in the same manner as they are applied in the administration of 38 U.S.C. chs. 34 and 36.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1783; Pub. L. 98-525)

§ 21.7807 Examination of records.

In administering benefits payable under 10 U.S.C. ch. 106, the VA will apply the provisions of § 21.4209 in the same manner as they are applied in the administration of 38 U.S.C. chs. 34 and 36.

(Authority: 10 U.S.C. 2136(b), 38 U.S.C. 1790; Pub. L. 98-525)

§ 21.7810 Civil rights.

(a) *Delegations of authority concerning Federal equal opportunity laws.* (1) The Chief Benefits Director is delegated the responsibility to obtain evidence of voluntary compliance with Federal equal opportunity laws from educational institutions and from recognized national organizations whose representatives are afforded space and office facilities under his or her jurisdiction. (See § 81.1 et seq. of this chapter. These equal opportunity laws are:

(i) Title VI, Civil Rights Act of 1964,

(ii) Title IX, Education Amendments of 1972, as amended,

(iii) Section 504, Rehabilitation Act of 1973, and

(iv) The Age Discrimination Act of 1975.

(2) In obtaining evidence from educational institutions of compliance with Federal equal opportunity laws, the Chief Benefits Director may use the State approving agencies as provided in § 21.4258(d) in this part.

(Authority: 42 U.S.C. 2000)

(b) *Nondiscrimination in educational programs.* In administering benefits payable under 10 U.S.C. ch. 106, the VA shall apply the following sections in the same manner as they are applied to the administration of 38 U.S.C. chs. 34 and 36:

(1) § 21.4300—Civil rights assurances—Title VI, Public Law 88-352,

(2) § 21.4301 (with the exception of references to elementary and secondary schools and medical institutions)—Institutions of higher learning; elementary and secondary schools; medical institutions,

(3) § 21.4304 (with the exception of references to elementary and secondary schools and medical institutions)—Assurance of compliance received—i.h.l.'s; elementary and secondary schools; medical facilities,

(4) § 21.4305—Noncompliance—complaints—initial action,

(5) § 21.4306—Payments after final agency action, and,

(6) § 21.4307—Posttermination compliance.

(Authority: 42 U.S.C. 2000)

[FR Doc. 88-20221 Filed 9-7-88; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-3442-9]

South Carolina; Final Authorization of State's Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule; correction.

SUMMARY: This document corrects the dates previously published in the **Federal Register** dated August 5, 1988 (53 FR 29461) for the deadline for receipt of public comment, the effective date for authorization, and other errors for Final Authorization of South Carolina's hazardous waste program. Due to an oversight, EPA inadvertently drafted a notice authorizing the state for these provisions with an incomplete Attorney General's Statement. This oversight has been corrected. The public comment period is extended until the close of business October 6, 1988. Final Authorization for the Federal requirements listed at 53 FR 29461 shall be effective November 7, 1988.

FOR FURTHER INFORMATION CONTACT: Otis Johnson, Chief, Waste Planning Section, RCRA Branch, Waste Management Division U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365, (404) 347–3016.

On page 29462, Column 1, paragraph 1, the chart of requirements to be approved which reads:

South Carolina is today seeking authority to administer the following Federal requirements promulgated between 1/23/83—7/14/86.

		Federal promulgation date
• Biennial Report	48 FR 3977	1/28/83
• Permit Rules-Settlement Agreement.	48 FR 39622	9/1/83
• Interim Status Standards.	48 FR 52718	11/22/83
• Chlorinated Aliphatic Hydrocarbon Listing.	49 FR 5313	2/10/84
• National Uniform Manifest.	49 FR 10490	3/20/84
• Permit Rules-Settlement Agreement.	49 FR 17716	4/24/84
• Listing Warfarin + Zinc Phosphide.	49 FR 19922	5/10/84
• Lime Stabilized Pickle Liquor Sludge.	49 FR 23284	6/5/84
• Exclusion of Household Waste.	49 FR 44980	11/13/84
• Interim Status Standards Applicability.	49 FR 46095	11/21/84
• Satellite Accumulation	49 FR 49571	12/20/84
• Interim Status Standards for Landfills.	50 FR 16044	4/23/85
• Listing of Spent Pickle Liquor.	51 FR 19320	5/28/86
• Hazardous Waste Tank Systems.	51 FR 25422	7/14/86
• Redefinition of Solid Waste.	50 FR 614	1/4/85

is corrected to read,

South Carolina is today seeking authority to administer the following Federal requirements promulgated between 1/23/83–7/14/86.

		Federal promulgation date
• Biennial Report	48 FR 3977	1/28/83
• Permit Rules-Settlement Agreement.	48 FR 39622	9/1/83
• Interim Status Standards.	48 FR 52718	11/22/83
• Chlorinated Aliphatic Hydrocarbon Listing.	49 FR 5313	2/10/84
• National Uniform Manifest.	49 FR 10490	3/20/84
• Listing Warfarin + Zinc Phosphide.	49 FR 19922	5/10/84
• Lime Stabilized Pickle Liquor Sludge.	49 FR 23284	6/5/84
• Exclusion of Household Waste.	49 FR 44980	11/13/84
• Interim Status Standards Applicability.	49 FR 46095	11/21/84
• Satellite Accumulation	49 FR 49571	12/20/84
• Interim Status Standards for Landfills.	50 FR 16044	4/23/85
• Listing of Spent Pickle Liquor.	51 FR 19320	5/28/86
• Hazardous Waste Tank Systems.	51 FR 25422	7/14/86
• Redefinition of Solid Waste.	50 FR 614	1/4/85

On page 29462, column 1, paragraph 2, which reads, "South Carolina is currently revising analogous regulations to address EPA's comments of February 12, 1988, for the following provisons:

		Federal promulgation date
• Interim Status Standards Applicability.	49 FR 46095	11/21/84
• Closure Post Closure and Financial Responsibility Requirements.	51 FR 16422	5/2/86

is corrected to read:

"South Carolina is currently revising analogous regulations to address EPA's comments of February 12, 1988, for the following provisons:

		Federal promulgation date
• Correction to Test Methods Manual.	49 FR 47391	12/4/84
• Closure Post Closure and Financial Responsibility Requirements.	51 FR 16422	5/2/86

Lee A. DeHihns, III,

Acting Regional Administrator.

[FR Doc. 88–20323 Filed 9–7–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 271

[FRL–3442–8]

Florida: Final Authorization of State Hazardous Waste Program; Correction

AGENCY: Environmental Protection Agency.

ACTION: Notice of correction.

SUMMARY: This notice corrects the list of authorities previously published in the **Federal Register** dated December 1, 1987, (52 FR 45634) for Final Authorization for revisions to Florida's Hazardous Waste Management Program. At that time Florida was seeking authority to administer federal non-HSWA (Hazardous and Solid Waste Amendment of 1984) requirements promulgated prior to June 30, 1985. The following analogs were part of the State's authorization application but were inadvertently omitted from the **Federal Register** announcement: "Re-definition of Solid Waste", 50 FR 614, January 4, 1985, and "Corrections to Test Methods Manual", 49 FR 47391, December 4, 1984. These provisions were made publicly available for review during the public comment period for the original application and are still available at the organizations listed in the addresses section of the December 1, 1987 notice. Public comments on the two omitted provisions will be received until the close of business, September 31, 1988. If there are no adverse public comments, final authorization for Florida for analogs for these provisions will be effective October 30, 1988, unless EPA publishes a prior **Federal Register** acton withdrawing this Immediate Final Rule.

FOR FURTHER INFORMATION CONTACT: Otis Johnson, Jr., Chief, Waste Planning Section, RCRA Branch, U.S. Environmental Protection Agency, 345

Courtland Street NE., Atlanta, Georgia 30365, (404) 347–3016.

Lee A. DeHihns, III,

Acting Regional Administrator.

Date: August 24, 1988.

[FR Doc. 88–20322 Filed 9–7–88; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 80482–8082]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

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

ACTION: Notice of closure.

SUMMARY: NOAA announces the closure of the Treaty Indian ocean salmon fishery in the exclusive economic zone (EEZ) from the U.S.-Canada border to Point Chehalis, Washington, at midnight, September 3, 1988, to evaluate landings. The Treaty Indian ocean fishery will reopen by notice in the **Federal Register** only if sufficient coho salmon remain in the quota to allow at least 24 hours of additional fishing. The Director, Northwest Region, NMFS (Regional Director), has determined that this closure is necessary to ensure that the ocean quota for the Treaty Indian fishery of 68,000 coho salmon is not exceeded. This action is intended to ensure conservation of coho salmon.

EFFECTIVE DATE: Closure of the EEZ from the U.S.-Canada border to Point Chehalis, Washington, to Treaty Indian ocean salmon fishing is effective at 2400 hours local time, September 3, 1988. Comments on this closure will be received through September 18, 1988.

ADDRESS: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way N.W., BIN C15700, Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the **Federal Register** under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached." The regulations further specify at § 661.10 that "Except as otherwise provided in this part, Treaty Indian fishing in any part of the fishery management area is subject to the provisions of this part, the Magnuson Act, and any other regulations issued under the Magnuson Act."

In its preseason notice of 1988 management measures (53 FR 16002, May 4, 1988), NOAA announced that the Treaty Indian ocean fishery for all salmon species except coho salmon would begin on May 1 and continue through the earlier of June 30 or the attainment of the chinook salmon quota, and that the Treaty Indian ocean fishery for all salmon species would begin on July 1 and continue through the earliest of September 30 or the attainment of the chinook or coho salmon quota. Treaty Indian ocean quotas are 60,000 chinook and 68,000 coho salmon. In-season adjustments to the season were imposed by Treaty Indian tribal regulations.

Based on the best available information on the estimated average daily catch of coho salmon, the Treaty Indian ocean fishery is projected to exceed its quota of 68,000 coho salmon if allowed to continue beyond September 3, 1988. Therefore, the Treaty Indian ocean salmon fishery between the U.S.-Canada border and Point Chehalis, Washington (46°53'18" N. latitude), must be closed at midnight, September 3, 1988, to prevent exceeding the quota and to evaluate landings. If sufficient coho salmon remain in the quota to allow at least 24 hours of additional fishing, reopening of this fishery will be announced by publishing a notice in the **Federal Register** in accordance with the regulations at 50 CFR 661.21(a)(2).

Consequently, NOAA issues this notice to close the Treaty Indian ocean salmon fishery in the EEZ from the U.S.-Canada border to Point Chehalis, Washington, effective 2400 hours local time, September 3, 1988. This notice does not apply to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and affected Treaty Indian tribes regarding a closure of the Treaty Indian ocean fishery between the U.S.-Canada border and Point Chehalis, Washington.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after the effective date, through September 18, 1988.

Other Matters

This action is authorized by 50 CFR 661.21(a)(1) and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

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

Dated: September 2, 1988.

Joe P. Clem,

Acting Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–20416 Filed 9–2–88; 4:37 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 53, No. 174
Thursday, September 8, 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.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 225 and 226

Summer Food Service Program and Child Care Food Program; Meat Alternates Used in the Supplement (Snack)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the meal pattern in the Summer Food Service Program and Child Care Food Program to allow crediting of yogurt as a meat alternate in the supplement (snack). The service of yogurt in Child Nutrition Programs has never been disallowed; however, crediting the product has never been permitted. This proposed rule would allow up to four (4) ounces (weight) of plain or sweetened and flavored yogurt to fulfill the meat/meat alternate component for the supplement (snack). This rule is intended to maintain the nutritional integrity of the supplement (snack), while providing local flexibility in meal service to meet regional and ethnic food preferences.

This proposed rule applies to products covered by Standards of Identity as established for yogurt (21 CFR 131.200), lowfat yogurt (21 CFR 131.203), and nonfat yogurt (21 CFR 131.206).

DATE: To be assured of consideration, comments must be postmarked no later than November 7, 1988.

ADDRESS: Comments should be mailed to Cynthia Ford, Chief, Technical Assistance Branch, Nutrition and Technical Services Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 602, 3101 Park Center Drive, Alexandria, Virginia 22302. Comments received may be inspected at the above address during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Ford at the address listed above or by telephone at (703) 756–3556.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Executive Order 12291 and has been classified nonmajor because it will not have an annual effect on the economy of $100 million or more; 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 have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

This rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to this rule, Ms. Anna Kondratas, FNS Administrator, has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities.

These programs are listed in the Catalog of Federal Domestic Assistance under Nos. 10.558 and 10.559 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V, and final rule-related notice published in 48 FR 29114, June 24, 1983).

No new reporting or recordkeeping requirements are included which require Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

Sections 13(f) and 17(g) of the National School Lunch Act (42 U.S.C. 1761(f), 1766(g)) requires that the Secretary of Agriculture set minimum nutritional requirements for meals and snacks served in the Summer Food Service and Child Care Food Programs. Meal pattern requirements have been established for specific types and amounts of food for the meals served in each of the programs that the Department administers. These meal patterns are designed to provide a flexible framework for food service managers to use in planning nutritious meals from a wide variety of foods and within a diversity of regional, cultural, and ethnic food preferences. From time to time, the Department has reviewed these meal patterns to reflect new knowledge about food consumption habits and the food preferences of children, as well as nutrition need.

Requirements for the supplement (snack) in the Summer Food Service Program and Child Care Food Program specify a choice of two (2) of the following four (4) components: Fluid milk; meat or meat alternate; vegetable or fruit or juice; and bread or bread alternate. The meat/meat alternate component currently includes lean meat, poultry, fish, egg, cheese, cooked dry beans or peas, peanuts and other nut or seed butters, and nuts and seeds. Yogurt is widely recognized as a good source of protein and would be a nutritious addition to the list of approval meat alternates (comparable to cheese and cottage cheese). In addition, yogurt is gaining wide acceptance by children.

The Department is limiting yogurt to the Summer Food Service Program and Child Care Food Program because it believes yogurt is most appropriately served as a supplement (snack). The Department believes that yogurt is not an appropriate meat alternate in breakfast, lunch, or supper in any of the other Child Nutrition Programs. The Department made this decision based on the sugar content of the majority of yogurt products, the likelihood of decreased milk consumption when yogurt is served in meals along with milk, and yogurt's inherently low iron content.

The objections to yogurt as a meat alternate in breakfasts, lunches, and suppers are not necessarily relevant for supplements (snacks). From time to time, additional appropriate foods have been allowed to be credited in the supplement (snack) that cannot be credited in other meals. An example of such a policy is the crediting of cookies made from whole-grain or enriched flour or meal. While cookies are not creditable as bread alternates at breakfast, lunch, or supper, cookies can be considered an acceptable and appropriate item if served in reasonable serving sizes and on an infrequent basis. The Department's position is that foods served in the supplement (snack) should make a positive contribution to children's diets by providing additional food energy (calories) and other nutrients needed at mid-morning and mid-afternoon.

The Department is proposing that four (4) ounces (weight) of yogurt be the equivalent of the one (1) ounce of meat/meat alternate, which is a component for the supplement (snack). For nutrient comparison of yogurt and other meat/meat alternates, see the following chart. This proposed rule applies to products covered by Standards of Identity as established for yogurt (21 CFR 131.200), lowfat yogurt (21 CFR 131.203), and nonfat yogurt (21 CFR 131.206).

NUTRIENT COMPARISON OF YOGURT AND CURRENT CREDITABLE MEAT AND MEAT ALTERNATES IN THE SUPPLEMENT (SNACK) OF THE SUMMER FOOD SERVICE PROGRAM AND CHILD CARE FOOD PROGRAM

Food Item	Amount	Calories	Protein g	Calcium mg	Iron mg	Thiamin mg	Niacin mg
Yogurt, plain, whole milk	4 oz	70	3.94	137	0.06	0.03	0.08
Yogurt, plain, lowfat	4 oz	72	5.95	207	0.09	0.05	0.13
Yogurt, plain, skim milk	4 oz	64	6.5	226	0.05	0.05	0.14
Yogurt, vanilla, lowfat	4 oz	97	5.59	194	0.08	0.05	0.12
Yogurt, fruit, lowfat (average)	4 oz	116	5	174	0.08	0.04	0.11
Cheese, American, pasteurized process	1 oz	106	6.28	174	0.11	0.01	0.01
Cheese, cottage, lowfat	¼ cup	41	7	34	0.08	0.01	0.07
Meat, lean (average)	1 oz	61	7.1	7.7	0.4	0.02	1.47
Bologna, beef	1 oz	90	3.5	3	0.4	0.05	0.75
Egg, whole, large	½	40	3.03	14	0.52	0.02	0.02
Beans, pinto, dry, cooked	¼ cup	59	3.5	21	1.11	0.08	0.17
Walnuts	1 oz	182	4.06	27	0.69	0.11	0.3
Peanut Butter, smooth	2 tbsp	188	7.87	11	0.53	0.05	4.19

List of Subjects

7 CFR Part 225

Food assistance programs; Grant programs—health, infant and children.

7 CFR Part 226

Daycare; Food assistance programs; Grant programs—health, infants and children.

Accordingly, Parts 225 and 226 are proposed to be amended as follows:

PART 225—SUMMER FOOD SERVICE PROGRAM

1. The authority citation for Part 225 is revised to read as follows:

Authority: Secs. 311, 323 and 326 of the School Lunch and Child Nutrition Amendments of 1986, Pub. L. 99–500 and 99–591, 100 Stat. 1783, 1783–359 to 362, 3341–363 to 365; Pub. L. 97–35, secs. 803, 809, 816, and 817(a)–(b), 95 Stat. 357, 524, 527 and 531 (42 U.S.C. 1759a, 1761, 1785, and 1759); Pub. L. 96–499, secs. 203 and 206, 94 Stat. 2599, 2600, and 2601 (42 U.S.C. 1759a and 1761); Pub. L. 95–627, secs. 5(c)–(d), 7(b), and 10(c)(2), 92 Stat. 3603, 3620, 3622, and 3624 (42 U.S.C. 1759a and 1761); Pub. L. 95–166, sec. 2, 91 Stat. 1325 (42 U.S.C. 1761); Pub. L. 91–248, sec. 7, 84 Stat. 207, 211 (42 U.S.C. 1759a); unless otherwise noted.

2. In § 225.20, the table in paragraph (b)(3) is amended by adding a new entry for yogurt after the entry for "Peanuts or soynuts * * *" to read as follows:

§ 225.20 Meal service requirements.

* * * * *

(b) * * *

Supplemental Food

(3) * * *

Food component	Minimum amount
Meat and Meat Alternates	
* * * * *	
or	
Yogurt, plain, or sweetened and flavored	4 oz.
* * * * *	

* * * * *

PART 226—CHILD CARE FOOD PROGRAM

1. Authority citation for Part 226 is revised to read as follows:

Authority: Sec. 401, Pub. L. 100–175, 100 Stat. 972 (42 U.S.C. 1766); secs. 323, 326, and 361, Pub. L. 99–500 and 99–591, 100 Stat. 1783 and 3341 (42 U.S.C. 1758, 1760 and 1766); secs. 803, 810, and 820, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1758, 1766); sec. 2, Pub. L. 95–627, 92 Stat. 3603 (42 U.S.C. 1766); sec. 10, Pub. L. 89–642, 80 Stat. 889 (42 U.S.C. 1779), unless otherwise noted.

2. In § 226.20, the table in paragraph (c)(3) is amended by adding a new entry for yogurt after the entry for "Peanuts or soynuts * * *" to read as follows:

§ 226.20 Requirements for meals.

* * * * *

(c) * * *

Supplemental Food

(3) * * *

Food components	Age 1 up to 3	Age 3 up to 6	Age 6 up to 12 [1]
* * * * *			
Meat and Meat Alternates.			
* * * * *			
or			
Yogurt, plain, or sweetened and flavored.	2 oz	2 oz	4 oz

[1] Children age 12 and up may be served adult size portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section for children age 6 up to 12.

* * * * *

Dated: September 1, 1988.

Anna Kondratas,

Administrator.

[FR Doc. 88–20334 Filed 9–7–88; 8:45 am]

BILLING CODE 3410-30-M

Federal Crop Insurance Corporation

7 CFR Part 401

[Amendment No. 34; Doc. No. 5721S]

General Crop Insurance Regulations; Pear Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1989 and succeeding crop years, by adding a

new section 7 CFR 401.140, Pear Endorsement. The intended effect of this rule is to provide the provisions of crop insurance protection on pears in an endorsement to the general crop insurance policy.

DATES: Written comments, data, and opinions on this proposed rule must be submitted not later than October 11, 1988, to be sure of consideration.

ADDRESS: Written comment on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as April 1, 1992.

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

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

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

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

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

FCIC herewith proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.140, the Pear Endorsement, effective for the 1989 and succeeding crop years, to provide the provisions for insuring pears.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register.** Written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

Crop insurance, pear endorsement.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), proposed to be effective for the 1989 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.140, Pear Endorsement, effective for the 1989 and Succeeding Crop Years, to read as follows:

§ 401.140 Pear Endorsement.

The provisions of the Pear Crop Insurance Endorsement for the 1989 and subsequent crop years are as follows:

Federal Crop Insurance Corporation

Pear Endorsement

1. *Insured Crop*

a. The crop insured will be all pear varities established as adapted to the area and classified as follows:

(1) Type I: Green Bartlett; and

(2) Type II: All others.

b. In addition to the pears not insurable in section 2 of the general crop insurance policy, we do not insure any pears:

(1) Of any type which has not produced an average of 4 tons per acre of first grade canning or U.S. number 1 pears in at least one of the four previous crop years;

(2) Which we inspect and consider not acceptable; or

(3) Which do not have production records acceptable to us.

2. *Causes of Loss*

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

(1) Drought;

(2) Earthquake;

(3) Excess wind;

(4) Fire;

(5) Flood;

(6) Freeze;

(7) Frost;

(8) Fruit-set failure;

(9) Hail;

(10) Volcanic eruption; or

(11) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless those causes are expected, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss not insured against in section 1 of the general crop insurance policy, we will not insure against any loss of production due to fire if weeds and other forms of undergrowth have not been controlled or tree pruning debris has not been removed from the orchard. We also specifically do not insure against failure of the fruit to color properly, or the inability to market the fruit as a direct result of quarantine, boycott, or refusal of any entity to accept production.

3. *Report of Acreage, Share, and Type (Acreage Report)*

a. In addition to the information required in section 3 of the general crop insurance policy, you must report the crop type.

b. The date you must annually submit the acreage report is December 15 of the calendar year insurance attaches in California and January 15 of the calendar year the insured crop normally blooms in all other states.

4. *Production Reporting and Production Guarantees*

a. In addition to the information required by section 4 of the general crop insurance policy, you must report by variety:

(1) The number of bearing trees;

(2) The number and age of trees per acre and the current planting pattern; and

(3) Any tree damage or change in farming practices which will or may reduce yields from previous levels.

5. *Annual Premium*

The annual premium amount is computed by multiplying the production guarantee (in tons) times the price election, times the premium rate, times the insured acreage, times your share on the date insurance attaches.

6. *Insurance Period*

a. The calendar date on which insurance attaches is November 21.

b. The calendar date for the end of the insurance period is the following applicable date of the calendar year in which the pears are normally harvested:

Variety and Date

Bartlett (Green and red), September 15
Star Crimson (Crimson Red), September 15
All others, October 15

7. *Unit Division*

a. Pear acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy may be divided between type I and type II. However, alternating rows of, or interplanting of type I and II pears will not be separate units.

b. Pear acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy and subsection 7.a. above may be divided into more than one unit if:

(1) You agree to pay additional premium if provided for by the actuarial table;

(2) For each proposed unit you maintain written, verifiable records of acreage and harvested production for at least the previous crop year and production reports based on those records are timely filed to obtain an insurance guarantee; and

(3) The acreage of insured pears is located on non-contiguous land.

c. If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

8. *Notice of Damage or Loss*

In addition to the notices required in the general crop insurance policy and in case of damage or probable loss you must give us notice of the date and cause of damage within 10 days of such damage.

9. *Claim for Indemnity*

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

(1) Multiplying the insured acreage by the production guarantee;

(2) Multiplying this product by the price election;

(3) Subtracting the dollar amount obtained by multiplying the total production to be counted (see subsection 9.3.) by the price election; and

(4) Multiplying the result by your share.

b. If a unit contains acreage to which both type I and type II pear guarantees apply, the dollar amount of insurance and the dollar amount of production to be counted will be determined separately for each type and then added together to determine the total amount for the unit.

c. The total production to be counted for a unit will include:

(1) All harvested and appraised production that meets the following applicable U.S.D.A. grade standards except those pears specified in subsection 9.d.:

(a) For Type I pears, first grade canning (under California Tree Fruit Agreement Standards) or U.S. Number 1 (under U.S. Standards for summer and fall pears) in California, or U.S. Number 1 (under either U.S. standards for summer and fall pears or processing pears) in states other than California; or,

(b) For Type II pears, U.S. Number 1 (under U.S. standards for summer and fall or winter pears) for type II pears; and

(2) All production that due to insurable causes does not meet the grade requriements in subsection 9.c.(1) but could be marketed for any use. The amount of such production to be counted will be determined by:

(a) Dividing the value of the pears per ton by the highest price election available for the insured type and;

(b) Multiplying the result by the number of tons of such pears.

d. The amount of size 180 and smaller pears in excess of 10 percent of the total production of a type will not be considered as production to count except under the provisions of subsection 9.c.(2) if the quantity of such pears is the result of an insured cause of loss. This adjustment is not applicable to the Forelle, Seckel, or Winter Nelis varieties.

e. Appraised production will include:

(1) Mature and potential production on unharvested acreage;

(2) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good pear farming practices; and

(3) Not less than the guarantee for any pears which are abandoned, damaged solely by an uninsured cause, or destroyed by you without our consent.

f. Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is: (1) further damaged by an insured cause and is reappraised by us; or (2) harvested.

g. If you are going to claim an indemnity on any unit, all production must be inspected by us prior to the beginning of harvest and we must give you written consent prior to disposal or sale of any damaged fruit. If you fail to meet the requirements of this subsection all such production may be considered undamaged and included as production to count.

10. *Cancellation and Termination Dates*

The cancellation and termination dates are November 20.

11. *Contract Changes*

The date by which contract changes will be available in your service office is August 31 preceding the cancellation date.

12. *Meaning of Terms*

a. *"Crop year"* means the period beginning with the date insurance attaches and extending through normal harvest time and is designated by the calendar year in which the pears are normally harvested.

b. *"Excess wind"* means a natural movement of air of sufficient velocity to separate pears from the trees.

c. *"Freeze"* means the condition that exists when air temperatures over a widespread area fall to or below 32 degrees fahrenheit, and cause damage to plant tissue or fruit.

d. *"Frost"* means a deposit or covering of minute ice crystals formed from frozen water vapor which causes damage to plant tissue or fruit.

e. *"Fruit-set failure"* means failure of the pear trees to develop blossoms or set fruit due only to adverse weather conditions.

f. *"Harvest"* means the picking of pears from the trees or removing the fruit from the ground.

g. *"Non-contiguous Land"* means any land owned by you or rented by you for cash, a fixed commodity payment or any consideration other than a share in the insured crop, whose boundaries do not touch at any point. Land which is separated by a public or private right-of-way, waterway or irrigation canal will be considered to be touching (contiguous).

h. *"Ton"* means 2000 pounds. All production in varying container sizes will be converted to tons.

Done in Washington, DC on August 17, 1988.

John Marshall,

Manager, Federal crop Insurance Corporation.

[FR Doc. 88-20186 Filed 9-7-88; 8:45am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 945

[FV-88-125]

Irish Potatoes Grown in Certain Designated Counties in Idaho and Malheur County, Oregon; Proposed Rule to Authorize Collection of Destination Data

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal rule would require handlers to provide the Idaho-Eastern Oregon Potato Committee with the destinations of all potato shipments. Although production area potatoes are shipped nationwide, some markets receive heavier shipments than others. Collection of this data should help the committee determine which markets are underutilized and so advise handlers. This information would also assist the committee in performing other duties under the marketing order.

DATES: Comments must be received by September 19, 1988.

ADDRESSES: Comments should be sent to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085-S, Washington, DC 20090-6456. Three copies of all written material should be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. Comments should reference the date and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone 202-447-2431.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 945 (7 CFR Part 945), regulating the handling of potatoes grown in certain designated counties of Idaho and

Malheur County, Oregon. This order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This proposed 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 (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproporationately burdened. Marketing orders issued pursuant to the 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 compatiability.

There are approximately 70 handlers of potatoes subject ot regulation under the Idaho-Eastern Oregon Potato Marketing Order and approximately 3,100 potato producers in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of Idaho-Eastern Oregon potatoes may be classified as small entities.

This proposed rule would require handlers to provide the Idaho-Eastern Oregon Potato Committee with the destinations of all potato shipments leaving the production area. This rule is being proposed under § 945.80 of the marketing order which authorizes the committee to collect from handlers information necessary to perform its duties. One such committee duty, as set forth in § 945.33, is to investigate and assemble data on potato shipping and marketing conditions. Although potatoes from the production area are distributed nationally and reach nearly all major markets, some markets receive heavier shipments than others. Such differences may be attributed to higher freight costs for more distant markets, competition from other producing areas, or personal preferences of consumers.

At its June 8 meeting the committee unanimously recommended that handlers provide the committee with the zip codes of final destinations of potatoes shipped from the area. The marketing order authorizes the establishment of grade, size, quality, maturity, pack, and container requirements based upon committee recommendations. Prior to making such recommendations, the committee is required to develop and submit a marketing policy which sets forth relevant potato supply and demand conditions, and serves as a basis for regulatory actions. Information complied on destinations of shipments would be useful to the committee in developing its annual marketing policy. The committee would be able to compare movement to various markets over time in recommending regulations. For example, relatively low shipment levels to a specific market could support a modification of regulatory requirements for shipments to that area for market development purposes.

Under the proposed rule, the committee staff would compile a list of destinations and quantities shipped to each from the information provided by handlers. Information gathered by the committee would be disseminated to the trade in aggregate form so that individual handlers' operations would not be divulged. The information thus provided would help the trade to pinpoint markets that would seem to be underutilized. It would also be useful information in the planning of individual marketing and promotion programs.

At the present time there is not available from any source a reliable, complete, ongoing record of where production area potatoes are shipped. While the Federal-State Market News Service does publish some potato arrival statistics for certain markets, it does not give a complete picture of potato movement. With a monthly report of potato sales by destination, the committee would be better able to analyze the results of its quality control program.

The committee considered several ways of collecting this information, including requiring handlers to complete and submit reports to the committee on a weekly or monthly basis. However, the mechanism chosen to gather the necessary information would provide that the Federal or Federal-State inspector copy the zip code from the bill of lading onto the inspection certificate at the time of inspection. The committee staff would then compile the information upon receipt of the inspection certificates, which are already forwarded to the committee by the Inspection Service for billing, statistical reporting, and other purposes. The Inspection Service has agreed to do this, and the additional time required for each certificate should be only a few seconds. Also, many handlers are already providing this information to the Inspection Service. Thus, the burden on the handler imposed by this proposed rule would be insignificant.

At times, a load of potatoes may be shipped to other than the destination intended at the time of inspection. In such situations, handlers would be required to notify the committee directly of the actual destination of the load. This notification could be provided to the committee office either by telephone or in writing.

This rule would impose some additional reporting requirements on handlers. Specifically, handlers would need to provide the Inspection Service with the intended destination of each shipment. Additionally, handlers would be required to contact the committee office directly in those instances where a shipment is diverted from its intended destination. These information collection requirements will be submitted to the Office of Management and Budget (OMB) for approval, in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). These requirements would not be made effective until OMB approval has been received.

Based on the above, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A ten-day comment period is allowed to receive written comments with respect to this proposal. Such time period is deemed sufficient since the proposal was recommended in a public meeting of growers and handlers, and the commitee manager has discussed the proposal with area handlers. Moreover, shipments of Idaho-Eastern Oregon potatoes have begun, and this rule should cover as many current-season shipments as possible to be of maximum benefit.

List of Subjects in 7 CFR Part 845

Marketing agreements and orders, potatoes, Idaho, Oregon.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 945 be amended as follows:

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR Part 945 continues to read as follows:

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

2. Section 945.341 is amended by adding a new paragraph (d)(4) to read as follows:

§ 945.341 Handling regulation.

* * * * *

(d) * * *

(4) Handlers shall provide the committee with the destination zip codes of all potatoes handled by permitting the Federal-State Inspection Service to review the bills of lading upon inspection to determine the destination zip codes. The zip codes shall be included on the inspection certificates. Whenever potatoes are diverted to a different destination, the handler shall notify the committee of the new destination zip code orally or in writing as soon as practicable.

* * * * *

Dated: September 2, 1988.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–20337 Filed 9–7–88; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Parts 1006, 1012 and 1013

[Docket No. AO–356–A26, AO–347–A29 and AO–286–A36; DA–88–102]

Milk in the Upper Florida, Tampa Bay and Southeastern Florida Marketing Areas; Recommended Decision and Opportunity to File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision amends provisions of the three Florida milk orders to reflect current marketing conditions. The proposed changes are based upon industry proposals considered at a public hearing held January 26, 1988, in Orlando, Florida.

Each of the three orders would be amended to provide a two-month "lock-in" provision for pool distributing plants, seasonal diversion limits, and an increase in the charges on overdue accounts. Shrinkage on other source milk receipts would be limited to buy fluid milk products.

The Upper Florida and Tampa Bay orders would be amended to permit a pool plant and a manufacturing plant under a single roof to operate as separate facilities.

The Southeastern Florida order would be changed to require that a dairy farmer must deliver 10 days' production to a pool plant in order for such dairy farmer's milk to be diverted to nonpool plants as producer milk. Other miscellaneous amendments would delete the $6 maximum on partial payments to producers and make other changes to conform the Southeastern Florida order to other Federal milk orders.

DATE: October 11, 1988.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers.

Prior document in this proceeding:

Notice of Hearing: Issued January 12, 1988; published January 15, 1988 (53 FR 1035).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the Upper Florida, Tampa Bay and Southeastern Florida marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC, 20250, by the 30th day after publication of this decision in the **Federal Register**. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Orlando, Florida, on January 26, 1988, pursuant to a notice of hearing issued January 12, 1988 (53 FR 1035).

The material issues on the record of hearing relate to:

1. Two-month "lock-in" for distributing plants under the three Florida milk orders;
2. Diversion of producer milk to nonpool plants under the three Florida milk orders;
3. Classification of shrinkage on milk receipts under the three Florida milk orders;
4. Charges on overdue accounts under the three Florida milk orders;
5. Amendments to the pool plant provisions of the three Florida milk orders;
6. Miscellaneous amendments to the three Florida milk orders.
7. Regulatory treatment under Upper Florida and Tampa Bay milk orders of a pool plant and a manufacturing plant under a single roof.
8. Regulatory status of an exempt distributing plant under the Upper Florida order; and
9. Miscellaneous amendments to the Southeastern Florida order.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Two-month "lock-in" for distributing plants under the three Florida orders.* The orders should be amended to provide that a pool distributing plant will not shift regulation to another Federal order until the third month of greater fluid milk sales in the marketing area of the other order.

The three Florida orders currently provide that a distributing plant which qualifies as a pool plant shall be regulated under the order for the market in which the plant's distribution in the marketing area is the greatest.

A representative of the Florida Dairy Farmers' Association and Tampa Independent Dairy Farmers' Association proposed that a distributing plant continue to be pooled under the order for the market in which it has been previously regulated until the third month that the plant's sales in the marketing area of another order

exceeded its fluid milk sales in the marketing area of the order in which the plant had been regulated. The cooperatives indicated that since 1983, four distributing plants have shifted regulation among the three Florida orders 28 times. Such shifts have caused distortions in the monthly market data published by the market administrator. In addition, such shifts often reveal confidential information regarding the plant that switches regulation from one order to another order. When a plant shifts regulation, the handler is identified as the source of increased route sales by pool handlers in the marketing area of the new order. Route sales in the marketing area of the prior milk order by the handler are reflected in increased out-of area sales by pool handlers when the plant shifts regulation.

The shifting in plant regulation from one order to another order on a month-to-month basis serves no useful purpose and can cause a number of administrative problems for the handler involved in such shifts. For example, a shift in regulation of the plant can cause a handler to have problems in pooling milk diverted to nonpool plants for Class II use.

Requiring that a plant continue to be regulated under an order until the third month that it has more sales in the marketing area of another order will minimize the number of times that a plant will shift regulation. Such change will insure that a plant which has greater sales in another order area due to some aberration in sales for a relatively short period will not shift to another order immediately. Instead, the plant will continue to be regulated by the order under which the plant was previously regulated until the third month in which the plant has greater sales in the marketing area of another order.

2. *Diversion of producer milk to nonpool plants under the three Florida milk orders.* Seasonal diversion limits should apply on producer milk diverted to nonpool plants for Class II use. Cooperative associations and proprietary plant operators should be permitted to divert producer milk in amounts up to the following percentages of milk physically received at pool plants for which they are the responsible handler: 40 percent in March–June, 25 percent in December–February and 20 percent in July–November.

Under the three Florida orders, cooperative associations and proprietary plant operators are permitted currently to divert an amount equivalent to 25 percent of the aggregate quantity of milk physically received from producers at a pool plant. Proponents indicated that current provisions allow up to 50 percent of producer milk physically received at pool plants to be diverted to nonpool plants. In this regard, they noted that while cooperative associations are limited to diverting only the milk of member producers, the order provisions also permit a proprietary plant operator to divert up to 25 percent of the milk of producers received at a pool plant. A representative of Southern Milk Sales, Inc., likewise pointed out that the proposed limits are less than now permitted under the separate orders.

The seasonal diversion limits adopted herein are identical to the modified diversion limits proposed at the hearing by proponent cooperatives. In the proposals contained in the notice of hearing, the proponent cooperatives had specified the following diversion limits: 40 percent in April, May and June, 30 percent in March and 20 percent in all other months.

An exhibit presented at the hearing by proponent cooperatives identified the percent of producer milk that such cooperatives had diverted on a month-by-month basis from 1983 through 1987. The months of March–June were the months when the greatest amount of milk was diverted and the months of July–November were the months when the least amount of milk was diverted. The months of December–February are months of somewhat greater diversion than the months of July–November.

The cooperatives pointed out that the exhibit represents the combined diversions of proponent cooperatives for the three Florida milk orders. Their spokesman pointed out that the individual cooperatives' diversions from specific plants varied greatly from the percentages shown on the exhibit.

Monthly average diversions to nonpool plants by proponent cooperatives in the three Florida orders for the years 1983 through 1987 as a percentage of producer milk pooled by proponent cooperatives ranged from a low of 0 in August 1987 to a high of 7.7 in December 1983. On the basis of prior diversions, the percentage limitations adopted herein will facilitate the handling of milk that is in excess of the fluid needs of handlers. Furthermore, proponent cooperatives modified at the hearing the diversion limits set forth in the hearing notice after consulting with other cooperative associations serving the Florida markets. Such modified limits are the percentage diversion limits adopted herein.

The seasonal monthly limits on diversions provided herein represent a monthly average of 27.5 percent on a year-round basis. This is only 2.5 percentage points greater than the limit now provided for a cooperative under the order. It is concluded, therefore, that the diversion limits requested by proponent cooperatives of 40 percent in March–June, 25 percent in December–February and 20 percent in July–November are reasonable limits and should be adopted.

Any milk diverted by a handler in excess of the quantity limitations should not be producer milk. The diverting handler should be permitted to designate the dairy farmer deliveries to nonpool plants that would not be producer milk.

In the event that the diverting handler fails to designate which producer's milk was over-diverted, the market administrator shall make such determination. In this regard, milk last diverted during such month in lots of an entire day's production, should be excluded first in determining which milk would not be producer milk.

Proponent cooperatives suggested that the market administrator should determine whose milk was over-diverted in the event that the diverting handler fails to make such determination. Proponents, however, gave no indication how the market administrator should make such determination. Accordingly, this decision adopts a method that has been used in other Federal orders to make such choice.

In conjunction with the seasonal diversion limits, proponent cooperatives asked that the minimum monthly delivery of 10 days' production of each producer to a pool plant under the Upper Florida and Tampa Bay milk orders and the proposed 10-day requirement for the Southeastern Florida milk order (discussed later in this decision) be modified. Proponents indicated that the producer whose milk is diverted may not be able to meet the 10-day requirement if a pool plant switches regulation to another Federal order. In such case, the cooperatives proposed that milk delivered to another order plant regulated by the order that had regulated such pool plant in the prior month shall be counted towards meeting the 10-day production requirement.

The proposed change is an appropriate modification and is adopted herein. Unless such change is adopted, a dairy farmer who delivered 10 days' production to two pool plants might not be able to qualify the milk that was diverted to a nonpool plant as producer milk if one of the two pool plants

became regulated under another order during the month. Under the change adopted herein, the producer could use the milk delivered to the pool plant and the other order plant to qualify the milk diverted for manufacturing use as producer milk. In the event that a cooperative is the diverting handler, the cooperative should be permitted to elect under which order the diverted milk is to be pooled as producer milk.

3. *Classification of shrinkage on other source milk receipts under the three Florida milk orders.* Shrinkage on receipts of producer milk and bulk milk receipts that is classified as Class II milk should be more effectively limited to one and one-half percent of such receipts. In prorating total plant shrinkage between receipts of fluid milk products that are generally intended for Class I use and other receipts of fluid milk products and fluid cream products intended for Class II use (including milk products that are utilized in the plant's processing operations to produce other milk products), only receipts that are in bulk should be used in such proration.

Under the current provisions of the three orders, shrinkage is assigned to both packaged fluid milk products and bulk fluid milk products that are received at a pool plant. Proponent cooperatives requested that plant shrinkage not be assigned to packaged receipts of fluid milk products.

The shrinkage provisions of orders recognize that losses do occur in the processing of raw milk into packaged fluid milk products. Processing losses do not occur in the handling of packaged fluid milk products that are transferred between plants. In most cases, there is no shrinkage or loss in the handling of packaged fluid milk products transferred between plants. Under usual circumstances, the quantity of packaged fluid milk products that is received at a pool plant is disposed of on routes without any loss. Consequently, the orders should be changed so that shrinkage losses are not attributed to packaged fluid milk products transferred to a pool plant. This will assign plant shrinkage to those milk receipts for which a handler is more likely to incur shrinkage as well as better effect the limit on the Class II classification of shrinkage.

4. *Charges on overdue accounts under the three Florida orders.* Late payment charges should apply on all funds due to the market administrator (Sections 71, 76, 77, 85, and 86—Payments to the producer-settlement fund, payments by handlers operating a partially regulated distributing plant, adjustment of accounts, assessment for order administration and deductions for marketing services, respectively) and on payments due to producers and cooperative associations (Section 73—Payments to producers and to cooperative associations). The charge for late payments should be one percent for each month or portion thereof that such payment is overdue. The order should also provide that the amounts payable on overdue accounts shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously computed on such overdue accounts. Any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. Also, all monies collected on overdue accounts shall be paid to the administrative fund maintained by the market administrator.

The Upper Florida and Tampa Bay milk orders currently provide for late payment charges on accounts due the market administrator. The Southeastern Florida milk order applies a late payment charge only on funds due to the producer-settlement fund. In each of the three orders, the charge for late payments is one-half of one percent for each month the payment is overdue. The representative for the two Florida cooperative associations requested that late payment charges apply on all accounts due the market administrator and on payments due producers and cooperative associations. The cooperatives requested that the charges on overdue accounts be one percent for the first month the account is overdue, one and one-half percent the second month the account is overdue, and two percent per month for each succeeding month hat the account is overdue.

The cooperatives' representative indicated that he was not aware of any handler who is habitually tardy in making payments required under the order. However, he believed that the individual orders should not encourage late payments as temporary short-term sources of funds by the imposition of relatively low charges on late payments. Also, the cooperatives indicated that producers and cooperative associations should not be expected to become sources of operating funds for handlers. If a handler fails to make payments as required, cooperative associations would have to borrow short-term capital to pay member producers or reduce the payment that they make to producers.

Charges on overdue accounts should apply on the unpaid obligation of a handler pursuant to sections 71, 73, 76, 77, 85 and 86 in each of the three Florida milk orders. As indicated by proponents, none of the Federal milk orders provide for later payment charges as high as those proposed for the three Florida orders. The Alabama-West Florida order provides for a charge of one and one-half percent per month on overdue accounts. All of the other Federal milk orders that have late payment charges have rates that range from one-half of one percent to one percent per month.

The effectiveness of the late payment charges that currently apply under the three Florida orders is nullified to a large extent by the relatively small charge (½ of 1 percent of the unpaid obligation) and the fact that the charge does not apply until the first of the month following the due date. If the charge on overdue accounts is to have an impact on encouraging prompt payments, it should be an amount that is more nearly what a delinquent handler would be charged by commercial banks for money borrowed for short-term purposes. Otherwise, handlers who may have financial problems would be encouraged to delay their payments, knowing that the charge under the order is cheaper than borrowing money commercially at a higher loan rate.

The late-payment charge should be established at the rate of one percent per month of the unpaid balance. This charge is only one-half the rate proposed by proponents. The rate that cooperatives proposed was based upon the rate of interest charged by certain credit card companies for loans extended to their customers. The rate of 1 percent per month on the unpaid balance is more nearly representative of the cost of borrowing money commercially and should tend to encourage the payment of an obligation.

In the event that the 1-percent-per-month charge on overdue accounts fails to encourage prompt payment of accounts by handlers, interested parties may want to propose at the next public hearing on amendments to these orders that such charge be applied at an earlier date. Currently, late payment charges are not applied until the first day of the month after the account is due. The regulatory provisions in certain other Federal milk orders apply the charge immediately after the account is due.

Late-payment charges on all overdue accounts should accrue to the administrative expense fund maintained by the market administrator. In the event a handler is delinquent in the payment of an obligation, money must be spent by the market administrator in determining the amount of the late-payment charges and in collecting such payments. The money to cover the cost

of these activities comes from the administrative assessment fund. Thus, the competitors of the noncomplying handlers who pay assessments to this fund are bearing the administrative costs of dealing wih the delinquent handler. Therefore, it is reasonable that the late-payment charges assessed on noncomplying handlers be used to help defray these administrative costs.

5. *Amendments to the pool plant provisions of the three Florida milk orders.* The pool distributing plant and the pool supply plant provisions should be amended to provide that the performance standards for such plants are based upon the fluid milk products physically received at the plant and diverted from such plant to a nonpool plant as producer milk.

The current provisions of the three orders base the performance standards for pool distributing plants and pool supply plants upon the fluid milk products received at a plant. Proponent cooperatives requested that diversions to a nonpool plant be counted in computing the qualification percentage of the plant from which such milk is diverted during the month.

As noted by proponents, milk pooled on the Florida markets must move a significant amount of time to handlers regulation under the orders to fill the needs of the marketplace. This is evidence from the high Class I utilization of producer milk in the three markets.

The proposed change is appropriate for the three Florida orders because the State is deficit in milk production. Such change clarifies the pool plant qualification standards and will tend to assure that sufficient quantities of fluid milk products are available to meet the fluid milk requirements of regulated handlers.

As provided herein, milk diverted from a pool plant to a nonpool plant for Class II use would be included in the pool plant's receipts for the purpose of determining whether or not the plant meets the applicable pooling standards. It is necessary under this procedure to safeguard against a plant not meeting the pooling standards because too much milk was diverted from the plant, perhaps without timely knowledge of this by the plant operator. Accordingly, whatever quantity of milk diverted by a cooperative from a pool plant that would cause such plant to become a nonpool plant should not be considered as producer milk. In such event, the cooperative should be permitted to designate the dairy farmer deliveries to nonpool plants that would not be producer milk. Otherwise, the milk last diverted by the cooperative from the pool plant, in lots of an entire day's production, should be excluded first in determining the milk of dairy farmers that would not be producer milk.

6. *Miscellaneous amendments to the three Florida milk orders.* The provisions of the three Florida orders should also be amended as follows:

(1) The basic formula price section of the orders should be amended to delete a provision that establishes a floor price of $4.33 for the basic formula price;

(2) The section of the orders dealing with the handler's value of milk for computing the uniform price should be amended by removing the last paragraph in such section. Such paragraph provided during a temporary period of transportation credit for bulk fluid milk products received from an other order plant.

(3) The plant location adjustments for handlers in section 52 of the orders should provide that the Class I price applicable to producer milk and other source milk when adjusted by location pricing shall not be less than the Class II price for the month; and

(4) The plant location adjustments on nonpool milk should be amended to provide that the uniform price when adjusted to the location of the nonpool plant from which the milk was received shall not be less than the Class II price for the month.

The basic formula section of the three orders should be amended to delete an inappropriate floor price for the basic formula price. The $4.33 floor price is no longer an appropriate price since the basic formula price at the present time is more than twice the floor price. Accordingly, the $4.33 floor price should be deleted.

The paragraph to be removed from Section 60 of the orders, handler's value of milk for computing uniform price, was made a provision of the orders for a temporary period. The paragraph was added to provide a transportation credit through February 1985. Since the period in which the transportation credit was available has expired, the paragraph should be removed from each of the three orders

In the plant location adjustments for handlers section of the orders, a limit should be placed on the amount that the Class I price applicable to producer milk and other source milk shall be adjusted downward. Likewise, in the plant location adjustments for the uniform price to producers and on nonpool milk, a limit should be placed on the amount that the uniform price on nonpool milk shall be adjusted downward. In each instance, the price shall not be less than the Class II price for the month. Such limit is appropriate since the Class II price represents the minimum value of producer milk in a manufacturing use. Furthermore, such change brings these provisions of the three Florida orders in conformity with changes made in other Federal milk orders at the time of the uniform classification changes.

7. *Regulatory treatment under the Upper Florida and Tampa Bay milk orders of a pool plant and a manufacturing plant under a single roof.* The Upper Florida and Tampa Bay milk orders should be amended to provide that the term pool plant shall not apply to any building, premises, or facilities, the primary function of which is to hold or store bottled milk or milk products (including filled milk) in finished form, nor shall it include any part of a plant in which the operations are entirely separated (by wall or other partition) from the handling of producer milk.

The current provisions of the Upper Florida and Tampa Bay orders do not provide for two facilities under a single roof to operate as separate facilities. Proponent cooperatives pointed out that the Southeastern Florida milk order permits a manufacturing plant to be operated as a separate facility if it is separated by a wall from a facility that is handling producer milk. The cooperatives requested that such provision be incorporated in the Upper Florida and Tampa Bay milk orders.

When the provision was adopted in the Southeastern Florida order, the findings and conclusins stated:

"A minimum requirement for treating the manufacturing facilities as a nonpool plant would be that a separate receiving plant or platform is maintained for nonproducer milk and that the equipment for manufacturing be in a room entirely separated from the fluid milk handling equipment, such separation to be by a solid partition without communicating doorway. It would, of course, be necessary that handlers keep adequate records as to transfers of milk and milk products between the two parts of the plant." (Official notice is taken of the final decision for the Southeastern Florida order issued July 11, 1957 (22 FR 5588))

Such provision has been included in the Southeastern Florida order since September 1, 1957. The provision should be adopted in the Upper Florida and Tampa Bay milk orders to provide uniformity among the three orders. Thus, a pool plant that has a separate manufacturing facility will be treated the same when shifting regulatory status among the three Florida orders.

8. *Regulatory status of an exempt distributing plant under the Upper Florida milk order.* The pool plant

definition of the Upper Florida milk order should be modified to conform to the nonpool plant definition of the order. Such definition provides that an exempt distributing plant shall not be a pool plant. Accordingly, the pool plant definition should specify that the term "pool plant" shall not apply to an exempt distributing plant.

The nonpool plant definition of the order identifies one category of nonpool plant as an "exempt distributing plant". Such plant is defined as a distributing plant operated by a governmental agency.

The pool plant modification adopted herein was proposed by proponent cooperatives. The adoption of the change will conform the pool plant definition to the nonpool plant definition. Accordingly, the pool plant definition should be changed to specify that the term "pool plant" shall not apply to an exempt distributing plant.

9. *Miscellaneous amendments to the Southeastern Florida milk order.* (a) The producer definition of the order should be revised to specify that milk of a dairy farmer must be recieved at a pool plant during the month in order for the dairy farmer to be a producer under the order.

Proponent cooperatives requested the modification of the producer definition that is adopted herein.

The proposed modification is appropriate and should be adopted herein. In the absence of the proposed change, any dairy farmer who produces Grade A milk could be qualified as a producer under the Southeastern Florida milk order. The proposed change provides specificity as to which dairy farmers are to be identified as producers under the order. Obviously, only those dairy farmers whose milk is received at a pool plant regulated by the Southeastern Florida order should be producers under such order. It is appropriate that the order be modified accordingly.

(b) The Class III Price shall be computed by multiplying the butterfat differential for the month by 35 and rounding the result to the nearest cent. The net result of such computation is that the value of skim milk classified as Class III is effectively zero.

Under the current provisions of the order, the Class III price is determined by multiplying the Chicago butter price by 1.25, adding 4 cents and multiplying the result by 3.5. This formula results in a Class III price that is about 60 cents above the value of Class II butterfat in a hundredweight of milk testing 3.5 percent butterfat. This is largely because the butterfat differential under the order is based on a yield factor of 1.15 compared to the 1.25 yield factor in this formula. Since the value of butterfat as reflected through the butterfat differential adjustment to the uniform price is about 60 cents per 3.5 pounds lower than the Class II price, the current formula effectively results in a handler being charged about 60 cents per hundredweight for Class III skim milk.

Proponent cooperatives requested that the computation for the Class III price be amended to provide a zero value for skim milk classified as Class III.

In the Southeastern Florida order, Class III milk is all milk of which the skim milk portion is disposed of for fertilizer or livestock feed or dumped after such prior notification as the market administrator may require. It is obvious that skim milk classified as Class III is of no value to the handler. Accordingly, the order should be amended to provide for a zero value for skim milk in a Class III use. The butterfat differential is the amount that the value of a tenth of a pound of butterfat exceeds the value of a tenth of a pound of skim milk. Thus, to effect a zero value for a hundreweight of skim milk in Class III, the Class III price needs to be established at the butterfat differential value in a hundredweight of milk containing 3.5 percent butterfat.

(c) The provision providing that the partial payment to producers shall not exceed $6 per hundredweight should be deleted.

The current provisions of the order provide that a handler shall make a partial payment to a producer on or before the 20th day of the month for milk received during the first 15 days of the month. On or before the 5th day of the following month, a handler is required to make a partial payment to a producer for milk recieved from the 16th day of the month unil the last day of the month. The amount of the partial payment is the uniform price for the preceding month less ten percent, but not to exceed $6, multiplied by the hundreweight of milk received during the two periods of the months.

Proponent cooperatives requested that the $6 maximum be deleted. They noted that such rate is no longer appropriate in today's market. Handlers in the market have been paying in excess of the maximum rate provided under the order for a long period of time.

As noted by proponent, the $6 maximum is no longer appropriate in today's market in which the uniform price under the Southeastern Florida Federal milk order ranges from $14 to $15 per hundredweight. Accordingly, the $6 maximum should be deleted.

(d) Ten days' milk production must be received from a producer in order for milk of such producer to be diverted to a nonpool plant for Class II use.

The current order provisions define producer milk as skim milk and butterfat contained in milk diverted from a pool plant to a nonpool plant, other than a producer-handler plant subject to certain limitations. It is not clear from the order language whether milk of a producer must be received once a month at a pool plant to be eligible for diversion to a nonpool plant or whether such milk may be diverted to a nonpool plant every day after being received once at a pool plant.

Proponent cooperatives requested that the Southeastern Florida milk order be modified to require that at least 10 days' production must be received at a pool plant in order for milk of a producer to be eligible for diversion as Class II milk to a nonpool plant. The cooperatives noted that the Upper Florida and Tampa Bay milk orders currently contain such requirement.

Only that milk genuinely associated with the market should be eligible to be diverted to nonpool plants. A requirement that at least 10 days' production of a producer must be physically received at a pool plant during the month to qualify any of such producer's production in the same month for diversion to a nonpool plant as producer milk should provide assurance that such milk is genuinely associated with the market and still permit the necessary flexibility in diverting milk not needed for fluid use. Such limitation has been in effect under the Upper Florida and Tampa Bay milk orders for a number of years and has served to identify that milk associated with such markets. The 10-day production requirement under the Southeastern Florida order adopted herein should provide assurance that the milk of such producer is associated with the Southeastern Florida market.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

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

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

Recommended Marketing Agreements and Order Amending the Orders

The recommended marketing agreements for the Upper Florida, Tampa Bay and Southeastern Florida marketing areas are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following order amending the orders, as amended regulating the handling of milk in the Upper Florida, Tampa Bay, and Southeastern Florida marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Parts 1006, 1012 and 1013

Milk marketing orders, Milk, Dairy products.

1. The authority citation for 7 CFR Parts 1006, 1012 and 1013 continues to read as follows:

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

PART 1006—MILK IN THE UPPER FLORIDA MARKETING AREA

2. Revise § 1006.7 to read as follows:

§ 1006.7 Pool Plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant that has route distribution, except filled milk, during the month of not less than 50 percent of the total Grade A fluid milk products, except filled milk, that are physically recieved at such plant or diverted as producer milk to a nonpool plant pursuant to § 1006.13, and that has route disposition, except filled milk, in the marketing area during the month of not less than 10 percent of such receipts.

(b) A supply plant from which not less than 50 percent of the total quantity of Grade A fluid milk products that are physically received from dairy farmers at such plant or diverted as producer milk to a nonpool plant pursuant to § 1006.13, during the month is shipped as fluid milk products, except filled milk, to pool plants meeting the requirements of § 1006.7(a).

(c) A plant, other than a distributing plant, that is located in the marketing area and is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and 50 percent or more of the producer milk of members of the cooperative association is received at pool distributing plants either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested, subject to the following conditions:

(1) The plant is approved by a duly constituted health authority for the disposition of Grade A milk in the marketing area; and

(2) The plant does not qualify as a pool plant under paragraph (b) of this section or under the provisions of another Federal order applicable to a supply plant.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt distributing plant;

(3) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than as route disposition in this marketing area: *Provided*, That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order; and

(4) Any building, premises, or facilities, the primary function of which is to hold or store bottled milk or milk products (including filled milk) in finished form, nor shall it include any part of a plant in which the operations are entirely separated (by wall or other partition) from the handling of producer milk.

3. In § 1006.13, paragraph (b) is revised to read as follows:

§ 1006.13 Producer milk.

* * * * *

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the plant to which diverted;

(2) Not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant: Provided, That any delivery during the current month for such producer to another order plant regulated by the order that regulated such pool plant in the prior month shall be counted towards meeting the 10-day production requirement;

(3) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(4) A cooperative association may divert for its account the milk of a producer. The total quantity of such milk so diverted by a cooperative that exceeds the following specified applicable percentage of producer milk that the cooperative association caused to be delivered to and physically received at pool plants during the month shall not be producer milk;

(i) 40 percent in March-June,

(ii) 25 percent in December-February, and

(iii) 20 percent in July-November;

(5) The operator of a pool plant other than a cooperative association may divert for its account any milk of producers that is not under the control of a cooperative association that is

diverting milk during the month pursuant to paragraph (b)(4) of this section. The total quantity so diverted by the operator of the pool plant that exceeds the following specified applicable percentage of milk physically received at such plant during the month that is eligible to be diverted by the plant operator shall not be producer milk;

(i) 40 percent in March-June,

(ii) 25 percent in December-February, and

(iii) 20 percent in July-November;

(6) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraph (b) (4) and (5) of this section. If the handler fails to make such designation, milk diverted on the last day of the month, then the second-to-last day of the month, and so on, shall be excluded until all diversions in excess of the prescribed limit are accounted for.

4. In § 1006.40, paragraph (b)(6) is revised to read as follows and paragraph (b)(7) is removed:

§ 1006.40 Classes of Utilization.

* * * * *

(b) * * *

(6) Skim milk and butterfat in shrinkage assigned pursuant to § 1006.41(a) to the receipts specified in § 1006.41(a)(2) and in shrinkage specified in § 1006.41 (b) and (c).

5. Revise §1006.41 to read as follows:

§ 1006.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1006.30, the market administrator shall determine the following:

(a) The pro rate assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraphs; and

(2) In other source milk not specified in paragraphs (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product.

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excees of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1006.9(c));

(2) Plus 1.5 pecent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1006.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph shall be two percent;

(3) Plus 0.5 pecent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is diverted purchases such milk on the basis of weights determined from its measurement on the farm, the applicable percentage under this paragraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II classification is requested by the operator of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective quantities of skim milk and butterfat to which percentages are applied in paragraphs (b)(1), (2), (4), (5) and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1006.9 (b) and (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1006.51 [Amended]

6. Amend § 1006.51 by removing the last sentence which reads "For the purpose of computing the Class I price, the resulting price shall not be less than $4.33."

7. Amend § 1006.52 by adding a new paragraph (c) to read as follows:

§ 1006.52 Plant Location Adjustments for Handlers.

* * * * *

(c) The Class I price resulting from such adjustments specified in this section shall not result in a price less than the Class II price for the month and the Class I price applicable to other source milk shall be adjusted at the rates specified in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class II price for the month.

§ 1006.60 [Amended]

8. In § 1006.60, paragraph (h) is removed.

9. In § 1006.75, revise paragraph (b) to read as follows:

§ 1006.75 Plant Location Adjustments for Producers and Nonpool Milk.

(a) * * *

(b) For purposes of computations pursuant to §§ 1006.71 and 1006.72, the uniform price shall be adjusted at the rates set forth in § 1006.52 applicable at the location of the nonpool plant from which the milk was received, except that the resulting adjusted price shall not be less than the Class II price for the month.

10. Revise § 1006.78 to read as follows:

§ 1006.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1006.71, 1006.73, 1006.76, 1006.77, 1006.85 or 1006.86 shall be increased 1 percent for each month or portion thereof that such obligation is overdue, subject to the following conditions:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously computed pursuant to this section:

(b) For the purposes of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due; and

(c) All monies collected pursuant to this section shall be paid to the administrative assessment fund maintained by the market administrator.

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

11. Revise § 1012.7 to read as follows:

§ 1012.7 Pool Plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant that has route distribution, except filled milk, during the month of not less than 50 percent of the total grade A fluid milk products, except filled milk, that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to § 1012.13, and that has route disposition, except filled milk, in the marketing area during the month of not less than 10 percent of such receipts.

(b) A supply plant from which not less than 50 percent of the total quantity of Grade A fluid milk products that is physically received from dairy farmers at such plant or diverted as producer milk to a nonpool plant pursuant to § 1012.13 during the month is shipped as fluid milk products, except filled milk, to pool plants meeting the requirements of § 1012.7(a).

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than as route disposition in this marketing area: *Provided,* That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order; and

(3) Any building, premises, or facilities, the primary function of which is to hold or store bottled milk or milk products (including filled milk) in finished form, nor shall it include any part of a plant in which the operations are entirely separated (by wall or other partition) from the handling of producer milk.

12. In § 1012.13, paragraph (b) is revised to read as follows:

§ 1012.13 Producer milk.

* * * * *

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the plant to which diverted;

(2) Not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant: *Provided,* That any delivery during the current month from such producer to an other order plant regulated by the order that regulated such pool plant in the prior month shall be counted towards meeting the 10-day production requirement;

(3) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(4) A cooperative association may divert for its account the milk of a producer. The total quantity of such milk so diverted by a cooperative that exceeds the following specified applicable percentage of producer milk that the cooperative association caused to be delivered to and physically received at pool plants during the month shall not be producer milk:

(i) 40 percent in March–June,

(ii) 25 percent in December–February, and

(iii) 20 percent in July–November;

(5) The operator of a pool plant other than a cooperative association may divert for its account any milk of producers that is not under the control of a cooperative association that is diverting milk during the month pursuant to paragraph (b)(4) of this section. The total quantity so diverted by the operator of the pool plant that exceeds the following specified applicable percentage of milk physically received at such plant during the month that is eligible to be diverted by the plant operator shall not be producer milk:

(i) 40 percent in March–June,

(ii) 25 percent in December–February, and

(iii) 20 percent in July–November;

(6) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraph (b) (4) and (5) of this section. If the handler fails to make such designation, milk diverted on the last day of the month, then the second-to-last day of the month, and so on, shall be excluded until all diversions in excess of the prescribed limit are accounted for.

13. In § 1012.40, paragraph (b)(6) is revised to read as follows and paragraph (b)(7) is removed:

§ 1012.40 Classes of Utilization.

* * * * *

(b) * * *

(6) Skim milk and butterfat in shrinkage assigned pursuant to § 1012.41(a)to the receipts specified in § 1012.41(a)(2) and in shrinkage specified in § 1012.41 (b) and (c).

14. Revise § 1012.41 to read as follows:

§ 1012.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1012.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraphs; and

(2) In other source milk not specified in paragraphs (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product or a bulk fluid cream product.

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1012.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1012.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph shall be two percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is diverted purchases such milk on the basis of weights determined from its measurement on the farm, the applicable percentage under this paragraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II classification is requested by the operator of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective quantities of skim milk and butterfat to which percentages are applied in paragraphs (b) (1), (2), (4), (5) and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1012.9 (b) and (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1012.51 [Amended]

15. Amend § 1012.51 by removing the last sentence which reads "For the purpose of computing the Class I price, the resulting price shall not be less than $4.33."

16. Amend § 1012.52 by adding a new paragraph (c) to read as follows:

§ 1012.52 Plant Location Adjustments for Handlers.

* * * * *

(c) The Class I price resulting from such adjustments specified in this section shall not result in a price less than the Class II price for the month and the Class I price applicable to other source milk shall be adjusted at the rates specified in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class II price for the month.

§ 1012.60 [Amended]

17. In § 1012.60, paragraph (h) is removed.

18. In § 1012.75, revise paragraph (b) to read as follows:

§ 1012.75 Plant Location Adjustments for Producers and on Nonpool Milk.

(a) * * *

(b) For purposes of computations pursuant to §§ 1012.71 and 1012.72, the uniform price shall be adjusted at the rates set forth in § 1012.52 applicable at the location of the nonpool plant from which the milk was received, except that the resulting adjusted price shall not be less than the Class II price for the month.

19. Revise § 1012.78 to read as follows:

§ 1012.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1012.71, 1012.73, 1012.76, 1012.77, 1012.85 or 1012.86 shall be increased 1 percent for each month or portion thereof that such obligation is overdue, subject to the following conditions:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligations, which shall include any unpaid charges previously computed pursuant to this section;

(b) For the purposes of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due; and

(c) All monies collected pursuant to this section shall be paid to the administrative assessment fund maintained by the market administrator.

PART 1013—MILK IN THE SOUTHEASTERN FLORIDA MARKETING AREA

20. Revise § 1013.7 to read as follows:

§ 1013.7 Pool Plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant that has route distribution, except filled milk, during the month of not less than 50 percent of the total Grade A fluid milk products, except filled milk, that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to § 1013.13, and that has route disposition, except filled milk, in the marketing area during the month of not less than 10 percent of such receipts.

(b) A supply plant from which not less than 50 percent of the total quantity of Grade A fluid milk products that is physically received from dairy farmers at such plant or diverted as producer milk to a nonpool plant pursuant to § 1013.13 during the month is shipped as fluid milk products, except filled milk, to pool plants meeting the requirements of § 1013.7 (a).

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than as route disposition in this marketing area: Provided, That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order; and

(3) Any building, premises, or facilities, the primary function of which is to hold or store bottled milk or milk products (including filled milk) is finished form, nor shall it include any part of a plant in which the operations are entirely separated (by wall or other partition) from the handling of producer milk.

21. Section 1013.12 is revised to read as follows:

§ 1013.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the inspection requirements of a duly constituted health authority, which milk is received at a pool plant or diverted pursuant to § 1013.13 from a pool plant to a nonpool plant.

(b) The term "producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act; or

(2) Any person with respect to milk produced by such person that is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I milk under the provisions of such other order.

22. In § 1013.13, paragraph (b) is revised to read as follows:

§ 1013.13 Producer milk.

* * * * *

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the plant to which diverted;

(2) Not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant: Provided, That any delivery during the current month from such producer to an other order plant regulated by the order that regulated such pool plant in the

prior month shall be counted towards meeting the 10-day production requirement;

(3) To the extent that is would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(4) A cooperative association may divert for its account the milk of a producer. The total quantity of such milk so diverted by a cooperative that exceeds the following specified applicable percentage of producer milk that the cooperative association caused to be delivered to and physically received at pool plants during the month shall not be producer milk:

(i) 40 percent in March–June,

(ii) 25 percent in December–February, and

(iii) 20 percent in July–November;

(5) The operator of a pool plant other than a cooperative association may divert for its account any milk of producers that is not under the control of a cooperative association that is diverting milk during the month purusant to paragraph (b)(4) of this section. The total quantity so diverted by the oeprator of the pool plant that exceeds the following specified applicable percentage of milk physically received at such plant during the month that is eligible to be diverted by the plant operator shall not be producer milk:

(i) 40 percent in March–June,

(ii) 25 percent in December–February, and

(iii) 20 percent in July–November;

(6) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraph (b) (4) and (5) of this section. If the handler fails to make such designation, milk diverted on the last day of the month, then the second-to-last day of the month, and so on, shall be excluded until all diversions in excess of the prescribed limit are accounted for.

23. In § 1013.40, paragraph (b)(6) is revised to read as follows and paragraph (b)(7) is removed:

§ 1013.40 Classes of Utilization.

* * * * *

(b) * * *

(6) Skim milk and butterfat in shrinkage assigned pursuant to § 1013.41 (a) to the receipts specified in § 1013.41 (a)(2) and in shrinkage specified in § 1013.41 (b) and (c).

* * * * *

24. Revise § 1013.41 to read as follows:

§ 1013.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1013.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraphs (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraphs; and

(2) In other source milk not specified in paragraphs (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product of a bulk fluid cream product.

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1013.9 (c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1013.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph shall be two percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is diverted purchases such milk on the basis of weights determined from its measurement on the farm, the applicable percentage under this paragraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II classification is requested by the operator of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants that is not in excess of the respective quantities of skim milk and butterfat to which percentages are applied in paragraphs (b)(1), (2), (4), (5) and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1013.9(b) and (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm, the applicable percentage under this paragraph for the cooperative association shall be zero.

25. In § 1013.50, revise the introductory text and paragraph (c) as follows:

§1013.50 Class prices.

Subject to the provisions of § 1013.52, the Class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) * * *

(b) * * *

(c) *Class III price.* The Class III price shall be computed as follows: Multiply the butterfat differential pursuant to § 1013.74 for the month by 35 and round the result to the nearest cent.

§ 1013.51 [Amended]

26. Amend § 1013.51 by removing the last sentence which reads "For the purpose of computing the Class I price, the resulting price shall not be less than $4.33."

27. Amend § 1013.52 by adding a new paragraph (c) to read as follows:

§ 1013.52 Plant Location Adjustments for Handlers.

* * * * *

(c) The Class I price resulting from such adjustments specified in this section shall not result in a price less than the Class II price for the month and the Class I price applicable to other source milk shall be adjusted at the rates specified in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class II price for the month.

§ 1013.60 [Amended]

28. In § 1013.60, paragraph (h) is removed.

§ 1013.73 [Amended]

29. Amend § 1013.73(a)(1) and (2) by removing the phrase "but not to exceed $6,".

30. In § 1013.75, revise paragraph (b) to read as follows:

§ 1013.75 Plant Location Adjustments for Producers and on Nonpool Milk.

(a) * * *

(b) For purposes of computations pursuant to §§ 1013.71 and 1013.72, the uniform price shall be adjusted at the rates set forth in § 1013.52 applicable at the location of the non pool plant from which the milk was received, except that the resulting adjusted price shall not be less than the Class II price of the month.

31. Revise § 1013.78 to read as follows:

§ 1013.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1013.71, 1013.73, 1013.76, 1013.77, 1013.85 or 1013.86 shall be increased 1 percent for each month or portion thereof that such obligation is overdue, subject to the following conditions:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously computed pursuant to this section;

(b) For the purposes of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report has been filed when due; and

(c) All monies collected pursuant to this section shall be paid to the administrative assessment fund maintained by the market administrator.

Signed at Washington, DC, on September 2, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88-20336 Filed 9-7-88; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. 9210]

New York State Chiropractic Association; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a corporation, the New York State Chiropractic Association, from entering into or implementing any agreement or understanding among its members to deal with any third-party payer on collectively determined terms and, for a period of eight years, would prohibit respondent from providing advice to any member on the desirability or appropriations of any participation agreement.

DATE: Comments must be received on or before November 7, 1988.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: M. Elizabeth Gee, FTC/S-3115, Washington, DC 20580. (202) 326-2756.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

List of Subjects in 16 CFR Part 13

Chiropractors, Trade practices.

Agreement Containing Consent Order To Cease and Desist

The agreement herein, by and between the New York State Chiropractic Association, a corporation, by its duly authorized officer and its attorney, and counsel from the Federal Trade Commission, is entered into in accordance with the Commission's rules governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent New York State Chiropractic Association is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its mailing address at 215 Park Avenue South, New York, New York 10003.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violation of section 5 of the Federal Trade Commission Act, and has filed an answer to said complaint denying said charges.

3. Respondent admits all of the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in the complaint.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to Respondent, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to Respondent's address as stated in this agreement shall constitute service. Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, respresentation, or interpretation not contained in the order or the agreement

may be used to vary or contradict the terms of the order.

8. Respondent has read the complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that for purposes of this Order the following definitions shall apply.

A. "NYSCA" means New York State Chiropractic Association and its Board of Directors, House of Delegates, districts, committees, officers, representatives, agents, employees, successors and assigns.

B. "Third-party payer" means any person or entity that reimburses for, purchases, or pays for health care services provided to any other person, and includes, but is not limited to, health insurance companies; prepaid hospital, medical or other health service plans, such as Blue Shield and Blue Cross plans; health maintenance organizations; preferred provider organizations; government health benefits programs; administrators of self-insured health benefits programs; and employers or other entities providing self-insured health benefits programs.

C. "Chiropractor" means a person licensed to engage in the practice of chiropratic.

D. "Participation agreement" means any existing or proposed agreement in which a third-party payer agrees to pay a chiropractor directly for the provision of chiropractic services, and the chiropractor agrees in advance to accept such payment from the third-party payer for the provision of such chiropractic services during the term of the agreement.

II

It is further ordered that NYSCA, directly, indirectly, or through any corporate or other device, in connection with the provision of chiropractic services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist from:

A. Entering into, attempting to enter into, organizing, implementing, or continuing any agreement or understanding, express or implied, with any NYSCA member or among any NYSCA members, to deal with any third-party payer on collectively detemined terms by, for example:

1. Acting on behalf of any NYSCA member or members to negotiate with any third-party payer; or

2. Communicating that NYSCA members will refuse to enter into or withdraw from any participation agreement, actual or proposed, if any term or condition is not acceptable to NYSCA or to NYSCA members collectively.

B. For a period of eight (8) years after the date the Order is served, providing advice to any NYSCA member on the desirability or appropriateness of any participation agreement, or of any term of any participation agreement, actual or proposed, including, but not limited to, comments on the desirability or appropriateness of any such agreement or term, or advice that any NYSCA member refuse to enter into or withdraw from any participation agreement, actual or proposed.

III

It is further ordered that NYSCA:

A. Mail a copy of this Order to each of its members within thirty (30) days of the date the Order is served.

B. Publish this Order in an issue of *NYSCA Newsletter* published no later than sixty (60) days after the date the Order is served in the same type size normally used for articles which are published in *NYSCA Newsletter*.

C. For a period of five (5) years after the date the Order is served, provide each new NYSCA member with a copy of this Order at the time the member is accepted into membership.

IV

It is further ordered that NYSCA:

A. Shall file a written report with the Commission within ninety (90) days of the date the Order is served, and annually for five (5) years on the anniversary of the date the Order was served, and at such other times as the Commission may by written notice to NYSCA require, setting forth in detail the manner and form in which it has complied and is complying with the Order.

B. For a period of five (5) years after the date the Order is served, maintain and make available to Commission staff, for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by Parts II and III of this Order, including, but not limited to, all documents generated by NYSCA or that come into NYSCA's possession, custody, or control, regardless of source, that embody, discuss or refer to the terms or conditions of any participation agreement.

V

It is further ordered that NYSCA shall notify the Commission at least thirty (30) days prior to any proposed change to itself, such as dissolution, assignment, or sale resulting in the emergence of a successor corportation or association, or any other change which may affect compliance with this Order.

New York State Chiropractic Association Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from the New York State Chiropractic Association ("NYSCA"). The agreement settles charges by the Federal Trade Commission that the NYSCA violated section 5 of the Federal Trade Commission Act by conspiring to increase the price paid by Group Health Incorporated, a third-party payer operating in New York State, for chiropractic services by first negotiating for higher prices, and then, when the negotiations failed, organizing a boycott by its members in order to force Group Health Incorporated to increase its payments for chiropractic services.

The proposed consent order has been placed on the public record for sixty days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint

On September 9, 1987, the Commission issued a complaint charging that the New York State Chiropractic Association had organized its members to coerce higher payments for chiropractic services from Group Health Incorporated ("GHI").

According to the complaint, GHI provides health care coverage through a participating provider system. Under this system, GHI and providers enter into agreements under which the provider agrees to provide care to persons covered by GHI, and GHI agrees to pay the provider directly for that care. GHI depends on having a sufficient number of participating providers in order to deliver care to persons with GHI coverage.

The complaint alleges that, in 1984, the NYSCA agreed with some of its members, and that some of its members agreed among themselves, to act as a united front to coerce an increase in payments to chiropractors. As part of this agreement, the NYSCA attempted to negotiate higher payments from GHI. In December of 1984, according to the complaint, the NYSCA threatened GHI that unless it raised its payments to chiropractors, the NYSCA's members would engage in concerted action against GHI. In May of 1985, after GHI refused to meet the NYSCA's terms, the NYSCA began soliciting its members to refuse concertedly to provide services to GHI as participating providers. In May and June of that year, the NYSCA delivered several hundred letters to GHI on behalf of its members who were resigning from participation in GHI. In addition, many of the NYSCA's members sent resignation letters directly to GHI. Shortly thereafter, GHI changed its coverage of chiropractic services, and subsequently increased its compensation for particular chiropractic serivces, as the NYSCA had demanded.

The complaint alleges that these actions have had, or have the tendency and capacity to have, the following effects, among others:

A. Restraining price and service competition among chiropractors in the State of New York.

B. Increasing the prices that chiropractors in the State of New York are paid for their services.

C. Depriving GHI and its insureds of the benefits of competition among chiropractors in the State of New York.

The Proposed Consent Order

The proposed order would prohibit the NYSCA from entering into or implementing any agreement or understanding among its members to deal with any third-party payer on collectively determined terms. Examples of the conduct that would be prohibited by this order are: (1) Negotiating on behalf of NYSCA members with third-party payers, and (2) communicating to third-party payers that NYSCA members will refuse to enter into an agreement if any term of that agreement is unacceptable to the NYSCA. This provision of the order would allow the NYSCA or its members to provide information to third-party payers, as long as providing the information were not part of an agreement to deal on collectively determined terms.

The proposed order also contains a "fencing-in" provision that would prohibit the NYSCA, for a period of eight years, from providing advice to any member on the desirability or appropriateness of any participation agreement or of any term of any participation agreement. This provision includes a prohibition on commenting on the desirability or appropriateness of any participation agreement, or term of a participation agreement, and on advising any member to refuse to enter into, or withdraw from, any participation agreement. This provision of the order, however, would allow the NYSCA to provide information to its members about the terms of a participation agreement.

Under the proposed order, the NYSCA would be required to distribute a copy of the order to each of its members, to publish this order in an issue of its newsletter, and, for a period of five years, to provide each new member of the NYSCA with a copy of the order. The order also would require the NYSCA to file compliance reports with the Commission ninety days after service of the order, annually for a period of five years, and at such other times as the Commission may require. In addition, the NYSCA would be required for a period of five years to make certain records available to the Commission upon reasonable notice. The NYSCA would also be required to notify the Commission prior to any proposed change to its structure, such as dissolution, which may affect compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify its terms in any way.

The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by the NYSCA that the law has been violated as alleged in the complaint.

Donald S. Clark,

Secretary.

[FR Doc. 88-20318 Filed 9-7-88; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-82-88]

Certain Indebtedness Treated As Payments On Installment Obligations; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to certain indebtedness treated as payments on installment obligations. Changes to the applicable law were made by the Tax Reform Act of 1986 and the Revenue Act of 1987. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: The regulations are proposed to be effective for, and are applicable to, taxable years ending after December 31, 1986. Written comments and requests for a public hearing must be delivered or mailed by November 7, 1988.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-82-88), Washington, DC 20224.

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

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (designated by a "T" following the section citation) in the Rules and Regulations section of this issue of the **Federal Register** amend Part 1 of Title 26 of the Code of Federal Regulations under section 453C of the Internal Revenue Code of 1986. These amendments conform the regulations to the provisions of section 811 of the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2085) and section 10202(a) of the Revenue Act of 1987 (Pub. L. 100-203, 101 Stat. 1330-388). This document proposes to adopt the temporary regulations as final regulations. Accordingly, the text of the temporary regulations serves as the comment document for this notice of proposed rulemaking. In addition, the preamble to the temporary regulations explains the proposed and temporary rules.

For the text of the temporary regulations, see FR Doc. (T.D. 8224) published in the Rules and Regulations section of this issue of the **Federal Register.**

Special Analyses

The Commissioner of Internal Revenue has determined that this

proposed rule is not a major rule as defined in Executive Order 12291. Therefore, a regulatory impact analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments And Requests for a Public hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who submitted comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Drafting Information

The principal authors of these proposed regulations are William L. Blagg of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service and Ewan D. Purkiss, formerly of that Division. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations on matters of both substance and style.

List Of Subjects In 26 CFR 1.441–1—1.483–2

Income taxes, Accounting, Deferred compensation plans.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88–20265 Filed 9–7–88; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[LR–66–88]

Section 1502—Consolidated Return Regulations Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary and final regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary and final regulations that provide rules for determining the basis and the earnings and profits of members of an affiliated group filing consolidated returns following certain changes in the structure of the group, where the group remains in existence. The temporary and final regulations also provide for alternative agents of the group if the common parent ceases to be the common parent. The text of the temporary and final regulations also serves as the comment document for this notice of proposed rulemaking.

DATES:

Proposed Effective dates

The final regulations under section 1502 are generally proposed to be applied to changes in the structure of a group after September 7, 1988.

Dates for Comments and Requests for a Public Hearing

Written comments and requests for a public hearing must be delivered or mailed by November 7, 1988.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T [LR–66–88], Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Judith C. Winkler of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) Telephone: 202–566–3458 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer TR:FP, Washington, DC 20224.

The collection of information in this regulation is in section 26 CFR 1.1502–31T(b). This information is required and will be used by the Internal Revenue Service to determine if a consolidated group has elected to adjust its basis and earnings and profits to reflect a restructuring of the group that occurred on or before September 7, 1988. The likely respondents are businesses or other for-profit institutions.

The following estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances.

Estimated total annual reporting and/or recordkeeping burden: 50 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: .5 hours

Estimated number of respondents and/or recordkeepers: 100.

Estimated annual frequency of responses: One time generally.

Background

Temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** add new temporary regulations §§ 1.1502–31T, 1.1502–33T, and 1.1502–77T to part 1 of Title 26 of the Code of Federal Regulations ("CFR") and make conforming amendments to §§ 1.1502–31, 1.1502–33 and 1.1502–77. Final regulations are proposed to be based on the temporary regulations. The final regulations would provide rules for determining the basis and the earnings and profits of members following certain changes in the structure of the group, where the group remains in existence. They would also provide for alternative agents of the group when the corporation that is the common parent of the group ceases to be the common parent. For the text of the new temporary regulations, see T.D. 8226 published in the Rules and Regulations portion of this issue of the **Federal Register.** The preamble to the temporary regulations explains the additions to the regulations.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required.

The Secretary of the Treasury has certified that this rule, if issued, will not have a significant economic impact on a substantial number of small entities. The rule applies only to affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger businesses. It would not significantly alter the reporting or recordkeeping duties of small entities. A regulatory flexibility analysis is therefore not required under the

Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Request for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Judith C. Winkler of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, other personnel of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

Charles H. Brennan,

Acting Commissioner of Internal Revenue.

[FR Doc. 88-20395 Filed 9-7-88; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1918

[Docket No. C-02]

General Safety and Health Programs

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

ACTION: Notice of public information gathering meeting.

SUMMARY: This notice schedules a public information gathering meeting on suggested guidelines for general safety and health programs to manage the protection of worker safety and health. These guidelines were published July 15, 1988 (53 FR 26790). An extension of the comment period to September 28, 1988 was published September 1, 1988 (53 FR 33823).

The purpose of this meeting is to receive comments and information on the issues raised in that notice and on other topics relevant to the management of occupational safety and health.

DATES: Notices of intention to appear at the public meeting must be received by September 30, 1988. The meeting will begin at 9 a.m. on Thursday, October 6 in Des Plaines, Illinois.

ADDRESSES: Notices of intention to appear at the meeting, statements, and documentary evidence should be submitted to Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-3647, Washington, DC 20210, Telephone (202) 523-8615.

The informal meeting will begin at 9:00 a.m. on Thursday, October 6, 1988 at the Occupational Safety and Health Administration's National Training Institute at 1555 Times Drive, Des Plaines, Illinois 60018, Telephone (312) 297-4810. The meeting may continue on October 7, 1988.

Representatives of the Department of Labor, and anyone filing a timely notice of intention to appear, may participate in dialogue at the meeting.

FOR FURTHER INFORMATION CONTACT:

Notice: Mr. James Foster, Occupational Safety and Health Administration, Room N3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 523-8148.

Meeting: Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, Room N3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 523-8615.

Public Participation

In order to provide an informal forum in which interested persons can orally present comments and information and ask questions regarding the issues, OSHA has scheduled a public meeting to begin at 9:00 a.m. on October 6 at 1555 Times Drive, Des Plaines, Illinois 60018.

Any person wishing to make an oral presentation must submit a notice of intention to appear by September 30, 1988. Notices, together with statements and other documents, should be addressed to Mr. Tom Hall, Division of Consumer Affairs, Room N-3647, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210. The notice should identify the person and/or the organization intending to participate, the amount of time requested for oral presentation, and a brief summary of the intended oral presentation. All persons giving written advance notice will have time reserved for oral presentations. As long as time permits, and at the discretion of the presiding officer, all persons who wish to be heard will be allowed to make oral presentations and participate during the course of the meeting. However, priority will be given to those who register in advance.

The meeting will be presided over by a representative of the U.S. Department of Labor, designated by the Assistant Secretary, and this representative will have the necessary authority to regulate the conduct of the meeting.

The close of the comment period for written comments which are not part of submissions for the public meeting will not change. Those comments still must be received by September 28, 1988.

All written submissions, the transcript of the meeting, as well as all other information in Docket C-02 will be considered by OSHA in preparing the final version of the guideline.

Authority: This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued under Sec. 41. Longshoremen's and Harbor Worker's Compensation Act (33 U.S.C. 941); Secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059) or 9-83 (48 FR 35736), as applicable; 29 CFR Part 1911.

Signed at Washington, DC this 2nd day of September 1988.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 88-20333 Filed 9-7-88; 8:45 am]

BILLING CODE 4510-26-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 3443-8; EPA Docket No. AM054PA]

Approval and Promulgation of Air Quality Implementation Plan; Pennsylvania; Proposed Revision of Ozone Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is today proposing to approve a revision in Pennsylvania's State Implementation Plan (SIP) for Ozone. The revision incorporates the guidelines set forth in EPA's Control Technology Guidelines (CTG) documents (Group III) "Control of VOC Emissions from Manufacture of High-Density Polyethylene, Polypropylene,

and Polystyrene Resins" and "Control of VOC Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry." The intent of this notice is to discuss the results of EPA's reveiw and to solicit public comments on the revision and EPA's proposed approval.

DATES: Comments must be received on or before October 11, 1988. Public comments are requested and will be considered before taking final action on this rule.

ADDRESSES: copies of the documents relevant to this proposed action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Management Division, 841 Chestnut Building, Philadelphia, Pennsylvania, Attn: Esther Steinberg

Commonwealth of Pennsylvania, Department of Environmental Resources, Bureau of Air Quality Control, 200 North Third Street, Harrisburg, Pennsylvania 17120, Attn: Mr. Gary Triplett.

All written comments should be sent to Mr. Joseph W. Kunz, Chief, PA/WV Section, at the EPA, Region III address given above.

FOR FURTHER INFORMATION CONTACT: Rebecca L. Taggart at the EPA, Region III address given above or at (215) 597–9189.

SUPPLEMENTARY INFORMATION: Section 172 in Part D of the Clean Air Act (CAA) requires that states with areas not capable of meeting the National Ambient Air Quality Standard for ozone submit a revised ozone State Implementation Plan (SIP) by December 31, 1982, and demonstrate that such Plan will attain the standard by December 31, 1987. States are additionally required under section 172(a)(2) and (b)(3) of the CAA, and as elaborated in the April 4, 1979 "General Preamble for Proposed Rulemaking on Approval of State Implementation Plan Revisions for Nonattainment Areas," to revise their ozone SIP to include Reasonably Available Control Technology (RACT) regulations for stationary sources whenever a Control Technology Guideline (CTG) document is published that is applicable for photochemical oxidant sources in the State.

In November 1983, EPA published a CTG document titled "Control of VOC Emissions from Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins." In December 1984, EPA published an additional CTG document relating to VOC sources titled "Control of VOC Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry."

In response to the requirements of Section 172(a)(2) and (b)(3), the Pennsylvania Department of Environmental Resources (PADER) submitted a draft ozone SIP revision to EPA on February 14, 1986, which incorporated the recommendations made in these two CTG documents. EPA sent a number of comments on the proposed revision to PADER, which were addressed as part of public hearing on March 12, 1986. As a result of this process, PADER revised its draft and subsequently submitted the proposed SIP revision for EPA processing on January 14, 1987.

The proposed SIP revision calls for incorporating the PADER "plan approvals" and operating permtis applicable to the individual sources covered by the two CTGs into the SIP rather than adopting statewide regulations, because so few sources are affected. There is only one source in the state covered by the polymer resin CTG—Arco's Monaca, Beaver County, polystyrene plant— and one source covered by the air oxidation CTG—IMC's Seiple, Lehigh County, formaldehyde plant.

The ARCO permit conditions (permit No. 04–313–052) stipulate that the VOC emissions from each bulk polymerization process will not exceed 0.12 pounds per 1000 pounds polystyrene produced. This corresponds exactly to the emission limitation described as representative of RACT for polystyrene plants in the CTG. The permit further stipulates that the expiration date on the permit is for state purposes only, and that the permit conditions will remain in effect as part of the SIP until such a time as EPA approves a repeal of the SIP provision. The PADER "plan approval" relating to the ARCO facility contains specific mechanisms by which ARCO is required to meet the applicable emission limitation, including a provision that daily records be kept for two years of the collection vessel temperature and the vacuum system pressure. The permit, therefore, together with the plan approval, satisfies all RACT requirements for this facility.

The air oxidation processes CTG defines RACT as 98 percent reduction by weight in total organic compound emissions, or as a 20 parts per million emission limit, whichever is less stringent. The CTG further recommends, however, that facilities with existing combustion devices be recognized as RACT until such a time as the existing device is replaced for other reasons. This "grandfathering" recommendation applies to IMC's formaldehyde plant, which currently employs a catalytic incinerator with an estimated 90–95% efficiency. The IMC plant will therefore be allowed to operate without meeting the RACT emission limit until the catalytic incinerator is replaced. This proposed SIP revision consists of the PADER "plan approval" applicable to this facility and PADER's permit No. 39–313–014 which together require the operation of the incinerator. At the time of replacement, PADER will submit a revised operating permit incorporating RACT to EPA for processing as a SIP revision. IMC will be subject to recordkeeping requirements, which provide for records to be kept for two years of the gas stream temperature.

EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the EPA, Region III address above.

Proposed Action

The EPA proposes to approve the submitted ozone SIP revision for air oxidation and high-density resin facilities. As there are only two sources covered by the two CTG documents in Pennsylvania, and as any new source constructed in Pennsylvania would be covered by new source review requirements, the EPA has determined that incorporating the ARCO and IMC plan approvals and permits into the Pennsylvania SIP currently constitutes statewide RACT for sources covered by these two CTGs.

Final action on this proposed revision will occur only after all submitted comments are reviewed.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant ecomonic impact on a substantial number of small entities (See 46 FR 8709).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Ozone.

Authority: 42 U.S.C. 7401–7642.

Date: September 23, 1987.

James M. Seif,

Regional Administrator.

[**Editorial note:** This document was received at the Office of the Federal Register on September 2, 1988.]

[FR Doc. 88–20330 Filed 9–7–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[A-1-FRL-3443-4]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Reasonably Available Control Technology for Boston Whaler, Inc., Norwell, MA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a proposed State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions from Boston Whaler, Inc. in Norwell, Massachusetts. The intended effect of this action is to propose approval of a source specific RACT determination made by the Commonwealth of Massachusetts in accordance with commitments of its approved 1982 ozone attainment plan. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before October 11, 1988.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2313, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2313, JFK Federal Bldg., Boston, MA 02203 and the Department of Environmental Quality Engineering, Division of Air Quality Control, One Winter Street, 8th floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Lorenzo Thantu, (617) 565-3250; FTS 835-3250.

SUPPLEMENTARY INFORMATION: EPA approved Regulation 310 CMR 7.18(17), "Reasonably Available Control Technology (RACT)," on November 9, 1983 (48 FR 51480) as part of the Commonwealth of Massachusetts' 1982 ozone attainment plan. This regulation requires the Commonwealth of Massachusetts Department of Environmental Quality Engineering (DEQE) to determine and impose RACT on all stationary sources with the potential to emit one hundred tons per year (TPY) or more of VOCs that are not already subject to RACT under Massachusetts' regulations developed pursuant to the EPA Control Techniques Guideline (CTG) documents. In a November 17, 1982 letter to EPA, the DEQE committed to submit each of the individual RACT determinations to EPA for incorporation into the Massachusetts SIP. On November 9, 1983, EPA codified at 40 CFR 52.1123 that the DEQE must submit each RACT determination made under 310 CMR 7.18(17) to EPA as a SIP revision in order to incorporate the limitations into the SIP. EPA's rationale for requiring the DEQE to submit each RACT determination as a single source SIP revision is that emission limits and reduction measures imposed by states on existing stationary sources in nonattainment areas do not constitute RACT unless and until EPA approves them as RACT via rulemaking.

Boston Whaler, Inc. in Norwell, Massachusetts is a non-CTG VOC source subject to RACT under Massachusetts' Regulation 310 CMR 7.18(17). On March 25 and June 30, 1987, EPA received a proposed SIP revision from the Massachusetts DEQE. This revision includes the DEQE's proposed Plan Approval, State Order SM-85-117-1F, issued under 310 CMR 7.18(17) to Boston Whaler, Inc. in Norwell, Massachusetts on July 8, 1986. This proposed Plan Approval imposes RACT for Boston Whaler's non-CTG processes and specifies a December 31, 1986 compliance date. Although the proposed Plan Approval issued by the DEQE is currently fully enforceable by that agency under State law, the formal SIP revision submitted by the DEQE to EPA must consist of the Plan Approval amended as specified by this notice before EPA will undertake final rulemaking approving it as RACT and incorporating it into the SIP.

Summary of RACT Determination

Boston Whaler has three production processes that emit VOCs at its Norwell facility. The three production processes are fiberglass boat fabrication, clean-up operations and miscellaneous operations. As stated above, on March 25 and June 30, 1987, the DEQE submitted State Order SM-85-117-IF as a proposed Plan Approval for Boston Whaler's Norwell facility. That proposed Plan Approval imposes requirements on Boston Whaler which the DEQE has determined to constitute RACT to reduce VOC emissions. The requirements of the proposed Plan Approval are summarized below:

Fiberglass Boat Fabrication

a. A reduced-styrene content gelcoat resin must continue to be used.

b. New gelcoat application equipment is required which reduces the amount of resin required per unit of production.

c. Improved gelcoat and laminating resin management and engineering changes to reduce usage and emissions are required.

Clean-up Operations

a. Closed-top dip tanks are required.

b. Employees contacting laminating resin are required to wear gloves.

c. Employee training to reduce cleaning solvent usage is required.

d. Boston Whaler, Inc. must control and track the use of organic cleaning solvent.

e. Work practice modifications are required including the substitution of a water-based cleaning solution for an organic cleaning solvent for some applications.

Miscellaneous Operations

The methyl ethyl ketone (MEK) content in the Gelcoat Catalyst must be reduced through the installation of new application equipment.

As a result of these VOC emission reduction measures imposed in the proposed Plan Approval, Boston Whaler, Inc.'s Norwell facility will achieve a plantwide emission reduction of approximately 51%, when 1983 baseline emission levels are compared with emission levels after control. The year 1983 was used as the baseline year instead of the 1980 baseline year of the SIP as a result of several factors which complicated or invalidated comparisons between present and future emissions. For example, the production of small sailboats from 1979 to 1982 significantly changed the potential production and emissions per boat during that time. Additionally, recordkeeping has improved greatly for the period since 1983.

In addition to the above individual VOC emission reduction measures which constitute RACT, the proposed Plan Approval also requires Boston Whaler to meet the emission rates expressed in pounds of VOC emitted per boat produced. These emission rates are imposed as additional requirements on Boston Whaler to assure that the VOC emission reductions resulting from the continuous compliance with the RACT measures as stated above are permanent. The final compliance date contained in the proposed Plan Approval is December 31, 1986. These emission rates are specified in the proposed Plan Approval for each of Boston Whaler's three production processes as follows:

	Pounds VOC/ per boat produced, effective Dec. 31, 1986
Fiberglass boat fabrication	63.5
Clean-up operations	52.0
Miscellaneous operations	2.4
Total pounds VOC emitted/ boat	[1] 117.9

[1] This represents a 51% reduction over 1983 emission levels, on a per boat produced basis.

Whether Boston Whaler is complying with the above emission limitations will be determined in accordance with records of VOC usage which it is required to maintain. In order to assure that Boston Whaler is adhering to the improved gelcoat and laminating resin management policy in its daily operations, it is required to update the following recordkeeping forms: Gelcoat Daily Reconcilement; Laminating Resin Daily Reconcilment; Daily VOC Chemical Usage; Laminating Resin Daily Reconcilement, Norwell Small Parts; and Gelcoat Daily Reconcilement, Norwell Small Parts. In addition, Boston Whaler is required to control and track the use of organic cleaning solvent by updating the recordkeeping form, "Norwell Daily Cleaning Solvent Usage." This will provide Boston Whaler the information necessary to determine the amount of cleaning solvent which can be allocated to various departments and still meet Boston Whaler's usage reduction goals.

EPA has reviewed the proposed Plan Approval and supporting documents submitted as a SIP revision for parallel-processing and generally concurs with the DEQE's RACT determination. For more details on EPA's review and justification of Boston Whaler's RACT determination, see the Technical Support Document available at the EPA Regional Office listed in the **ADDRESSES** section of this notice. However, the proposed Plan Approval itself must be amended as explained below before EPA will conduct final rulemaking to approve and incorporate it into the SIP.

The proposed Plan Approval specifies certain work practice standards and process modifications as emission reduction measures for fiberglass boat fabrication, clean-up operations, and miscellaneous operations which the DEQE has determined to constitute RACT for Boston Whaler. These RACT requirements, as currently written in the proposed Plan Approval, in general are not clearly enforceable and the emission reductions calculated to result from their implementation, therefore, may not occur.

EPA is proposing to approve the Commonwealth of Massachusetts' proposed Plan Approval (ORDER SM-85-117-IF) as RACT for Boston Whaler's Norwell facility. However, before EPA will conduct final rulemaking approving this Plan Approval as a SIP revision, the DEQE must add the requirements listed below to clarify the RACT emission reduction measures and to make them more enforceable. The Plan Approval must also specify the final compliance date of December 31, 1986 for the following requirements. Regulation 310 CMR 7.18(17) requires subject stationary sources to demonstrate compliance with RACT as expeditiously as practicable but no later than December 31, 1986.

Fiberglass Boat Fabrication

1. The final Plan Approval must specify a maximum styrene monomer content not to be exceeded for the reduced-styrene content gelcoat and polyester laminating resins and require Boston Whaler to use only these types of resins.

2. The final Plan Approval must specify the type of gelcoat application equipment (e.g., airless, air-assisted airless, or electrostatic spray equipment) that has been demonstrated to use less resin by providing a more even and less porous coating, thereby reducing the VOCs emitted per unit of production. This measure could be made enforceable by requiring Boston Whaler to use only this specific type of gelcoat application equipment.

Clean-up Operations

1. The final Plan Approval must specify that all cleaning solvent dip tanks' and containers' lids are closed at all times except when an item is being entered into or removed.

2. The final Plan Approval must require Boston Whaler to operate its in-house solvent recovery system which is used to reclaim waste organic cleaning solvent, and must include specific operating requirements for the solvent recovery system. First, the final Plan Approval must specify a maximum weight percentage of VOC content to be met at all times (on a continuous basis) for the solvent recovery system's residues. This maximum VOC content by weight should be initially established using the solvent recovery system's design specifications and the reduction in VOC emissions accounted for during RACT implementation. In addition, the final Plan Approval must also specify, at a minimum, one of the following limitations for the solvent recovery system in accordance with its design specifications: (1) A maximum concentration of outlet VOCs from the condensor's vent (i.e., in parts per million by volume of VOC) not to be exceeded, (2) a maximum temperature of the condensor's vent not to be exceeded, or (3) a maximum temperature of the condensor's coolant not to be exceeded. This will assure that the solvent recovery system is operating as intended and designed. Finally, the Plan Approval must require that the waste organic cleaning solvent (before being recovered) and the solvent recovery system's residues (before being sent out as a waste product) must be stored in closed containers to prevent evaporation.

3. The final Plan Approval must specify what portion of the solvent cleaning of brushes, rollers, spray guns, hands, etc. is done with the newly introduced non-volatile, water-based cleaning solvent. The final Plan Approval must require Boston Whaler to use only this water-based cleaning solvent in designated areas where reduction in VOC emissions from its use were accounted for during RACT implementation. In addition, the final Plan Approval must specify for each cleaning solvent: the name, an emission rate in pounds of VOC per gallon of cleaning solvent, designated area(s) for its application, and a daily maximum consumption in gallons of VOC per day.

Miscellaneous Operations

The final Plan Approval must specify a maximum feed ratio of gelcoat catalyst to fiberglass resin in accordance with reduction in VOC emissions that were anticipated due to the installation of new application equipment under the RACT determination. Likewise, for the finishing of small parts (gas tank covers, cabin topskins, consoles, lockers, etc.) and hulls, the final Plan Approval must specify a maximum content to be met on a continuous basis of naphtha/mineral spirits and other VOC(s) in the polyester resin catalyst in either volume or weight percent. Finishing includes repairing any defects on the molded hull as well as plugging and patching any holes caused by the molding tools.

Once EPA approves the final Plan Approval for Boston Whaler, the DEQE must submit any amendment to it as a SIP revision.

Today's Action

In order for EPA to take final action approving the DEQE's Plan Approval for Boston Whaler, that Plan Approval must be amended to include the requirements outlined in this notice.

If the DEQE's final Plan Approval does not incorporate the requirements outlined in this notice to clearly define

Boston Whaler's RACT VOC emission reduction measures and insure their enforceability, EPA will withdraw this proposed action to approve it and publish an action proposing to disapprove Boston Whaler's Plan Approval.

EPA is soliciting public comments on issues discussed in this notice. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above.

This revision is being proposed under a procedure called "parallel processing" (47 FR 27073). If the proposed revision is substantially changed, in areas other than those required in this notice, EPA will evaluate those changes and may publish a revised NPR. If no substantial changes are made other than those areas cited in this notice, EPA will publish a Final Rulemaking Notice on the revision. Final rulemaking action by EPA will occur only after the final Plan Approval for Boston Whaler has been issued by the DEQE and has been formally submitted to EPA for incorporation into the SIP.

Proposed Action

EPA is proposing to approve Commonwealth of Massachusetts' ORDER SM-85-117-IF, a proposed Plan Approval, as a revision to the Massachusetts SIP with the understanding that the DEQE will revise the proposed Plan Approval as outlined in this notice prior to its formal submitted to EPA for incorporation into the SIP.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of sections 110(a)(2)(A)-(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 51

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Date: December 22, 1987.

Michael R. Deland,

Regional Administrator, Region I.

Editorial Note.—This document was received by the Office of the Federal Register September 2, 1988.

[FR Doc. 88-20327 Filed 9-17-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-1-FRL-3443-3]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Reasonably Available Control Technology for Boston Whaler, Inc., Rockland, MA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a proposed State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions from Boston Whaler, Inc. in Rockland, Massachusetts. The intended effect of this action is to propose approval of a source specific RACT determination made by the Commonwealth of Massachusetts in accordance with commitments of its approved 1982 ozone attainment plan. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before October 11, 1988.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2313, JKF Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2313, JFK Federal Bldg., Boston, MA 02203 and the Department of Environmental Quality Engineering, Division of Air Quality Control, One Winter Street, 8th floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Lorenzo Thantu, (617) 565-3250; FTS 835-3250.

SUPPLEMENTARY INFORMATION: EPA approved Regulation 310 CMR 7.18(17), "Reasonably Available Control Technology (RACT)," on November 9, 1983 (48 FR 51480) as part of the Commonwealth of Massachusetts' 1982 ozone attainment plan. This regulation requires the Commonwealth of Massachusetts Department of Environmental Quality Engineering (DEQE) to determine and impose RACT on all stationary sources with the potential to emit one hundred tons per year (TPY) or more of VOCs that are not already subject to RACT under Massachusetts' regulations developed pursuant to the EPA Control Techniques Guideline (CTG) documents. In a November 17, 1982 letter to EPA, the DEQE committed to submit each of the individual RACT determinations to EPA for incorporation into the Massachusetts SIP. On November 9, 1983, EPA codified at 40 CFR 52.1123 that the DEQE must submit each RACT determination made under 310 CMR 7.18(17) to EPA as a SIP revision in order to incorporate the limitations into the SIP. EPA's rationale for requiring the DEQE to submit each RACT determination as a single source SIP revision is that emission limits and reduction measures imposed by states on existing stationary sources in nonattainment areas do not constitute RACT unless and until EPA approves them as RACT via rulemaking.

Boston Whaler, Inc. in Rockland, Massachusetts is a non-CTG VOC source subject to RACT under Massachusetts' Regulation 310 CMR 7.18(17). On August 26, 1986 and June 30, 1987, EPA received a proposed SIP revision from the Massachusetts DEQE. This revision includes the DEQE's proposed Plan Approval, State Order SM-85-116-1F, issued under 310 CMR 7.18(17) to Boston Whaler, Inc. in Rockland, Massachusetts on July 8, 1986. This proposed Plan Approval imposes RACT for Boston Whaler's non-CTG processes and specifies a December 31, 1986 compliance date. Although the proposed Plan Approval issued by the DEQE is currently fully enforceable by that agency under State law, the formal SIP revision submitted by the DEQE to EPA must consist of the Plan Approval amended as specified by this notice before EPA will undertake final rulemkaing approving it as RACT and incorporating it into the SIP.

Summary of RACT Determination

Boston Whaler has three production processes that emit VOCs at its Rockland facility. The three production processes are fiberglass boat fabrication, clean-up operations, and miscellaneous operations. As stated above, on August 26, 1986 and June 30, 1987, the DEQE submitted State Order SM-85-116-1F as a proposed Plan Approval for Boston Whaler's Rockland facility. That proposed Plan Approval imposes requirements on Boston Whaler

which the DEQE has determined to constitute RACT to reduce VOC emissions. The requirements of the proposed Plan Approval are summarized below:

Fiberglass Boat Fabrication

a. A reduced-styrene content gelcoat resin must continue to be used.

b. New gelcoat application equipment is required which reduces the amount of resin required per unit of production.

c. Improved gelcoat and laminating resin management and engineering changes to reduce usage and emissions are required.

Clean-up Operations

a. Closed-top dip tanks are required.

b. Employees contacting laminating resin are required to wear gloves.

c. Employee training to reduce cleaning solvent usage is required.

d. Boston Whaler, Inc. must control and track the use of organic cleaning solvent.

e. Work practice modifications are required including the substitution of a water-based cleaning solution for an organic cleaning solvent for some applications.

Miscellaneous Operations

a. The methyl ethyl ketone (MEK) content in the Gelcoat Catalyst must be reduced through the installation of new application equipment.

b. Emissions must be reduced from the reformulated varnishes.

As a result of these VOC emission reduction measures imposed in the proposed Plan Approval, Boston Whaler, Inc.'s Rockland facility will achieve a plantwide emission reduction of approximately 38%, when 1983 baseline emission levels are compared with emission levels after control. The year 1983 was used as the baseline year instead of the 1980 baseline year of the SIP as a result of several factors which complicated or invalidated comparisons between present and future emissions. For example, the production of small sailboats from 1979 to 1982 significantly changed the potential production and emissions per boat during that time. Additionally, recordkeeping has improved greatly for the period since 1983.

In addition to the above individual VOC emission reduction measures which the DEQE has determined to constitute RACT, the proposed Plan Approval also requires Boston Whaler to meet the emission rates expressed in pounds of VOC emitted per boat produced. These emission rates are imposed as additional requirements on Boston Whaler to assure that the VOC emission reductions resulting from the continuous compliance with the RACT measures as stated above are permanent. The final compliance date contained in the proposed Plan Approval is December 31, 1986. These emission rates are specified in the proposed Plan Approval for each of Boston Whaler's three production processes as follows:

	Pounds VOC/ per boat produced, effective Dec. 31, 1986
Fiberglass boat fabrication	16.6
Clean-up operations	8.5
Miscellaneous operations	5.2
Total pounds VOC emitted/ boat	[1] 30.3

[1] This represents a 38% reduction over 1983 emission levels, on a per boat produced basis.

Whether Boston Whaler is complying with the above emission limitations will be determined in accordance with records of VOC usage which it is required to maintain. In order to assure that Boston Whaler is adhering to the improved gelcoat and laminating resin management policy in its daily operations, it is required to update the following recordkeeping forms: Gelcoat Daily Reconcilement; Laminating Resin Daily Reconcilement; Daily VOC Chemical Usage; and Rockland Wood Division Chemical Usage. In addition, Boston Whaler is required to control and track the use of organic cleaning solvent by updating the recordkeeping form, "Rockland Daily Cleaning Solvent Usage." This will provide Boston Whaler the information necessary to determine the amount of cleaning solvent which can be allocated to various departments and still meet Boston Whaler's usage reduction goals.

EPA has reviewed the proposed Plan Approval and supporting documents submitted as a SIP revision for parallel-processing and generally concurs with the DEQE's RACT determination. For more details on EPA's review and justification of Boston Whaler's RACT determination, see the Technical Support Document available at the EPA Regional Office listed in the **ADDRESSES** section of this notice. However, the proposed Plan Approval itself must be amended as explained below before EPA will conduct final rulemaking to approve and incorporate it into the SIP.

The proposed Plan Approval specifies certain work practice standards and process modifications as emission reduction measures for fiberglass boat fabrication, clean-up operations, and miscellaneous operations which the DEQE has determined to constitute RACT for Boston Whaler. These RACT requirements, as currently written in the proposed Plan Approval, in general are not clearly enforceable and the emission reductions calculated to result from their implementation, therefore, may not occur. EPA is proposing to approve the Commmonwealth of Massachusetts' proposed Plan Approval (Order SM-85-116-IF) as RACT for Boston Whaler's Rockland facility. However, before EPA will conduct final rulemaking approving this Plan Approval as a SIP revision, the DEQE must add the requirements listed below to clarify the RACT emission reduction measures and to make them more enforceable. The DEQE also must specify the final compliance date of December 31, 1986 for the following requirements. Regulation 310 CMR 7.18(17) requires subject stationary sources to demonstrate compliance with RACT as expeditiously as practicable but no later than December 31, 1986.

Fiberglass Boat Fabrication

1. The final Plan Approval must specify a maximum styrene monomer content to be met on a continuous basis for the reduced-styrene content gelcoat and polyester laminating resins and require Boston Whaler to use only these types of resins.

2. The final Plan Approval must specify the type of gelcoat applications equipment (e.g., airless, air-assisted airless, or electrostatic spray equipment) that has been demonstrated to use less resin by providing a more even and less porous coating, thereby reducting the VOCs emitted per unit of production. This measure could be made enforceable by requiring Boston Whaler to use only this specific type of gelcoat application equipment.

Clean-up Operations

1. The final Plan Approval must specify that all cleaning solvent dip tanks' and containers' lids are closed at all times except when an item is being entered into or removed.

2. The final Plan Approval must require Boston Whaler to operate its in-house solvent recovery system to reclaim waste organic cleaning solvent, and must include specific operating requirements for the solvent recovery system. First, the final Plan Approval must specify a maximum weight percentage of VOC content to be met on a continuous basis for the solvent recovery system's residues. This maximum VOC content by weight should be initially established using the solvent recovery system's design specifications and the reduction in VOC

emissions accounted for during RACT implementation. In addition, the final Plan Approval must also specify, at minimum, one of the following limitations for the solvent recovery system in accordance with its design specifications: (1) A maximum concentration of outlet VOCs from the condensor's vent (i.e., in parts per million by volume of VOC) not to be exceeded, (2) a maximum temperature of the condensor's vent not to be exceeded, or (3) a maximum temperature of the condensor's coolant not to be exceeded. This will assure that the solvent recovery system is operating as intended and designed. Finally, the Plan Approval must require that the waste organic cleaning solvent (before being recovered) and the solvent recovery system's residues (before being sent out as a waste product) must be stored in closed containers to prevent evaporation.

3. The final Plan Approval must specify what portion of the solvent cleaning of brushes, rollers, spray guns, hands, etc. is done with the newly introduced non-volatile, water-based, cleaning solvent. The final Plan Approval must require Boston Whaler to use only this water-based cleaning solvent in designated areas where reduction in VOC emissions from its use were accounted for during RACT implementation. In addition, the final Plan Approval must specify for each cleaning solvent: the name, an emission rate in pounds of VOC per gallon of cleaning solvent to be met on a continuous basis, designated area(s) for its application, and a daily maximum consumption in gallons of VOC per day.

Miscellaneous Operations

The final Plan Approval must specify a maximum feed ratio of gelcoat catalyst to fiberglass resin in accordance with reduction in VOC emissions that were anticipated due to the installation of new application equipment under the RACT determination. Likewise, for the "Finishing Area" where the molded boat hulls are finished, the final Plan Approval must specify a maximum content to be met on a continuous basis of naphtha/mineral spirits and other VOC(s) in the polyester resin catalyst in either volume or weight percent. Finishing includes repairing any defects on the molded hull as well as plugging and patching any holes caused by the molding tools.

In addition, for the Wood Division where the wooden components (e.g., seats, consoles, locker covers) are varnished, the final Plan Approval must specify emission limits for both the urethane varnish(es) and the hardener(s) in pounds of VOC per gallon of solids. Further, the final Plan Approval must specify a maximum amount of varnish thinner that is allowed per gallon of the two-component urethane (i.e., urethane varnish and varnish hardener mixed together). These emission limits must be determined and imposed on Boston Whaler in accordance with reduction in VOC emissions achieved from the reformulation of the urethane varnishes which involved increasing the solids contents of the urethane resins while reducing the amount of varnish thinner (VOC). The Plan Approval must require that all these emission limitations be met on a continuous basis. Finally, once EPA has approved the Plan Approval, any amendment to it must be submitted as a SIP revision.

Today's Action

In order for EPA to take final action approving the DEQE's Plan Approval for Boston Whaler, that Plan Approval must be amended to include the requirements outlined in this notice. If the DEQE's final Plan Approval does not incorporate the requirements outlined in this notice to clearly define Boston Whaler's RACT VOC emission reduction measures and insure their enforceability, EPA will withdraw this proposed action to approve it and publish an action proposing to disapprove Boston Whaler's Plan Approval.

EPA is soliciting public comments on issues discussed in this notice. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedures by submitting written comments to the address above.

This revision is being proposed under a procedure called "parallel processing" (47 FR 27073). If the proposed revision is substantially changed, in areas other than those required in this notice, EPA will evaluate those changes and may publish a revised NPR. If no substantial changes are made other than those areas cited in this notice, EPA will publish a Final Rulemaking Notice on the revision. The final rulemaking action by EPA will occur only after the final Plan Approval for Boston Whaler has been issued by the DEQE and has been formally submitted to EPA for incorporation into the SIP.

Proposed Action:

EPA is proposing to approve Commonwealth of Massachusetts' ORDER SM-85-116-IF, a proposed Plan Approval, as a revision to the Massachusetts SIP with the understanding that the DEQE will revise the proposed Plan Approval as outlined in this notice prior to its formal submittal to EPA for incorporation into the SIP.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of sections 110(a)(2)(A)-(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: December 22, 1987.

Michael R. Deland,

Regional Administrator, Region I.

Editorial Note.—This document was received by the Office of the Federal Register September 2, 1988.

[FR Doc. 88-20326 Filed 9-7-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[FRL 3443-2; TN-073]

Approval and Promulgation of Implementation Plans, Tennessee; Avco Aerostructures/Textron Bubble

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to approve a State Implementation Plan (SIP) revision submitted by the State of Tennessee for the Metropolitan Health Department of Nashville and Davidson County. The SIP revision would provide for the Avco Aerostructures/Textron (AVCO) facility in Nashville, Tennessee (Davidson County) to achieve compliance with the applicable volatile organic compound (VOC) reasonably available control technology (RACT) regulations by averaging or "bubbling" of emissions within the facility. The proposed bubble is consistent with current Agency policy.

The public is invited to submit written comments on this proposed action.

DATE: To be considered, comments must reach us on or before October 11, 1988.

ADDRESSES: Written comments should be addressed to Kay Prince of EPA Region IV's Air Programs Branch (see EPA region IV address below). Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations.

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Tennessee Air Pollution Control Board, 4th Floor, Customs House, 71 Broadway, Nasville, Tennessee 37219

Metropolitan Health Department, Bureau of Pollution Control, 311–23rd Avenue, North, Nashville, Tennessee 37203

FOR FURTHER INFORMATION CONTACT: Kay T. Prince, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: The Avco facility in Nashville contains nineteen spray booths where miscellaneous aircraft and aerospace parts are coated. Such operations are generally covered by section 7–20 of the Metropolitan Health Department Pollution Control Division's VOC regulations. Regulation No. 7, Section 7–20 established the following VOC emission limitations for aerospace coatings:

Topcoatings	5.0 lbs/gal coating applied.
Temporary topcoatings	2.10 lbs/gal coating applied.
Strippers	3.3 lbs/gal coating applied.
Primers	2.9 lbs/gal coating applied.

Fuel tank and space vehicle coatings are exempt from the requirements of Regulation No. 7, Section 7–20.

On February 25, 1988, the State of Tennessee, through the Department of Health and Environment, officially submitted a source-specific SIP revision prepared by the Metropolitan Health Department for the Avco facility. The revision was adopted by the Metropolitan Board on February 9, 1988, and by the Tennessee Air Pollution Control Board on February 17, 1988. Although high solids coatings have successfully been used on aircraft wings supplied to Avoc's civilian customers, the United States Air Force refuses to accept these coatings, thus causing the need for a bubble. The SIP revision would permit Avoc to average or "bubble" VOC emissions from the nineteen spray booths in lieu of achieving compliance with Regulation 7–20, section 7 on a line-by-line basis. This would allow Avoc to compensate for continued use of non-compliance coatings on certain days at some of their spray booths by surpassing the emission reduction requirements applicable to other coatings used on those same days, such that total daily emissions from the facility as a whole do not exceed the original limits.

Specifically the proposed bubble provides for demonstration of compliance by: (1) Installing a thermal oxidizer with an overall volatile organic compound emission reduction efficiency of at least 90% on Booths B–30–PS (7 and 9), the county is revising the permit to say that this requirement applies to Booths 7 and 9 and EPA cannot take final action until the permit is revised; (2) Limiting the daily total of volatile organic compound (VOC) emissions calculated using the actual coating usage and VOC content of the coatings for each booth to less than the allowable daily emissions calculated on a solids applied basis (the actual daily emissions from the booths controlled by the thermal oxidizer will be reduced by a factor of 90%); (3) Using complying coatings at all times in Booths 2A–D433, B–2B, B–38–PS, BA–2A–D910, B4–PS, B30A–PS, B30–PS(10–15), B–30–B and B942–PS; (4) Using air assisted airless equipment in all booths, except for touch-up jobs requiring one pint or less of coatings; and (5) Limiting the annual actual volatile organic compound emissions to a total of 74,000 pounds/rolling twelve (12) months.

The Avco bubble has been determined to be consistent with the December 4, 1986, Emissions Trading Policy Statement (ETPS) which is current Agency policy. The ETPS requires that all bubbles have emission reductions which are (1) surplus, (2) enforceable, (3) permanent, and (4) quantifiable. The Avco bubble meets the surplus requirement. Baseline emissions were determined using the lowest of actual, SIP-allowable or reasonably available control technology (RACT) allowable emissions for each source involved in the bubble, with values for the actual quantity of VOC content of the coatings used based on the most recent two-year period. Baseline emissions were thus calculated to be 92,528 pounds VOC per year. The bubble limits the annual VOC emissions to 74,000 lbs for a reduction of 20%. This reduction meets the 20% required for bubbles submitted in primary nonattainment areas which need but lack an approved demonstration of attainment. The lowest of actual, SIP-allowable or RACT-allowable emissions baseline and a 20% reduction have been included in anticipation of the 1988 SIP call for Nashville that EPA announced it intended to issue in a **Federal Register** notice published on November 24, 1987. Average daily actual emissions for the sources involved in the bubble over the two-year period preceding the bubble application were 511 lb/day. Average daily actual emissions assuming the same level of protection and the use of all compliant coatings would be approximately 254 lb/day. Average daily actual emissions under the bubble will not exceed 203 lb/day. Therefore, the bubble is consistent with ambient progress and future air quality planning goals.

When Avco and the State of Tennessee began serious discussions with EPA about the bubble during 1986, Nashville was classified as a nonattainment area with an approved attainment demonstration. As the discussions concerning the bubble continued into 1987, it became apparent that the area could be reclassified as a nonattainment area needing but lacking an approved attainment demonstration. Accordingly, the State and Avco agreed to restructure the bubble by using the lowest of actual, or SIP-allowable or RACT-allowable baseline and adding the 20% progress requirement. The State formally submitted the bubble to EPA in February, 1988, after EPA issued the Final ETPS and after EPA stated in the November 24, 1987, **Federal Register** notice describing the Proposed Ozone Strategy that a SIP call would be issued for the area, but before EPA issued the SIP call on May 26, 1988.

As noted above, at the time Tennessee first began serious discussions with EPA about the bubble during 1986, Nashville was classified as a nonattainment area with an approved attainment demonstration ("NAWAD"); but currently, since it received the SIP call, Nashville is classified as a nonattainment area lacking an approved attainment demonstration ("NALAD"). Under the ETPS, EPA policy for approving bubbles differs depending on whether the bubble is in a NAWAD or a NALAD.

A bubble in a NAWAD is approvable if the baseline is consistent with the assumptions used in the approved SIP, and the bubble does not interfere with attainment of the ozone NAAQS. (51 FR 43838 col. 3.)

A bubble in a NALAD is approvable only if it meets the following three requirements (51 FR 43839–40):

(i) The baseline must be calculated using the lower of actual, SIP-allowable,

or Reasonably Available Control Technology (RACT)-allowable values for each baseline factor, determined as of the date the source submitted the bubble application to the State.

(ii) The bubble must produce a reduction of at least 20% in the emissions remaining after application of the baseline specified above.

(iii) The State must provide assurances that the proposed trade will be consistent with its efforts to attain the ambient standard. The ETPS sets out five representations that the State must make.

EPA believes that these NALAD policy elements are necessary to insure that the bubble will not interfere with attainment as expeditiously as practicable, as required under 42 U.S.C. 110(a)(2) and 7502.

Because the ETPS is a policy statement, it does not see out requirements that apply with equal force in all circumstances. Beyond this, the actions proposed in today's notice are consistent with the principles of grandfathering that the Court of Appeals for the District of Columbia Circuit has applied when an agency changes policy requirements, but seeks to apply the former requirements to certain actions pending before the agency at the time of the policy change. Under these principles, the agency may apply the former policy when: (i) The new policy represents an abrupt departure from well-established practice; (ii) affected parties have relied on the old policy; (iii) the new policy imposes a large burden on those affected; and (iv) there is no strong statutory interest in applying the new policy generally. *Sierra Club* v. *EPA*, 719 F.2d 436 (D.C. Cir. 1982), *cert. den.* 468 U.S. 1204 (1984).

Although Nashville is currently classified as a NALAD, EPA is proposing to approve the Avco bubble without requiring the State to provide the assurance found in the ETPS that are generally applicable to bubbles in areas classified as a NALAD. This result is consistent with both (i) the notion that the ETPS does not set out inflexible requirements; and (ii) grandfathering principles. Specifically, EPA believes that because Avco and the source initiated discussions with EPA concerning the bubble before the area's conversion to a NALAD came clearly into the picture, and because the bubble was submitted before EPA formally issued the SIP call, it is fair to conclude that the State and Avco relied on the area's classification as a NAWAD, and that the conversion to a NALAD represented a significant change. Further, the fact that the bubble employs the lower of actual, SIP-allowable or RACT-allowable baseline, with 20% progress, adequately protects the statutory requirement that the bubble not interfere with attainment as expeditiously as practicable; as a result, state assurances are not as essential as they would be if the bubble did not meet the strict baseline and progress tests. Since requiring the State assurances would impose some burden on the State, and because the statutory interest is protected by virtue of the bubble's satisfaction of the baseline and progress requirements, EPA believes it appropriate not to apply the State assurances requirement to the Avco bubble.

The provisions of the bubble described above are incorporated in a certificate of alternate control and in operating permits issued and enforceable by the Metropolitan Health Department. The certificate and permits include recordkeeping requirements based on the averaging period over which the bubble operates so that compliance may be easily determined. Because these instruments are being made part of the Tennessee SIP, they will be federally enforceable. Therefore, the enforceability requirement is met.

Because the bubble is being federally approved as a source-specific SIP revision, the reduction is considered to be permanent.

The reduction is quantifiable. Daily actual emissions after the bubble will be calculated every day and these calculations will be based on actual coating usage and the actual VOC content of the coatings. Daily allowable emissions will also be calculated every day and these calculations will be based on actual coating usage and the allowable VOC content of the coatings. Actual and allowable emissions before the bubble were calculated using data on actual coating usage and the actual and allowable VOC content of the coatings, respectively. Therefore, the emissions before and after the bubble, as well as the reduction may be readily calculated and thus the bubble meets the criteria for being quantifiable.

For a more detailed discussion, please refer to the Technical Support Document which is available at the EPA Region IV office.

Proposed Action

The Avco bubble is consistent with EPA's ETPS. Therefore, EPA is today proposing to approve this revision to the Nashville and Davidson County portion of the Tennessee SIP.

The public is invited to participate in this rulemaking by submitting comments on the proposed action.

Under 5 U.S.C. §605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Date: March 14, 1988.

Lee A. DeHihns, III,

Acting Regional Administrator.

[FR Doc. 88–20325 Filed 9–7–88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-1-FRL-3443-5]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Reasonably Available Control Technology For Starcraft Sailboat Products, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a proposed State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions from Starcraft Sailboat Products, Inc. (Starcraft) in Fall River, Massachusetts. The intended effect of this action is to propose approval of a source specific RACT determination made by the Commonwealth of Massachusetts in accordance with commitments of its approved 1982 ozone attainment plan. This action is being taken under Section 110 of the Clean Air Act.

DATES: Comments must be received on or before October 11, 1988.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2313, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during formal business hours at the Environmental Protection Agency, Room 2313, JFK Federal Bldg., Boston, MA 02203 and the Department of

Environmental Quality Engineering, Division of Air Quality Control, One Winter Street, 8th floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Lorenzo Thantu, (617) 565-3250; FTs 835-3250.

SUPPLEMENTARY INFORMATION: EPA approved Regulation 310 CMR 7.18(17), "Reasonably Available Control Technology (RACT)," on November 9, 1983 (48 FR 51480) as part of the Commonwealth of Massachusetts 1982 ozone attainment plan. This regulation requires the Commonwealth of Massachusetts Department of Environmental Quality Engineering (DEQE) to determine and impose RACT on all stationary sources with the potential to emit one hundred tons per year (TPY) or more of VOCs that are not already subject to RACT under Massachusetts' regulations developed pursuant to the EPA Control Techniques Guideline (CTG) documents. In a November 17, 1982 letter to EPA, the DEQE committed to submit each of the individual RACT determinations to EPA for incorporation into the Massachusetts SIP. On November 9, 1983, EPA codified at 40 CFR 52.1123 that the DEQE must submit each RACT determination made under 310 CMR 7.18(17) to EPA as a SIP revision in order to incorporate the limitations into the SIP. EPA's rationale for requiring the DEQE to submit each RACT determination as a single source SIP revision is that emission limits and reduction measures imposed by states on existing stationary sources in nonattainment areas do not constitute RACT unless and until EPA approves them as RACT via rulemaking.

Starcraft Sailboat Products, Inc. in Fall River, Massachusetts is a non-CTG VOC source subject to RACT under Massachusetts' Regulation 310 CMR 7.18(17). On March 25 and June 30, 1987, EPA received a proposed SIP revision from the Massachusetts DEQE. This revision includes the DEQE's proposed Plan Approval, State Order SM-85-171-IF, issued under 310 CMR 7.18(17) to Starcraft on October 14, 1986. This proposed Plan Approval imposes RACT for Starcraft's non-CTG processes and specifies a January 1, 1986 compliance date. Although the proposed Plan Approval issued by the DEQE is currently fully enforceable by that agency under State law, the formal SIP revision submitted by the DEQE to EPA must consist of the Plan Approval amended as specified by this notice before EPA will undertake final rulemaking approving it as RACT and incorporating it into the SIP.

Summary of RACT Determination

Starcraft has three production processes that emit VOCs at its Fall River facility. The three production processes are fiberglass boat fabrication, clean-up operations, and miscellaneous operations. The fiberglass boat fabrication and clean-up operations are the two major sources of VOC emissions. The miscellaneous operations, on the contrary, emit very small amounts of VOCs such that their overall contribution to total plantwide emissions is considered negligible (approximately one TPY in relation to total plant-wide emissions of 344 TPY). As stated above, on March 25 and June 30, 1987, the DEQE submitted State Order SM-85-171-IF as a proposed Plan Approval for Starcraft. That proposed Plan Approval imposes requirements on Starcraft which the DEQE has determined to constitute RACT to reduce VOC emissions. The requirements of the proposed Plan Approval are summarized below:

Work Practices

a. Starcraft is required to reduce the number of containers of miscellaneous cleaning solvent (acetone) used and to allocate them to specific work areas.

b. Starcraft is required to utilize cleaning solvent containers with lids to prevent evaporation when not in use.

c. Starcraft is required to restrict the allocation of the cleaning solvent and to track its use with accounting logs and usage balance sheets.

d. Starcraft is required to perform daily maintenance on its resin and gel coating equipment.

e. Starcraft is required to reuse some spent cleaning solvent for equipment cleaning versus using virgin solvent.

f. Starcraft is required to train its employees with an emphasis on acceptable laminating (lay-up) techniques and procedures.

g. Starcraft is required to adopt management policies which encourage employes to suggest ideas and methods to reduce VOC emission through improved manufacturing techniques and/or cleaning solvent substitutions.

h. Starcraft is required to make gloves available for employee hand protection thereby reducing the use of solvent for hand cleaning between resin applications.

Solvent Reclamation

Starcraft is required to recover on-site spent cleaning solvent (acetone) through distillation.

Styrene Suppressed Resins

Starcraft is required to use suppressed as opposed to nonsuppressed laminating resins thereby achieving emission reductions of styrene from laminating operatings.

Cleaning Solvent Substitutions

Starcraft is required to continue research into the use of reduced or non-VOC cleaning materials for certain applications.

As a result of these VOC emission reduction measures (excluding the reduction associated with the use of styrene suppressed resin) imposed in the proposed Plan Approval, Starcraft will achieve a plantwide emission reduction of approximately 22 percent, when 1979 baseline emission levels are compared with emission levels after control (RACT). The VOC emission reduction resulting from the Starcraft's use of the styrene suppressed resin versus nonsuppressed was not accounted for in calculating the 22 percent reduction due to the implementation of RACT as Starcraft has been using this type of laminating resin since prior to the 1979 baseline year.

In addition to the above individual VOC emission reduction measures which the DEQE has determined to constitute RACT, the proposed Plan Approval also requires Starcraft to meet the emission rates expressed in pounds of VOC emitted per unit boat model produced. These emission rates are imposed as additional requirements on Starcraft to assure that the VOC emission reductions resulting from the continuous compliance with the RACT measures as stated above are permanent. The final compliance date contained in the proposed Plan Approval is January 1, 1986. These emission rates are specified in the proposed Plan Approval for each of Starcraft's twelve boat models as shown below:

RACT Emission Rates (Pounds VOC/Unit Boat Model Produced)

Boat model	Pounds VOC per unit boat model
Widgeon	64.3
J	73.03
Day Sailer	82.4
192	130.16
222	139.00
272	204.54
32	336.72
35	400.74
40	470.76
c-22	147.41
c-28	286.04
c-33	380.90

Whether Starcraft is complying with the above emission limitations will be determined in accordance with records of VOC usage which it is required to maintain. In order to assure that Starcraft is adhering to the emission rates for each boat model that is produced, Starcraft is required to maintain and update daily records of material usage and VOC release to the ambient air, and of the weekly number of boats molded. The log must include daily usage of (a) gelcoat, (b) laminating resin, and (c) cleaning solvent.

In addition, Starcraft is required to track and report annually to the DEQE small usage items which emit VOCs but in a very small amount (approximately one ton per year).

EPA has reviewed the proposed Plan Approval and supporting documents submitted as a SIP revision for parallel-processing and generally concurs witht the DEQE's RACT determination. For more details on EPA's review and justification of Starcraft's RACT determination, see the Technical Support Document available at the EPA Regional Office listed in the **ADDRESSES** section of this notice. However, the proposed Plan Approval itself must be amended as explained below before EPA will conduct final rulemaking to approve and incorporate it into the SIP.

The proposed Plan Approval specifies various VOC emission reduction measures (summarized above) in the areas of work practices, solvent reclamation, styrene suppressed resins, and cleaning solvent substitution for fiberglass boat fabrication, clean-up operations, and miscellaneous operations. These RACT requirements, as currently written in the proposed Plan Approval, in general are not clearly enforceable and the emission reductions calculated to result from their implementation, therefore, may not occur.

EPA is proposing to approve the Commonwealth of Massachusetts' proposed Plan Approval (ORDER SM-85-171-IF) as RACT for Starcraft. However, before EPA will conduct final rulemaking approving this Plan Approval as a SIP revision, the DEQE must add the requirements listed below to clarify the RACT emission reduction measures and to make them more enforceable. The DEQE must also specify the final compliance date of January 1, 1986 for the following requirements.

Regulation 310 CMR 7.18(17) requires subject stationary sources to demonstrate compliance with RACT as expeditiously as practicable no later than December 31, 1986.

Work Practices

(1) The final Plan Approval must contain a requirement that all employees wear gloves when contacting laminating resins.

(2) The final Plan Approval must specify that all cleaning solvent containers' lids are closed at all times except when an item is being entered into or removed.

Solvent Reclamation

The final Plan Approval must require Starcraft to operate its in-house solvent recovery system which is used to reclaim waste organic clearing solvent, and must include specific operating requirements for the solvent recovery system. First, the final Plan Approval must specify a maximum weight percentage of VOC content to be met on a continuous basis for the solvent recovery system's residues. This maximum VOC content by weight should be initially established using the solvent recovery system's design specifications and the reduction in VOC emissions accounted for during RACT implementation. In addition, the final Plan Approval must also specify, at minimum, one of the following limitations for the solvent recovery system in accordance with its design specifications: (1) A maximum concentration of outlet VOCs from the condensor's vent (i.e., in parts per million by volume of VOCs) not to be exceeded, (2) a maximum temperature of the condensor's vent not to be exceeded, or (3) a maximum temperature of the condensor's coolant not to be exceeded. This will assure that the solvent recovery system is operating as intended and designed. Finally, the Plan Approval must require that the waste organic cleaning solvent (before being recovered) and the solvent recovery system's residues (before being sent out as a waste product) must be stored in closed containers to prevent evaporation.

Fiberglass Fabrication

The final Plan Approval must specify a maximum styrene monomer content to be met on a continuous basis for the gelcoat resins and styrene suppressed laminating resins, and require Starcraft to use only these two types of gelcoat and styrene suppressed laminating resins. In addition, the final Plan Approval must specify a maximum VOC content for the resin catalyst used and a maximum feed ratio of gelcoat catalyst to fiberglass resin for the application equipment. The Plan Approval must require that these emission limitations be met on a continuous basis.

Cleaning Solvent Substitutions

The final Plan Approval must specify what portion of the solvent cleaning, e.g., of brushes, rollers, spray guns, hands, etc. is done with the newly introduced VOC-reducted or non-VOC cleaning solvent. The final Plan Approval must require Starcraft to use only this water-based cleaning solvent in designated areas where reduction in VOC emissions from its use were accounted for during RACT implementation. In addition, the final Plan Approval must specify for each cleaning solvent: the name, an emission rate in pounds of VOC per gallon of cleaning solvent to be met on a continuous basis, designated area(s) for its application, and a daily maximum consumption in gallons of VOC per day.

Once EPA approves the Plan Approval, any amendment to it must be submitted by the DEQE as a SIP revision.

Today's Action

In order for EPA to take final action approving the DEQE's Plan Approval for Starcraft, that Plan Approval must be amended to include the requirements outlined in this notice. The Plan Approval must specify the final compliance date of January 1, 1986 for all of its requirements.

If the DEQE's final Plan Approval does not incorporate the requirements outlined in this notice to clearly define Starcraft's RACT VOC emission reduction measures and insure their enforceability, EPA will withdraw this proposed action to approve it and publish an action proposing to disapprove Starcraft's Plan Approval.

EPA is soliciting public comments on issues discussed in this notice. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above.

This revision is being proposed under a procedure called "parallel processing" (47 FR 27073). If the proposed revision is substantially changed, in areas other than those required in this notice, EPA will evaluate those changes and may publish a revised NPR. If no substantial changes are made other than those areas cited in this notice, EPA will publish a Final Rulemaking Notice on the revision. The final rulemaking action by EPA will occur only after the final Plan Approval for Starcraft has been issued by the DEQE and has been formally submitted to EPA for incorporation into the SIP.

Proposed Action

EPA is proposing to approve Commonwealth of Massachusetts' ORDER SM–85–171–IF, a proposed Plan Approval, as a revision to the Massachusetts SIP with the understanding that the DEQE will revise the proposed Plan Approval as outlined in this notice prior to its formal submittal to EPA for incorporation into the SIP.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of sections 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Date: December 22, 1987.

Michael R. Deland,

Regional Administrator, Region I.

[Editorial note: This document was received at the Office of the Federal Register on September 2, 1988]

[FR Doc. 88–20328 Filed 9–7–88; 8:45 am]

BILLING CODE: 6560–50–M

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40 CFR Part 81

[FRL–3443–1]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations; Wisconsin

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

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to disapprove a request from the State of Wisconsin to revise the attainment status designations, at 40 Code of Federal Regulations (CFR) 81.350, for a sub-city primary nonattainment area of Green Bay, Wisconsin, which is in Brown County, from primary nonattainment to attainment relative to the sulfur dioxide (SO_2) National Ambient Air Quality Standard (NAAQS). The intent of this proposed notice is to discuss the results of USEPA's review of the Wisconsin Department of Natural Resources (WDNR) redesignation request and to provide an opportunity for the public to comment. Under the Clean Air Act (CAA), designations can be changed if sufficient data are available to warrant such a change.

USEPA is proposing to disapprove a sub-city primary nonattainment area of Green Bay redesignation request because the WDNR failed to provide any evidence that (1) the necessary stack modifications at three sources have been completed, and that (2) all sources are in compliance with the emission limits in the State rule. Thus, the requirements in USEPA's April 21, 1983, redesignation policy entitled "Section 107 Designation Policy Summary" from Sheldon Meyers, Director, Office of Air Quality Planning and Standards, have not been met.

DATE: Comments on this redesignation request and on the USEPA's proposed disapproval action must be received by October 11, 1988.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.D. Environmental Protection Agency, Region V, Air Programs Branch, 230 S. Dearborn Street, Chicago, Illinois 60604

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Green Bay, Wisconsin 53707

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6031.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the CAA, the Administrator of USEPA has promulgated the NAAQS attainment status for all areas within each State. For Wisconsin, see 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978), and 40 CFR 81.350. These area designations are subject to revision whenever sufficient data become available to warrant a redesignation. On October 10, 1980 (45 FR 67348), a sub-city primary nonattainment area of Green Bay, Wisconsin, was designated as not attaining the SO_2 standard [1]. For areas designated nonattainment for SO_2, a revised SO_2 SIP was required which satisfies the requirements of section 110(a) and Part D of the CAA and provides for attainment and maintenance of the SO_2 NAAQ [2].

Redesignation requests for SO_2 are reviewed for compliance with USEPA's redesignation policy issued in the memorandum from Shelton Meyers, Director of the Office of Air Quality Planning and Standards (OAQPS), on April 21, 1983, entitled "Section 107 Designation Policy Summary."

On May 7, 1987, pursuant to section 107(d)(5) of the CAA, the WDNR requested that a sub-city primary nonattainment area of Green Bay be redesignated to attainment of the SO_2 NAAQS. In this policy, there are five main criteria for SO_2 redesignation from nonattainment, all of which must be met.

Criterion 1:

There must be evidence of implementation (i.e., compliance certifications) of the USEPA fully approved control strategy.

On January 23, 1984, the State of Wisconsin submitted a revised SO_2 State Implementation Plan (SIP) for sources in Green Bay and DePere. Based on USEPA's review of the technical support materials, USEPA expected to propose approval of this revised plan. In its submittal, Wisconsin stated that all sources "* * * came into compliance in November 1985 * * *", but provided no information to support this statement. Wisconsin did provide copies of each company's compliance plans, which were developed to ensure that the sources were complying with the limits in the State rule.

USEPA will propose rulemaking on the revised SO_2 State plan for Green Bay in a separate notice. Final redesignation cannot occur until final approval of the revised SIP. However, the State has failed to provide recent evidence that

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[1] Brown County: The Green Bay sub-city primary nonattainment area defined as follows:

North: Green Bay.

West: W. Mason St. and Ashland Ave., along Ashland north to Mather St., West Crocker St., north on Crocker St. to Bylsby ST., then to Green Bay.

South: W. Mason St. and Ashland Ave., east long Mason to Irwin Ave.

East: W. Mason St. and Irwin Ave., along Irwin Ave. north to Green Bay.

Remainder of corporate limits of Green Bay: Cannot be classified.

Remainder of Brown County: Better than national standard.

[2] USEPA is proposing action to approve Green Bay's SO_2 SIP in a separate **Federal Register** notice.

demonstrates that the necessary stack modifications at WPS–Pulliam, Green Bay Packaging, and Nicolet Paper, have been completed and that current emissions at all sources do not exceed the emission limitations in the State rule. The compliance plans merely establish recordkeeping and reporting requirements between the State and each company. The SIP must include as the compliance test method a stack test for all companies, in addition to containing specific recordkeeping and reporting requirements for P&G Fox River, Green Bay Packaging, and James River. This type of data was not submitted by the State to support the redesignation request.

Criterion 2

The most recent eight consecutive quarters of quality-assured, representative (i.e., reflects maximum, worst-case impacts under maximum allowable source operation) air quality data must show no violations of the applicable National Ambient Air Quality Standards (NAAQS).

WDNR submitted ambient data collected at nine different locations during the period 1979–1986. A map of the monitoring locations is presented in Figure 1 of the May 1, 1987, State's submittal. A copy of the data is presented in Table 1 of the May 1, 1987, State's submittal. (Note, no more than five monitors operated during any given year. Currently, there are four monitors in operation.) The monitored data show no violations of the NAAQS during 1985 and 1986, the most recent 2 calendar years of available data.

USEPA has determined that the existence of no monitored violations during the most recent 2 calendar years satisfies the ambient data requirement.

Criterion 3

There must be a reference modeled attainment demonstration at the USEPA approved emission limits.

The WDNR submitted a dispersion modeling analysis consistent with the modeling guidelines in effect at that time it was performed by the State to support the revised emission limitations.

USEPA recognizes the modeling done to develop the revised emission limitations as being acceptable to support the redesignation. The modeling used in the demonstration supporting the emission limits is based on the modeling guideline in place at the time the analysis was performed (i.e., USEPA's 1978 and 1981 modeling guidelines). Since that time, a revised modeling guideline has been promulgated (September 9, 1986). Because the modeling was completed prior to publication of the revised guideline, however, USEPA accepts the analysis as it stands.

Criterion 4

The redesignation must not result in a relaxation in the SIP unless the State demonstrates that the NAAQS are still assured with the relaxation.

The WDNR redesignation request will not result in any change in emission limitations. Therefore, USEPA has determined that this criterion is met.

Criterion 5

The redesignation must be consistent with USEPA's GEP Stack Height Regulations (50 FR 27892).

The State rule requires stack height increases and/or combined stack gases at P&G Fox River, WPS-Pulliam, Green Bay Packaging, Nicolet Paper, and Fort Howard. Each company submitted information to support the stack credits assumed in the modeled attainment demonstration, as discussed in "Green Bay, Wisconsin SO_2 SIP", October 28, 1987. USEPA has determined that the stack credits in the Green Bay plan are consistent with the GEP Stack Height Regulations. (USEPA's review ill be addressed in a separate **Federal Register** notice on the SO_2 SIP for Green Bay.)

Conclusion

USEPA is proposing to disapprove the redesignation request for a sub-city area primary nonattainment area of Green Bay, Wisconsin, for SO_2. The WDNR failed to comply with Criterion 1, which required evidence of implementation (i.e., compliance certifications) of the USEPA fully approved control strategy.

All interested persons are invited to submit written comments on the proposed redesignation. Written comments received by the date specified above will be considered in determining whether USEPA will approve the redesignation. After review of all comments submitted, the Administrator of USEPA will publish in the **Federal Register** the Agency's final action on the redesignation.

Under 5 U.S.C. 605(b), I certify that this disapproval of a proposed redesignation request will not have a significant economic impact on a substantial number of small entities because it applies only to a sub-city area of Green Bay, Wisconsin, and imposes no new requirements on anyone.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National Parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Dated: December 29, 1987.

Frank M. Covington,

Acting Regional Administrator.

[Editorial note: This document was received at the Office of the Federal Register on September 2, 1988.]

[FR Doc. 88–20324 Filed 9–7–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 7E3543/P459; FRL–3443–9]

Pesticide Tolerance for Carbaryl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for residues of the insecticide carbaryl in or on the raw agricultural commodity fresh dill. The proposed regulation to establish a maximum permissible level for residues of the insecticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4) in support of regional registration.

DATE: Comments, identified by the document control number, [PP 7E3543/P459], must be received on or before October 11, 1988.

ADDRESS: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m.,

Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT:
By mail:
Hoyt Jamerson, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460
Office location and telephone number: Rm. 716C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557–2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick NJ 08903, has submitted the pesticide petition 7E3543 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Station of Florida.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the insecticide carbaryl (1-naphthyl *N*-methylcarbamate) in or on the raw agricultural commodity fresh dill at 0.5 part per million (ppm); the petition was later amended to propose a tolerance of 0.2 ppm.

The petitioner proposed that use of fresh dill be limited to Florida based on the representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A three-generation rat reproduction study with a no-observed-effect level (NOEL) of 200 milligrams (mg)/kilogram (kg) (highest level fed).

2. A 2-year rat feeding study with a NOEL of 200 ppm, 10 mg/kg, which was negative for oncogenic effects at all levels tested (0, 50, 100, 200, and 400 ppm or 0, 2.5, 5, 10, and 20 mg/kg).

3. Additionally, 10 other studies were used to evaluate the oncogenic potential or carbaryl. No significant increase in the incidence of tumors was observed in these studies at levels as high as 400 ppm (the highest level tested). Although each study was found to contain some flaws in scientific design or reporting of data, the Agency believes that when the 10 studies are examined collectively they provide sufficient evidence that carbaryl is not oncogenic in experimental animals and, therefore, does not pose an oncogenic risk to humans.

4. Twenty-four animal teratology studies were used to evaluate the teratogenic potential of carbaryl. After evaluating these studies the Agency has concluded that the available data do not indicate that carbaryl constitutes a potential human teratogen or reproductive hazard under the proper use of the chemical.

The carbaryl toxicology data base was previously evaluated when carbaryl was a candidate for Special Review (previously known as Rebutable Presumption Against Registration). The Agency published its determination and findings in the **Federal Register** of December 12, 1980 (45 FR 81869), that the data did not support allegations of unreasonable adverse effects to humans, and therefore a Special Review was not warranted. Essentially, the Agency concluded that the data do not indicate that carbaryl is oncogenic, teratogenic, or a reproductive hazard under proper use. The Agency is reexamining these data as part of a final registration standard and tolerance reassessment (FRSTR) for carbaryl due in 1988.

The provisional acceptable daily intake (PADI), based on the 2-year rat feeding study with a NOEL of 10.0 mg/kg and using a 100-fold safety factor, is calculated to be 0.1 mg/kg of body weight (bw)/day. The anticipated residue contribution from existing tolerances is calculated to be 0.009165 mg/kg/day, which is equivalent to 9.1 percent of the ADI. The current action will contribute less than 0.000001 mg/kg/day of residue to the human diet (no apparent increase).

The nature of the residue is adequately understood, and an adequate analytical method, gas-liquid chromatography, is available for enforcement purposes. Analytical methods for enforcing this tolerance have been published in the *Pesticide Analytical Manuel* (PAM), Vols. I and II. No secondary residues in meat, milk, poultry, or eggs are expected since fresh dill is not considered a livestock feed commodity. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.169 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [PP 7E3543/P459]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: August 26, 1988.

Edwin F. Tinsworth,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.169(e) is amended by adding and alphabetically inserting the raw agricultural commodity fresh dill, to read as follows:

§ 180.169 Carbaryl; tolerances for residues.

* * * * *

(e) * * *

Commodities	Parts per million
• • • •	•
Dill (fresh)	0.2
• • • •	•

[FR Doc. 88-20331 Filed 9-7-88; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP 3F2956/P461; FRL-3444-1]

Pesticide Tolerance For Glyphosate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish a tolerance for residues of the herbicide glyphosate and its metabolite aminomethylphosphoric acid (AMPA) in or on the raw agricultural commodity (RAC) shellfish at 3.0 parts per million (ppm). This proposed regulation was requested by the Monsanto Co. and would establish the maximum permissible level for residues of the herbicide in or on shellfish.

DATE: Comments must be received on or before October 11, 1988.

ADDRESS: Submit written comments, bearing the identification number [PP 3F2956/P461],.

By mail to: Information Services Branch, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, deliver comments to: Room 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted and any comment concerning this proposed rule may be claimed confidential by marking any part or all of that inforamtion as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: 1921 Jefferson Davis Highway, Room 245, CM#2, Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of October 26, 1983 (48 FR 49543), which announced that the Monsanto Co., 1101 17th St., NW., Washington, DC 20036, had submitted a pesticide petition (PP 3F2956) to EPA proposing to amend 40 CFR 180.364 by establishing a tolerance for the combined residues of the herbicide glyphosate [*N*-(phosphonomethyl)glycine] and its metabolite aminomenthylphosphoric acid (AMPA) in or on the RAC shellfish at 0.25 ppm.

There were no comments received in response to the notice of filing.

The petitioner subsequently amended the petition to propose the establishment of a tolerance for the combined residues of the herbicide glyphosate and its metabolite AMPA on the RAC shellfish at 3.0 ppm. Because there is a potential increase in risk to humans from this revision, the tolerance of 3.0 ppm is being proposed for 30 days to allow for public comment.

The data submitted in the petition and other relevant material have been evaluated. The data evaluated include a 2-year oncogenicity study in mice fed dosages of 0, 150, 750, and 4,500 milligrams/kilogram/day (mg/kg/day) with a possible oncogenic effect (a slight increase in the incidence of renal tubular adenomas, a benign tumor of the kidney, in males) at the highest dose tested (HDT) of 4,500 mg/kg/day; a chronic feeding/oncognicity study in rats fed dosages of 0, 3, 10, and 31 mg/kg/day with no oncogenic effects observed under the conditions of the study at dose levels up to and including 31 mg/kg/day (HDT) and a systemic no-observed-effect level (NOEL) of 31 mg/kg/day; a 1-year chronic feeding study in dogs fed dosage levels of 0, 20, 100, and 500 mg/kg/day with a NOEL of 500 mg/kg/day; a teratology study in rats fed dosage levels of 0, 300, 1,000 and 3,500 mg/kg/day with no teratogenic effects occurring up to and including 3,500 mg/kg/day (HDT), maternal and fetotoxic NOELS of 1,000 mg/kg/day; a teratology study in rabbits fed dosage levels of 0, 75, 175, and 350 mg/kg/day with no teratogenci effects occurring up to an including 350 mg/kg/day (HDT), a maternal NOEL of 175 mg/kg/day, and a fetotoxic NOEL of 350 mg/kg/day (HDT); a three-generation reproduction study in rats fed dosage levels of 0, 3, 10, and 30 mg/kg/day with a NOEL of 10 mg/kg/day; a mutagenicity test—chromosomal aberration *in vitro* (no aberrations in Chinese hamster ovary cells were caused with and without S-9 activation); a mutagenicity test—DNA repair in rat hepatocytes (negative); a mutagenic test—*in vivo* bone marrow cytogenic in rats (negative); a mutagenicity test—rec-assay with *B. subtilis* (negative); a mutagenicity test—reverse mutation with *S. Typhimurium* (negative); a mutagenicity (Ames) test with *S. typhimurium* (negative); and a dominant lethal mutagenicity test in mice (negative).

The oncogenic potential of glyphosate is not fully understood. Because of the equivocal (uncertain) nature of the oncogenic response in mice, the Agency referred the issue to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Science Advisory Panel (SAP) for a "Weight-of-Evidence" classification. After reviewing all available evidence, the SAP proposed that glyphosate be classified as a "Class D Oncogen" or having "inadequate animal evidence of oncogenicity," and that there be a Data Call-In for further studies in rats and/or mice to clarify unresolved questions. After rereview of all available information, the Agency decided to classify glyphosate as a "Class D Oncogen" and also to request a repeat of the mouse oncogenicity study in males only, using larger numbers of animals for each dose level to increase the statistical power of the bioassay. Also, because of the large difference between the high dose levels tested in the rat and mouse oncogenicity studies, the rat oncogenicity study was reviewed. The rereview indicates that maximum tolerated dose (MDT) may not have been reached in that study. Therefore, the Agency decided to also request a repeat of the rat oncogenicity study at doses high enough to reach an MTD. Any significant new use registrations will be handled on a case-by-case basis and will not be issued until major data gaps in the Glyphosate Registration Standard have been filled. The Monsanto Co. has been notified of these conclusions and deficiencies by the Glyphosate Registration Standard, dated June 30, 1986.

The acceptable daily intake (ADI) based on the three-generation rat reproduction study (NOEL of 10 mg/kg/day) and using a hundredfold safety factor is calculated to be 0.1 mg/kg/day. The theoretical maximum residue contribution (TMRC) for published tolerances and unpublished but approved tolerances is 0.008339 mg/kg/

day. The current action will contribute 0.000103 mg/kg/day to the TMRC and will increase the percentage of the ADI utilized 0.1 percent. Published tolerances utilize 8.3 percent of the ADI.

Desirable data lacking are a repeat of the mouse and rat oncogenicity studies. There are currently no actions pending against the continued registration of this pesticide. No detectable residues of *N*-nitrosoglyphosate, a contaminant of glyphosate, are expected to be present in the commodities for which the tolerance is sought. This tolerance is toxicologically supported because the total increase in utilized ADI is less than 1 percent (0.1 percent).

The nature of the residue is adequately understood, and an adequate analytical method (gas chromatography with a phosphorous-specific flame photometric detector) is available for enforcement purposes. This method is listed in the *Pesticide Analytical Manual*, Vol. II. Since no feed items are involved with this petition, there will be no problems with respect to secondary residues in meat, milk, poultry, or eggs.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR Part 180 would protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under FIFRA, as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number (PP 3F2956/P461). All written comments filed in response to this proposed rule will be available in the product manager's office, Registration Division, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Pesticides and pests.

Dated: August 30, 1988.

Edwin F. Tinsworth,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. In § 180.364, paragraph (b) is amended by adding and alphabetically inserting the listing for shellfish, to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

* * * * *

(b) * * *

Commodities	Parts per million
* * * * *	
Shellfish	3.0
* * * * *	

[FR Doc. 88-20332 Filed 9-7-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 14

Changes in the Import/Export License Fee and in the Collection of Import/Export Inspection Fees

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to reduce the fee that it charges for an import/export license from $250 per year to $125 per year. The Service also proposes to eliminate the five (5) prepaid shipments allowed under the current regulations. Beginning on the effective date of this regulation, the Service proposes to charge a $25 inspection fee for each shipment presented for clearance by a licensee. Further, the Service proposes to change its policy for renewing import/export licenses and collecting import/export inspection fees. Beginning October 1, 1988, the Service proposes to no longer bill importers and exporters for renewal of licenses or for inspection fees. The Service proposes to require import/export licensees to apply for renewal to the issuing office at least 30 days before the current license expires. The Service also proposes to require import/export licensees to pay inspection fees before or at the time of inspection.

DATES: Public comment must be received by October 11, 1988.

ADDRESSES: Comments and materials concerning this proposal may be mailed to: Director, U.S. Fish and Wildlife Service, P.O. Box 28006, Washington, DC 20038-8006, or delivered to the U.S. Fish and Wildlife Service, Room 300, Hamilton Building, 1375 K Street NW., Washington, DC, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Thomas L. Striegler, Special Agent in Charge, Branch of Investigations, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 28006, Washington, DC 20038-8006, telephone (202) 343-9242.

SUPPLEMENTARY INFORMATION: In 1986, the Service began charging import/export licensees a fee for inspecting wildlife shipments. The basic license fee was increased from $25 to $250 and each licensee was allowed five (5) prepaid shipments. The Service charged a $25 inspection fee for each shipment in excess of five (5) that a licensee imported or exported during the license year.

To collect these fees, the Service developed a computerized billing system and sent monthly bills to each licensee. The Service also used the system to bill licensees for the annual renewal of their licenses.

Recently the Service and the Department of the Interior (Department) identified several areas in which the inspection fee system was inconsistent with the Government's financial management policies. First, the Service did not integrate the inspection fee billing system into the overall financial management system of the Service. Therefore, the Service could not maintain accounts receivable for the money owed to the government. Secondly, the Service did not collect fees at the time it performed inspections. This resulted in what amounted to interest free loans to licensees. Finally,

the Service has not charged interest for late or unpaid bills.

To correct these problems, it was recommended that the Service collect inspection fees at the time of inspection. The reviewers further recommended that the Service integrate the license and inspection fee program into its overall financial management system. Accordingly, the Service is proposing regulation changes to implement these recommendations.

Beginning October 1, 1988, the Service proposes to no longer bill licensees for license renewal fees. To renew a license, the licensee will have to submit an application at least 30 days before the expiration date of the current license. The Service will process applications for license renewals according to the procedures in § 13.24 of Title 50, Code of Federal Regulations. This proposal is not a change in regulations. The current procedure of billing licensees for license renewal is, in fact, a deviation from the requirements of the regulations.

Also effective October 1, 1988, the Service proposes to no longer bill licensees for inspection fees. The Service proposes to require licensees to pay for each shipment at or before the inspection. Under its proposal the Service will issue its last bills for import/export fees and license renewal on or about September 1, 1988.

Because it would be virtually impossible for the Service to manage the current system of allowing five (5) prepaid shipments to each licensee, the Service proposes to change its user fee system. These changes will not increase any licensee's costs for user fees, and will reduce the user fee costs for those licensees who import or export less than five (5) shipments annually. Under this proposal the Service would reduce the annual import/export license fee from $250 to $125. The Service proposes to eliminate the five (5) prepaid shipments and to charge a $25 inspection fee for each shipment. Therefore, those licensees who import or export five (5) or more shipments annually will pay the same fees as they are currently paying. However, licensees who import or export less than five (5) shipments will pay less in user fees.

Statement of Effects, Executive Order 12291, and Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this proposed rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

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

Environmental Effects

These changes in the regulations in Part 14 are regulatory and enforcement actions which are covered by a categorical exclusion from the National Environmental Policy Act procedures under 516 DM 2, Appendix 1, §1.4 and 1.5.

Author

The primary author of this proposed rule is Thomas L. Striegler, Special Agent in Charge, Division of Law Enforcement, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Parts 13 and 14

Exports, Imports, Wildlife.

For the reasons set out in the preamble, the Service proposes to amend Title 50, Chapter I, Subchapter B of the Code of Federal Regulations, as set forth below.

PART 13—GENERAL PERMIT PROCEDURES

1. The authority citation for Part 13 continues to read as follows:

Authority: Lacey Act, (18 U.S.C. 42); Lacey Act Amendments of 1981, (16 U.S.C. 3374); Migratory Bird Treaty Act, (16 U.S.C. 704, 712); Bald and Golden Eagle Protection Act, (16 U.S.C. 668a); Tariff Classification Act, of 1962, (19 U.S.C. 1202 "Schedule 1, Part 15D, Headnote 2(d), Tariff Schedules of the United States"), Endangered Species Act of 1973, as amended, (16 U.S.C. 1539,1540(f)); (16 U.S.C. 1538(d)); sec. E.E. 11911, 41 FR 15683, 3 CFR, 1976 Comp., p. 112; Airborne Hunting Act, (16 U.S.C. 742j–1); Marine Mammal Protection Act (16 U.S.C. 1382); 31 U.S.C. 9701.

§ 13.11 [Amended]

2. Amend §13.11(d)(4) by revising the first entry under "Fee" to read "$125 & inspection fees."

PART 14—IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE

1. The authority citation for Part 14 continues to read as follows:

Authority: 18 U.S.C. 42; secs. 5 and 6, Pub. L. 97–79, 95 Stat. 1077 and 1078 (16 U.S.C. 3375 and 3376); secs. 9(d)–(f) and 11(f), Pub. L. 93–205, 87 Stat. 894, 895, and 900 (16 U.S.C. 1538(d)–(f), 1540(f)); sec. 112, Pub. L. 92–522, 86 Stat. 1042 (16 U.S.C. 1382); sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 703); sec. 3(h)(3), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712; Pub. L. 97–1581, 96 Stat. 1051 (31 U.S.C. 9701).

§ 14.93 [Amended]

2. Amend § 14.93(f)(1) by removing "$250" and inserting in lieu thereof "$125".

3. Amend §14.93(f)(2) by removing the second sentence of the paragraph.

Dated: August 26, 1988.

Sam Marler,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 88–20086 Filed 9–7–88; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 53, No. 174
Thursday, September 8, 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

Drug Alliance; Fund Availability

Demonstration Grants

ACTION: Notice of Availability of Funds, Drug Alliance Grants.

ACTION, the Federal Domestic Volunteer Agency, announces the anticipated availability of funds during fiscal year 1989 for Drug Alliance grants under the Special Volunteer Programs authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. (3-113, Title 1, Part C; 42 U.S.C. 4992).

ACTION, historically a principal source of volunteer leadership in America, has been mandated by the President and Congress to respond to the crisis of illegal drug use by fostering innovative prevention programs that capitalize on volunteer resource on the local level. Volunteers of all ages and from every segment of the community can make vital contributions to drug prevention and awareness programs, and ACTION intends to support programs which encourage and sustain the spirit of voluntarism as a weapon in America's fight against drugs.

As most recently documented by the White House of Conference for a Drug-Free America, the best strategy to combat illegal drug use is to prevent it from starting. Effective prevention requires the involvement of every segment of the community, recognizing that no single approach will work in every locale. Comprehensive approaches assure that clear, consistent "no use" messages are delivered and reinforced by a variety of community resources.

There is growing recognition of the importance of community organizations, particularly parent groups, volunteer groups, schools, religious institutions, agencies of local government, private businesses and local chapters of state or national service organizations, joining together in community-based prevention coalitions or councils to fight illegal drug use. Such coalitions can be excellent foundations from which a variety of prevention strategies to help the community may be conducted. ACTION strongly encourages such local coalitions or councils to develop applications for funding under this Notice.

America's youth, who are often confronted by peer pressure and other encouragement to use illegal drugs, are perhaps the most important targets for such anti-drug programming, yet, drug-free youth also constitute a tremendous resource for a community's drug prevention effort. Despite impressive progress in the prevention of drug use—particularly among youth—there is a critical need for such programs in every part of the country.

A. Eligible Drug Prevention Strategies

Consideration will be limited to innovative proposals using volunteers to work primarily or solely with youth at particularly high risk of becoming involved in the use of illegal drugs, especially youth from low-income communities, youth from public housing developments, children of substance abusers and youth from single parent families. Proposals must use one of the following four strategies for preventing the use of illicit drugs by youth:

1. Programs that use older youth, who are drug and alcohol-free, as cross-age volunteers to involve younger youth in alternative and educational activities through which these youth will develop critical life skills to combat the pressures to use illicit drugs.

2. Programs that use volunteers to assist children of illegal drug users to break the cycle of drug use from one generation to another.

3. Programs that use adult volunteers from the business and corporate sector to serve as mentors in guiding at-risk youth away from illicit drug use by assisting them to develop constructive decision/making and crisis management skills, and raise self-esteem.

4. Programs that utilize volunteers in an innovative manner to increase awareness and provide accurate information about illegal drugs among target youth and in low-income communities.

B. Eligible Applicants

Only applications from private non-profit incorporated organizations and public agencies will be considered. Such organizations may include, but are not limited to, local coalitions or councils dedicated to the prevention of illegal drug use, volunteer groups, religious organizations, local government agencies, public housing authorities, tenant organizations, fraternities, sororities, community service groups, youth service organizations, vocational schools, and schools of performing and visual arts.

Any applicant who does not adhere to a strict policy of the non-use of illicit drugs will not be eligible for consideration. Furthermore, an application will be ineligible if it refers to philosophy, proposed activities, or training or educational materials implying that the initial or responsible use of any illicit drug, or the illicit use of any legal drug, will be tolerated by the applicant.

C. Available Funds and Scope of the Grant

The amount of a grant is not to exceed $35,000.

Publication of this announcement does not obligate ACTION to award any specific number of grants or to obligate any specific amount of money for Drug Alliance grants.

Projects funded under this announcement may receive funds for a grant period not to exceed 12 months. They will not be eligible for renewal funding.

D. General Criteria for Grant Review and Selection

Grant applications will be reviewed and revaluated based on the criteria outlined below, as appropriate, as well as conformance to the instructions included in the application. Grant applicants with a demonstrated competence in using volunteers to prevent the use of illicit drugs by youth, and applicants which have not received ACTION Drug Alliance funds previously will be given preference.

1. Plans to recruit, train, utilize and retain non-stipended volunteers in areas of priority.

2. Promise of developing innovations or knowledge in mobilizing and sustaining State and local volunteer

efforts to prevent illicit substance use by youth.

3. Potential for replication of the project model including: plans for implementation and dissemination of results of the project including any products such as reports and manuals for use by others.

4. Plans for continuation of the activities and self-sufficiency of the program following the completion of the project supported by ACTION funds.

5. Extent to which youth representing the target populations of the project are involved in planning, developing and conducting project activities.

6. Extent of efforts to create public awareness of the illicit drug problem and to combat the community denial of and apathy for the problem.

7. Carefully formulated schedule for achieving objectives, including self-sufficiency, number of volunteers and volunteer hours to be generated by quarter, and feasibility of methods for meeting those objectives.

8. Capability of proposed staff.

9. Likelihood of completion of project within proposed timetable.

10. Feasibility of proposed budget.

11. Adequacy of plans for data gathering and evaluation.

12. Letters of support from collaborating agencies and organizations and intent to participate in the project where such could be expected to contribute to the value or success of the project.

13. Samples of current materials to be disseminated to the participants, or used to train volunteers.

14. While specific levels of matching funds are not a requirement for grants, evidence of local public and private sector support (financial and in/kind) is strongly encouraged and will be considered in the decision-making process. Applicants capable of such contributions should specify the sources and nature of in-kind and other non-federal contributions. These contributions must be deemed allowable costs in accordance with ACTION requirements and be supported by a detailed budget narrative listing the source of that support and the formula used to compute those costs.

E. The Associate Director of Domestic and Anti-Poverty

Operations may use additional factors in choosing among applicants who meet the minimum criteria specified above, such as:

1. Geographic distribution;

2. Applicants accessibility to alternate resources, both techncial and financial;

3. Allocation of Program Demonstration/Drug Alliance resources in relation to other ACTION funds;

4. The significance of the project in terms of increasing knowledge of successful strategies to other volunteer illicit drug use prevention and education projects.

F. Application Review Process

Applications submitted under this announcement will be reviewed and evaluated by their respective ACTION State and Regional Offices and ACTION's Program Demonstration and Development Division. ACTION's Associate Director for Domestic and Anti-Poverty Operations will make the final selection. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

G. Application Submission and Deadline

One signed original and two copies of all completed applications must be submitted to the appropriate ACTION State Office no later than 5:00 p.m. local standard time on November 2, 1988. Only those applications that are received at the appropriate ACTION State Office by 5:00 p.m. local standard time on this date will be eligible.

All grant applications must consist of:

a. Application for Federal Assistance (ACTION Form A–1036) with narrative budget justification and a narrative of project goals and objectives, and assurances.

b. CPA certification of accounting capability.

c. Articles of Incorporation.

d. Proof of non-profit status or an application for non-profit status, which should be made through documentation.

Items b, c and d above are not required for public agencies of state and local government.

e. Current resumé of the candidate for the position of project director, if available, or the current resumé of the director of the applicant agency or project.

f. Organization chart of the applicant organization showing how the project is related to the organization.

g. List of the current board of directors showing their names, addresses and organizational or community affiliation.

To receive an application kit, please contact your ACTION State Office. Following is an address list of ACTION Regional Offices, along with the addresses and telephone numbers of ACTION State Offices under their jurisdiction.

Region I

Mr. John F. Torian, ACTION Regional Director, 10 Causeway Street, Rm. 473, Boston, MA 02222–1039

Mr. Romero A. Cherry, ACTION State Program Director, Abraham Ribicoff Federal Bldg., 450 Main Street, Rm. 524, Harford, CT 06103–3002, (203) 240–3237

Mr. Thomas E. Endres, ACTION State Program Director, Federal Bldg., Room 305, 76 Pearl Street, Portland, ME 04101–4188, (207) 780–3414

Mr. Malcolm Coles, ACTION State Program Director, 10 Causeway Street, Room 473, Boston, MA 02222–1038, (617) 565–7015

Mr. Peter Bender, ACTION State Program Director, Federal Post Office & Courthouse, 55 Pleasant Street, Room 316, Concord, NH 03301–3939, (603) 225–1450

Mr. Vincent Marzullo, ACTION State Program Director, John E. Fogarty Bldg., Room 200, 24 Weybosset Street, Providence, RI 02903–2882, (401) 528–5424

Region II

Mr. Herbert W. Stupp, ACTION Regional Director, 6 World Trade Center, Room 758, New York, NY 10048–0206

Mr. Stanley Gorland, ACTION State Program Director, 402 East State Street, District III, Room 422, Trenton, NJ 08608–1507, (609) 989–2243

Mr. Bernard A. Conte, ACTION State Program Director, 6 World Trade Center, Room 758, New York, NY 10048–0206, (212) 466–4471

Mr. Ruben Nazario, ACTION State Program Director, Federico DeGetau Federal Ofc. Bldg., Carlos Chardon Avenue, Suite G–49, Hato Rey, PR 00918–2241, (809) 766–5314 & 766–5188

Region III

Ms. Maryann Urban, ACTION Regional Director, U.S. Customs House, 2nd and Chestnut Street, Room 108, Philadelphia, PA 19106–2912

Mr. Benjamin I. Cheney, Jr., ACTION State Program Director, Federal Building, Room 372–D, 600 Federal Place, Louisville, KY 40202–2230, (502) 582–6384

Mr. Paul Schrader, ACTION State Program Director, Federal Bldg., Room 500, 85 Marconi Blvd., Columbus, OH 43215–2888, (614) 469–7441

Ms. Sally W. Yurchuck, ACTION State Program Director, U.S. Customs House, Room 108, 2nd and Chestnut Streets, Philadelphia, PA 19106–2998, (215) 597–3543

Mr. Lindsay B. Scott (Virginia and the District of Columbia), ACTION State

Program Director, 400 North 8th Street, P.O. Box 10066, Richmond, VA 23240–1832, (804) 771–2197

Mr. Jerry E. Yates, ACTION State Program Director, Federal Bldg., 31 Hopkins Plaza, Room 1125, Baltimore, MD 21201–2814, (301) 962–4443

Ms. Jean Taylor-Brown, ACTION State Program Director, 603 Morris Street—2nd Floor, Charleston, WV 25301–1409, (304) 347–5246

Region IV

Mr. Henry I. Jibaja, Acting ACTION Regional Director, 101 Marietta Street NW., Suite 1003, Atlanta, GA 30323–2301

Mr. John D. Timmons, ACTION State Program Director, 2121–8th Avenue North, Room 722, Birmingham, AL 35203–2307, (205) 254–1908

Ms. Betsy Wells, Acting ACTION State Program Director, 930 Woodcock Road—Suite 221, Orlando, FL 32803–3750, (407) 648–6117

Mr. David A. Dammann, ACTION State Program Director, 75 Piedmont Avenue NE., Suite 412, Atlanta, GA 30303–2587, (404) 331–4646

Mr. Alfred E. Johnson, ACTION State Program Director, U.S. Bldg./Federal Bldg., 801 Broadway, Room 246, Nashville, TN 37203–3889, (615) 251–5561

Mr. Robert L. Winston, ACTION State Program Director, Federal Building, P.O. Century Station, 300 Fayetteville Street Mall, Room 131, Raleigh, NC 27601–1739, (919) 856–4731

Mr. Arthur E. Brown, III, ACTION State Program Director, Federal Bldg. Room 1005–A, 100 West Capital Street, Jackson, MS 39269–1092, (601) 965–5664

Mr. Jerome J. Davis, ACTION State Program Director, Federal Building, Room 872, 1835 Assembly Street, Columbia, SC 29201–2430, (803) 765–5771

Region V

Mr. Alan A. Drazek, ACTION Regional Director, 10 West Jackson Blvd. 6th Floor, Chicago, IL 60604–3964

Mr. James E. Braxton, ACTION State Program Director, 10 West Jackson Blvd.—6th Floor, Chicago, IL 60604–3964, (312) 353–3622

Mr. Thomas L. Haskett, ACTION State Program Director, 46 East Ohio Street—Room 457, Indianapolis, IN 46204–1922, (317) 269–6724

Mr. Joel H. Weinstein, ACTION State Program Director, Federal Building, Room 339, 210 Walnut St., Des Moines, IA 50309–2195, (515) 284–4816

Mr. Stanley M. Stewart, ACTION State Program Director, Federal Bldg., Room 658, 231 West Lafayette Blvd., Detroit, MI 48226–2799, (313) 226–7848

Mr. Peter A. Marks, ACTION State Program Director, Old Federal Bldg.—Room 126, 212 Third Avenue South, Minneapolis, MN 55401–2596, (612) 334–4083

Mr. Michael P. Murphy, ACTION State Program Director, 517 East Wisconsin Avenue, Rm. 601, Milwaukee, WI 53202–4507, (414) 291–1118

Region VI

Ms. Paulette E. Standefer, ACTION Regional Director, 1100 Commerce Street, Room 6B11, Dallas, TX 75242–0696

Mr. John J. McDonald, ACTION State Program Director, Federal Office Bldg., 911 Walnut, Room 1701, Kansas City, MO 64106–2009, (816) 426–5256

Mr. Jerry G. Thompson, ACTION State Program Director, 611 East Sixth Street, Suite 107, Austin, TX 78701–3747, (512) 482–5671

Mr. Robert J. Torvestad, ACTION State Program Director, Federal Bldg., Room 2506, 700 West Capitol Street, Little Rock, AR 72201–3291, (501) 378–5234

Mr. James M. Byrnes, ACTION State Program Director, Federal Bldg., Room 248, 444 SE. Quincy, Topeka, KS 66603–3501, (913) 295–2540

Mr. Willard L. Labrie, ACTION State Program Director, 626 Main Street, Suite 102, Baton Rouge, LA 70801–1910, (504) 389–0471

Mr. Ernesto Ramos, ACTION State Program Director, Old Federal Bldg. Cathedral Place, Room 129, Sante Fe, NM 87501–2026, (505) 988–6577

Mr. Zeke Rodriquez, ACTION State Program Director, 200 N W. 5th Street, Suite 912, Oklahoma City, OK 73102–6093, (405) 231–5201

Region VIII

Ms. Naomi L. Bradford, ACTION Regional Director, Executive Tower Bldg., 1405 Curtis Street, Suite 2930, Denver, CO 80202–2349

Ms. Ben Knopp, ACTION State Program Director, Columbine Bldg., Room 301, 1845 Sherman Street, Denver, CO 80203–1167, (303) 866–1070

Mr. Ben Knopp, ACTION State Program Director, Federal Bldg., Room 8036, 2120 Capitol Avenue, Cheyenne, WY 82001–3649, (303) 866–1070

Mr. Joe R. Lovelady, ACTION State Program Director, Federal Office Bldg., Drawer 10051, 301 South Park, Room 192, Helena, MT 59626–0101, (406) 449–5404

Ms. Anne C. Johnson, ACTION State Program Director, Federal Bldg., Room 293, 100 Centennial Mall North, Lincoln, NE 68508–3896, (402) 471–5493

Ms. Naomi Bradford, Acting, ACTION State Program Director (North/South Dakota), Federal Bldg., Room 213, 225 S. Pierre Street, Pierre, SD 57501–2452, (605) 224–5996

Mr. Gary S. O'Neal, ACTION State Program Director, U.S. Post Office & Courthouse, 350 South Main Street, Room 484, Salt Lake City, UT 84101–2198, (801) 524–5411

Region IX

Ms. Teresa Keeshan, ACTION Regional Director, 211 Main Street, Room 530, San Francisco, CA 94105–1914

Mr. Ricardo Gerakos, ACTION State Program Director, Federal Bldg., Room 14218, 11000 Wilshire Blvd., Los Angeles, CA 90024–3671, (213) 209–7421

Mr. Michael J. Gale, ACTION State Program Director, Federal Bldg., P.O. Box 50024, Honolulu, HI 96850–0001, (808) 541–2832

Mr. Steven P. Gordon, ACTION State Program Director, 4600 Kietzke Lane, Suite E–141, Reno, NV 89502–1208, (702) 784–5314

Mr. Jess A. Sixkiller, ACTION State Program Director, 522 North Central, Room 205–A, Phoenix, AZ 85004–2190, (602) 261–4825

Region X

Mr. John Keller, ACTION Regional Director, Suite 3039 Federal Office Bldg., 909 First Avenue, Seattle, WA 98174–1103

Mr. Stephen Neal Stivers, ACTION State Program Director, Federal Bldg., Room 647, 511 NW. Broadway, Portland, OR 97209–3416, (503) 221–2261

Mr. Jack R. Nunn, ACTION State Program Director, Alaska State Office, Suite 3039 Federal Office Bldg., 909 First Street Avenue, Seattle, WA 98174–1103, (206) 442–1558

Mr. Wilford E. Overgaard, ACTION State Program Director, The Alaska Center, Suite 340, 1020 Main Street, Boise, ID 83702–5745, (208) 334–1707

Mr. John A. Miller, ACTION State Program Director, Suite 3039 Federal Office Bldg., 909 First Avenue, Seattle, WA 98174–1103, (206) 442–4975

Signed at Washington, DC, this 2d day of September.

Donna M. Alvarado,

Director.

[FR Doc. 88–20414 Filed 9–7–88; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

National Average Minimum Value of Donated Foods For The Period July 1, 1988 Through June 30, 1989

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the value of donated foods, or where applicable, cash in lieu thereof to be given in the 1989 school year for each lunch served by schools participating in the National School Lunch Program or by commodity schools and for each lunch and supper served by institutions participating in the Child Care Food Program. This action implements mandatory provisions of section 6(e), 14(f), and 17(h) of the National School Lunch Act (the Act).

EFFECTIVE DATE: July 1, 1988.

FOR FURTHER INFORMATION CONTACT: Susan Proden, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302 or telephone (703) 756–3660.

SUPPLEMENTARY INFORMATION: This action, which implements mandatory provisions of sections 6(e), 14(f) and 17(h) of the National School Lunch Act (the Act) 42 U.S.C. 1755(e), 1762a(f), 1766(h)) has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512. It has been classified as "nonmajor", because it meets none of the criteria in the Executive Order: The action will not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. enterprises to compete with foreign-based enterprises in domestic or export markets.

This action is not a rule as defined by the Regulatory Flexibility Act (15 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

These programs are listed in the Catalog of Federal Domestic Assistance Programs under Nos. 10.550, 10.555, and 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Section 6(e) of the Act establishes the national average value of donated food assistance to be given to States for each lunch served in the National School Lunch Program at 11.00 cents per meal. This amount is subject to annual adjustments as of July 1 of each year to reflect changes in the Price Index for Food Used in Schools and Institutions. Section 17(h) of the Act provides that the same value of assistance in donated foods for school lunches shall also be established for lunches and suppers served in the Child Care Food Program. Notice is hereby given that the national average minimum value of donated foods, or cash in lieu thereof, per lunch under the National School Lunch Program (7 CFR Part 210) and per lunch and supper under the Child Care Food Program (7 CFR Part 226) shall be 12.25 cents for the period July 1, 1988 through June 30, 1989.

The Price Index for Food Used in Schools and Institutions is computed on the basis of five major food components in the Bureau of Labor Statistics' Producer Price Index (cereal and bakery products; meats, poultry and fish; dairy products; processed fruits and vegetables; and fats and oil). Each component is weighted using the same relative weight as determined by the Bureau of Labor Statistics. The value of food assistance is adjusted each July 1 by the annual percentage change in a three-month simple average value of this Price Index for March, April and May. The three month average of the Price Index increased by 3.1 percent from 105.27 for March, April and May of 1987 to 108.54 for the same three months in 1988. When computed on the basis of unrounded data and rounded to the nearest one-quarter cent, the resulting national average for the period July 1, 1988 through June 30, 1989 will be 12.25 cents per meal. This constitutes a .25 cent per lunch increase over the rate in effect for the 1988 school year.

Section 14(f) of the Act provides that commodity schools shall be eligible to receive donated foods equal in value to the sum of the national average value of donated foods established under section 6(e) of the Act and the national average payment established under section 4 of the Act. Such schools are eligible to receive up to 5 cents of this value in cash for processing and handling expenses related to the use of such foods.

Commodity schools are defined in section 12(d)(7) of the Act as "schools that do not participate in the school lunch program under this Act, but which receive commodities made available by the Secretary for use by such schools in nonprofit lunch programs."

For the 1989 school year, commodity schools shall be eligible to receive donated-food assistance valued at 26.25 cents for each lunch served. This amount is based on the sum of the section 6(e) level of assistance announced in this notice and the adjusted section 4 minimum national average payment factor for school year 1989. The section 4 factor for commodity schools does not include the 2-cents per lunch increase for lunches served in the second preceding year free or at reduced prices, since that increase is applicable only to schools participating in the National School Lunch Program.

Authority: Sections 6, 14 and 17 of the National School Lunch Act, as amended, 42 U.S.C. 1755, 1762a, 1766.

Dated: September 1, 1988.

Anna Kondratas,

Administrator.

[FR Doc. 88–20340 Filed 9–7–88; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 27–88]

Foreign-Trade Zone 8—Toledo, Ohio; Application of Subzone Giant Products Company/High-Pressure Pumps

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Toledo-Lucas County Port Authority, grantee of FTZ 8, requesting special-purpose subzone status for the high-pressure pump manufacturing plant of Giant Products Company (GPC), located In Toledo, Ohio, within the Toledo Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 29, 1988.

The GPC plant (10 acres) is located at 900 N. Westwood Avenue in Toledo.

The facility employs 40 persons and is used to produce high-pressure pumps which have industrial and commercial applications. The percentage of foreign components used in the assembly process varies from 10 to 90 percent, averaging about 65 percent. Components sourced abroad include seals, values, gaskets, bearings, springs, cap screens, switches, casings, pistons, rings and other pump parts. The company also currently imports finished pumps for storage and distribution.

Zone procedures would exempt GPC from duty payments on the foreign components used in its exports. On its domestic sales, the company will be able to elect the duty rate that applies to finished pumps. The duty rate on the major components ranges from 0.2 to 11 percent, whereas the rate for the finished pumps and parts is is 3.3 percent. The application indicates that zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; John F. Nelson, District Director, U.S. Customs Service, North Central Region, Plaza Nine Building, 55 Erieview Plaza, Cleveland, Ohio 44114; and Colonel Daniel R. Clark, District Engineer, U.S. Army Engineer District Buffalo, 1776 Niagara Street, Buffalo, New York 14207–3199.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before October 17, 1988.

A copy of the application is available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, 234 North Summit Street, Toledo, Ohio 43604.

Office of the Executive Secretary, Foreign Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th & Pennsylvania Avenue, NW. Washington, DC 20230.

Dated: August 31, 1988

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88–20404 Filed 9–7–88; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[C–557–803]

Preliminary Affirmative Countervailing Duty Determination; Standard Pipe From Malaysia, and Preliminary Negative Countervailing Duty Determinations; Line Pipe, Heavy-Walled Rectangular Tubing and Light-Walled Rectangular Tubing From Malaysia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that 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 standard pipe, and that no 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 line pipe, heavy-walled rectangular tubing (HWRT) and light-walled rectangular tubuing (LWRT). These products, which constitute four separate "classes or kinds" of merchandise, are fully described in the "Scope of Investigations" section of this notice.

The estimated net bounty or grant for standard pipe is 1.17 percent *ad valorem* for all manufacturers, producers and exporters in Malaysia except Amalgamated Industrial Steel Bhd. (AIS) and Steel Pipe Industry of Malaysia Bhd. (SPIM). The rate for these two companies is zero. They are, therefore, excluded from this determination.

To take into account a program-wide change that occurred before our preliminary determination, we are adjusting the duty deposit rate to reflect the termination of the "Allowance of a Percentage of Net Taxable Income Based on the F.O.B. Value of Export Sales." The company that was claiming the Allowance has now started claiming the "Abatement of Taxable Income Based on the Ratio of Export Sales to Total Sales." Therefore, we have used the information on the Abatement to calculate a duty deposit rate of 1.85 percent *ad valorem* for all manufacturers, producers and exporters in Malaysia of standard pipe, except AIS and SPIM, which are excluded from this determination.

The estimated net bounty or grant for line pipe, HRWT and LWRT for all manufacturers, producers and exporters in Malaysia is zero.

We are directing the U.S. Customs Service to suspend liquidation of all entries of standard pipe from Malaysia, except for entries from AIS and SPIM, 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 or bond for each such entry equal to 1.85 percent *ad valorem.*

If these investigations proceed normally, we will make our final determinations on or before November 14, 1988.

EFFECTIVE DATE: September 8, 1988.

FOR FURTHER INFORMATION CONTACT: Kay Halpern or Barbara Tillman, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–0167 or 377–2438.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

Based on our investigations, we preliminarily 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 standard pipe. In addition, we preliminarily determine that no benefits which constitute bounties or grants within the meaning of section 303 of the Act are being provided to manufacturers, producers, or exporters in Malaysia of line pipe, HWRT and LWRT. For purposes of these investigations, the following programs are preliminarily found to be countervailable:

- Export Credit Refinancing
- Allowance of Percentage of Net Taxable Income Based on the F.O. B. Value of Export Sales and Abatement of Taxable Income Based on the Ratio of Export Sales to Total Sales

We preliminarily determine the estimated net bounty or grant for standard pipe to be 1.17 percent *ad valorem* for all manufacturers, producers and exporters in Malaysia except AIS and SPIM. The rate for these two companies is zero.

We preliminarily determine the rate on standard pipe for duty deposit purposes to be 1.85 percent *ad valorem* for all manufacturers, producers and exporters in Malaysia except AIS and SPIM. The duty deposit rate for these two companies is zero.

We preliminarily determine the estimated net bounty or grant for line pipe, HWRT and LWRT for all

manufacturers, producers and exporters in Malaysia to be zero.

Case History

Since the publication of the Notices of Initiation in the **Federal Register** (53 FR 22682, June 17, 1988), the following events have occurred. On June 24, 1988, we presented a questionnaire to the Government of Malaysia in Washington, DC, concerning petitioners' allegations. On July 29, 1988, we received responses from the Government of Malaysia, AIS, Maruichi Malaysia Steel Tube Bhd. (Maruichi), and SPIM. On August 4 and 10, 1988, we delivered supplemental/deficiency questionnaires to the Government and the respondent companies, and received responses on August 18, 1988. We received additional information from respondents on August 25, 1988.

According to the responses, AIS exported standard pipe, HWRT and LWRT to the United States during the review period, and Maruichi and SPIM exported only standard pipe to the United States during the review period.

On July 22, 1988, petitioners filed a request that the preliminary determinations be postponed for 14 days. Pursuant to section 703(c)(1)(A) of the Act, we postponed the preliminary determinations to no later than August 31, 1988 (53 FR 29371, August 4, 1988).

Scope of Investigations

The products covered by these investigations constitute four separate "classes or kinds" of merchandise. The four separate "classes or kinds" are as follows:

(1) Certain circular welded carbon steel pipes and tubes, 0.375 inch or more but not over 16 inches in outside diameter, generally known in the industry as standard pipe. This is a general-purpose commodity used in such applications as plumbing pipe, sprinkler systems, and fence posts. Standard pipe may be supplied with an oil coating (black pipe) or may be galvanized, and is sold in plain, threaded, threaded and coupled, or beveled ends. These products are generally produced to American Society of Testing Materials (ASTM) specifications A–53, A–120, or A–135. Imports of these products are classified under TSUSA categories 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925, and are classified under HS categories 7306.30.1000, 7306.30.5025, 7306.30.5030, 7306.30.5040, 7306.30.5045, 7306.30.5050, 7306.30.5060, 7306.30.5065, 7306.30.5070, and 7306.30.5075.

(2) Certain welded carbon steel American Petroleum Institute (API) line pipe, 0.375 inch or more but not over 16 inches in outside diameter known in the industry as line pipe. Line pipe generally is produced to API specification 5L. Line pipe is used for the transportation of gas, oil, or water, generally in pipeline or utility distribution systems. API line pipe not over 16 inches in outside diameter is classified under TSUSA categories 610.3208 and 610.3209, and is classified under HS categories 7306.10.1010 and 7306.10.1050.

(3) Certain heavy-walled carbon steel rectangular tubing having a wall thickness of 0.156 inch or greater, which is generally used for support members for construction or load-bearing purposes in construction, transportation, farm, and material-handling equipment. The product is generally produced to ASTM specification A–500, Grade B. Imports of heavy-walled rectangular tubing are classified under TSUSA category 610.3955, and are classified under HS category 7306.60.1000.

(4) Certain light-walled carbon steel rectangular tubing having a wall thickness of less than 0.156 inch, which is generally employed in a variety of end uses other than the conveyance of liquid or gas, such as agricultural equipment frames and parts, and furniture parts. The product is generally produced to ASTM specification A–513 or A–500, Grade A. Imports of light-walled rectangular tubing are classified under TSUSA category 610.4928, and are classified under HS category 7306.60.5000.

Analysis of Programs

We initiated investigations on four separate "classes or kinds" of merchandise (standard pipe, line pipe, HWRT, and LWRT). According to the Government of Malaysia, there were no exports of line pipe from Malaysia to the United States during the review period. However, U.S. import statistics indicate entries of line pipe. If we verify that producers and exporters in Malaysia produce and export only standard pipe, HWRT and LWRT, any potential countervailing duty order will not include line pipe.

For purposes of these preliminary determinations, the period for which we are measuring bounties or grants ("the review period") is calendar year 1987, which corresponds to the most recently completed fiscal year of one of the respondent companies. The other two respondent companies each have different fiscal years which overlap this period. In accordance with our practice in such situations, we have chosen the most recently completed calendar year as our review period.

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a bounty or grant in the final determination.

Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

I. Programs Preliminarily Determined to Confer Bounties or Grants

We preliminarily determine that bounties or grants are being provided to manufacturers, producers or exporters in Malaysia of standard pipe under the following programs:

A. Export Credit Refinancing

The Bank Negara Malaysia, the central bank of Malaysia, provides short-term export credit refinancing through commercial banks. The Export Credit Refinancing (ECR) programs, as revised in January 1986, provide 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.

According to the responses, AIS is the only respondent company that received financing under the order-based ECR loan programs for one shipment of standard pipe to the United States during the review period. Because only exporters are eligible for ECR loans, we preliminarily determine that they are countervailable to the extent that they are provided at preferential rates.

In order to determine whether the loan received by AIS was provided at a preferential rate, we compared the interest rate charged to our short-term loan 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 these detemrinations, we are using the 90-day Bankers' Acceptance (BA) rate as the most comparable and commonly used alternative source of short-term financing. This is the benchmark that we applied in *Final Affirmative Countervailing Duty Determination: Carbon Steel Wire Rod from Malaysia* (53 FR 13303, April 22, 1988) (*Wire Rod*), the last investigation in which this program was used. Based on this comparison, we find that ECR loans are provided at preferential rates and, therefore, are countervailable.

To calculate the benefit from the ECR loan on which AIS paid interest in 1987, we followed the short-term methodology which has been applied consistently in our past determinations and is described in more detail 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). We compared the amount of interest actually paid during the review period to the amount that would have been paid at the benchmark rate.

Because order-based ECR loans are shipment-specific, we included only that loan which financed exports of the products under investigation to the United States (in this case, standard pipe). For this loan, 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 the result by AIS' exports of standard pipe to the United States during the review period. The result was a rate of 0.001 percent *ad valorem*. Since this is the only program preliminarily determined to be countervailable that AIS reported it used during the review priod, AIS' rate for standard pipe is *de minimis* (19 CFR 355.8).

The estimated net bounty or grant for line pipe, HWRT and LWRT is zero for all manufactures, producers and exporters in Malaysia.

B. Allowance of a Percentage of Net Taxable Income Based on the F.O.B. Value of Export Sales; Abatement of Taxable Income Based on the Ratio of Export Sales to Total Sales

Effective in 1984, section 29 of the Investment Incentives Act of 1968 was amended to allow for a flat deduction or allowance of five percent of export revenues (based on F.O.B. value) from taxable income. Due to the enactment of the Promotion of Investments Act of 1986, this program, provided for under section 39 of the 1986 Act, currently applies only to trading companies and agricultural companies. It is not available to companies still participating in programs under the repealed Investment Incentives Act of 1968, including pioneer status, or to companies granted pioneer status or an investment tax allowance under the Promotion of Investments Act of 1986.

Maruichi is the only respondent company which claimed this allowance on its tax return filed during the review period. Because only exporters are eligible for the program, we preliminarily determine that it is countervailable.

To calculate the benefit from this program, we divided the tax savings from the program that Maruichi reported in the response by the company's total exports during the review period. We divided the savings over Maruichi's total exports because the program is not tied to specific export products, shipments or destinations. On this basis, we calculated an estimated net bounty or grant for the review period of 1.17 percent *ad valorem* for standard pipe, the only class or kind of merchandise under investigation which Maruichi exported to the United States during the review period. This rate is for all manufacturers, producers and exporters of standard pipe in Malaysia, except for AIS and SPIM.

The estimated net bounty or grant for line pipe, HWRT and LWRT is zero for all manufacturers, producers and exporters in Malaysia.

On January 1, 1986, the Government of Malaysia terminated the Allowance of a Percentage of Net Taxable Income Based on the F.O.B. Value of Export Sales, except with regard to trading and agricultural companies. This termination was implemented through the passage of the Promotion of Investments Act of 1986. The Government replaced the Allowance with a new program applicable to exports made on or after January 1, 1986. The new program is the "Abatement of Taxable Income Based on the Ratio of Export Sales to Total Sales." It provides for an abatement of adjusted income for exports. The amount of adjusted income to be abated is: (1) A rate equivalent to 50 percent of the ratio of export sales to total sales; and (2) five percent of the value of indigenous Malaysian materials incorporated in the manufacture of exported products. This program is not available to companies still participating in programs under the repealed Investment Incentives Act of 1968, including pioneer status, or to companies granted pioneer status or an investment tax allowance under the Promotion of Investments Act of 1986.

According to the responses, Maruichi claimed the first section of the Abatement on its tax return filed on May 9, 1988, the year immediately following the review period. Because only exporters are eligible for the Abatement, we preliminarily determine that it is countervailable. Since the Abatement effectively replaced the Allowance, we consider that the Abatement is the appropriate basis for calculating the estimated net bounty or grant for duty deposit purposes.

To take into account this program-wide change that occurred before our preliminary determinations, we calculated a benefit to reflect bounties or grants received due to the Abatement which are currently accruing on exports of standard pipe to the United States. To calculate the benefit from the program, we divided the 1988 tax savings attributable to it that Maruichi reported in its supplemental response by the company's total exports during the review period. We divided the savings over Maruichi's total exports because this program, like the export allowance program, is not tied to specific export products, shipments or destinations. Since 1988 export figures are not yet available, we used Maruichi's 1987 exports as best information available.

On this basis, we calculated an estimated duty deposit rate of 1.85 percent *ad valorem* for all manufacturers, producers and exporters in Malaysia of standard pipe except for AIS and SPIM.

The estimated duty deposit for line pipe, HWRT and LWRT is zero for all manufactures, producers and exporters in Malaysia.

At verification, we will seek complete information from the relevant government agencies concerning the nature and effect of this program-wide change, and from the respondent companies concerning the use of the new Abatement program.

II. Program Preliminarily Determined Not to Confer a Bounty or Grant

We preliminarily determine that bounties or grants are not being provided to manufacturers, producers or exporters in Malaysia of the subject merchandise under the following program:

Accelerated Depreciation Allowance

In our initiation, we stated that we would investigate whether manufacturers, producers or exporters in Malaysia of the subject merchandise receive countervailable benefits from

the Accelerated Depreciation Allowance (ADA). According to the responses, the ADA can be claimed by any company in Malaysia. There are no qualifying or application procedures associated with the claim and the government has no discretion to vary the level of the allowance (40 percent for all companies). We thus preliminarily determine that this program is not limited to a specific enterprise or industry or group of enterprises or industries and, therefore, is not countervailable.

III. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that manufacturers, producers, or exporters in Malaysia of the subject merchandise did not apply for, claim or receive benefits during the review period for exports of the subject merchandise to the United States under the following programs:

A. Export Tax Incentives

1. Abatement of Five Percent of the Value of Indigenous Materials Used in Exports

The Investment Incentives Act of 1968 provided for an abatement of taxable income based on the ratio of export sales to total sales. This law was repealed effective January 1, 1986, and replaced by the Promotion of Investments Act of 1986. Among other incentives, the new law provides for an abatement of adjusted income for exports. The amount of adjusted income to be abated is: (1) A rate equivalent to 50 percent of the ratio of export sales to total sales; and (2) five percent of the value of indigenous Malaysian materials incorporated in the manufacture of exported products. According to the responses, Maruichi made a claim under the first section of this program on its tax return filed in 1988 (see section I.B. of the notice), but did not make a claim under the second. This program is not available to companies still participating in programs under the repealed Investment Incentives Act of 1968, including pioneer status, or to companies granted pioneer status or an investment tax allowance under the Promotion of Investments Act of 1986.

2. Allowance of Taxable Income of Five Percent for Trading Companies Exporting Malaysian-Made Products

Under the Promotion of Investments Act of 1986, an allowance of five percent of the F.O.B. value of export revenues is available to trading companies and agricultural companies exporting Malaysian-made products. This program is not available to companies still participating in programs under the repealed Investment Incentives Act of 1968, including Pioneer Status, or to companies granted pioneer status or an investment tax allowance under the Promotion of Investments Act of 1986.

3. Double Deduction for Export Credit Insurance Payments

The Income Tax Act of 1967, as amended, provides for a deduction to be taken on a company's tax return for the cost of export credit insurance in addition to a similar deduction allowed on a company's financial statement.

4. Double Deduction for Export Promotion Expenses

Section 41 of the Promotion of Investments Act of 1986 allows companies to deduct expenses related to the promotion of exports twice, once on the financial statement and again on the income tax form.

5. Industrial Building Allowance

Sections 63–66 of the Income Tax Act of 1967, as amended, allow an income tax deduction for a percentage of the value of constructed or purchased buildings used in manufacturing. In 1984, this allowance was extended to include buildings used as warehouses to store finished goods ready for export or imported inputs to be incorporated into exported goods.

B. Other Export Incentive

Export Insurance Program

Export credit insurance is provided by Malaysian Export Credit Insurance, Bhd. (MECIB).

Established under the Malaysian Companies Act of 1965, MECIB is owned jointly by the Government of Malaysia (53.6 percent) and by commercial banks and insurance companies (46.4 percent). MECIB provides insurance only to cover commercial and political risks.

C. Other Tax Incentives

1. Pioneer Status Under the Investment Incentives Act of 1968

Pioneer status under this Act, as amended, is available to companies producing a product (1) with favorable prospects for further development, including development for export, or (2) currently being produced in insufficient quantities to meet the development needs of Malysia, 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 and may be extended for up to an additional three years. This program is not available to companies granted pioneer status under the Promotion of Investments Act of 1986.

According to the responses, all three respondent companies received pioneer status in the 1970s and completely utilized any residual benefits remaining from this program before the review period. At vertification, we will check to determine whether any residual benefits are still available and being used.

2. Pioneer Status Under the Promotion of Investments Act of 1986

As stated above, the Promotion of Investments Act of 1986 replaced the Investment Incentives Act of 1968. Companies which have received pioneer status under the 1968 Act may not receive it again under the 1986 Act for the same product. They may, however, receive it again under the 1986 Act for a different product. The primary changes in the pioneer status program under the new law are as follows: (1) The initial grant of pioneer status is five years for all companies, regardless of their level of investment; (2) the product must be on the "promoted product" or "promoted activities" list; (3) specific one-year extensions for location, priority products, and Malaysian content have been eliminated; (4) extensions are now granted for five years if the product is on the "promoted product" list for extensions and the company meets certain investment, employment, or development criteria; and (5) pioneer status may also be provided to non-corporate entities such as cooperative societies, associations, etc. This program is not available to companies granted pioneer status under the Investment Incentives Act of 1968.

3. Investment Tax Allowance

The Promotion of Investments Act of 1986 provides for an investment tax allowance, limited by the amount of actual expenses, for qualifying capital expenditures. This program is not available to companies granted pioneer status under the Investment Incentives Act of 1968 or under the Promotion of Investments Act of 1986.

4. Reinvestment Allowance

The Income Tax Act of 1967, as amended in 1979, provides for a reinvestment allowance of 25 percent for capital expenditures on a factory, plant or machinery. This program is not available to companies granted pioneer

status under the Investment Incentives Act of 1968 or under the Promotion of Investments Act of 1986.

D. Medium- and Long-term Government Financing

Medium- and long-term financing is provided by the following institutions:

- the Industrial Development Bank of Malaysia (IDBM)
- the Development Bank of Malaysia (DBM)
- the Borneo Development Corporation (BDC)
- the Sabah Development Bank (SDB)

IDBM, which is wholly owned by the Government of Malaysia, provides financing primarily to the shipping industry, whereas the main objective of DBM is to promote businesses owned by Bumitputras (native Malaysians not of Chinese or Indian descent). BDC was established to promote industrial development in the Sabah and Sarawak states; each state has a 50 percent ownership in the bank. SDB, wholly owned by the State of Sabah, was established to promote economic development in that state.

According to the responses, none of the respondent companies had loans outstanding from any of these institutions during the review period.

E. Reduction in the Cost of State Land for New Industry

Certain states may reduce the price of state land in order to attract investment and development. According to the responses, none of the respondent companies has received state land at reduced cost.

F. Preferential Financing for Bumiputras

The DBM provides medium- and long-term financing as well as guarantees for industrial equipment loans to Bumiputras.

According to the responses, none of the respondent companies had loans outstanding from the DBM during the review period.

Verification

In accordance with section 776(a) of the Act, we will verify the information used in making our final determinations.

Suspension of Liquidation

In accordance with sections 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of standard pipe from Malaysia (except as noted below) which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to require a cash deposit or bond in the amounts indicated below:

[In percent]

Manufacturers/producers/ exporters	Estimated net bounty or grant	Estimated duty deposit rate
Standard Pipe:		
AIS	0	[1] 0
SPIM	0	[1] 0
Maruichi & all others	1.17	1.85

[1] Excluded.

Since the determinations on line pipe, HWRT and LWRT are negative, no suspension of liquidation will be required.

Public Comment

In accordance with 19 CFR 355.35, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on these preliminary determinations at 1:00 p.m. on October 25, 1988, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Assistant Secretary for Import Administration, Room B–099, at the above address within ten days of the publicaton of this notice in the **Federal Register**.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the business proprietary version and seven copies of the nonproprietary version of the pre-hearing briefs must be submitted to the Assistant Secretary by October 18, 1988. Oral presentations will be limited to issues raised in the briefs. In accordance with 19 CFR 355.33(d) and 355.34, written views will be considered if received not less than 30 days before the final determination is due or, if a hearing is held, within seven days after the hearing transcript is available.

These determinations are published pursuant to section 703(f) of the Act (19 U.S.C. 167lb(f)).

Jan W. Mares,

Assistant Secretary for Import Administration.

August 31, 1988.

[FR Doc. 88–20405 Filed 9–7–88; 8:45 am]

BILLING CODE 3510-DS-M

East Texas Regional Health Facilities; Decision on Application For Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 88–116.

Applicant: East Texas Regional Health Facilities, Tyler, TX 75711.

Instrument: Lithotripter, Model HM4.

Manufacturer: Dornier Medizintechnik GmbH, West Germany.

Intended Use: See notice at 53 FR 15102, April 27, 1988.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: At the time of order there was no domestic manufacturer of lithotripters or of comparable devices capable of noninvasively pulverizing kidney stones.

Our consultants in the National Institutes of Health have advised us with respect to this application that there were no known domestic instruments available at time of order which were equivalent to the foreign article. We know of no equivalent instrument that, that at time of order, was being manufactured in the United States which was of equivalent scientific value to the foreign instrument for the purposes for which the instrument is intended to be used. (See also 52 FR 22512, June 12, 1987.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 88–20406 Filed 9–7–88; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology [1]

[Docket No. 80867–8167]

National Voluntary Laboratory Accreditation Program

AGENCY: National Institute of Standards and Technology, Commerce.

[1] Note: Public Law 100–418 renamed the National Bureau of Standards as the National Institute of Standards and Technology.

ACTION: Publication of NVLAP Directory Supplement.

SUMMARY: The National Institute of Standards and Technology (NIST) announces laboratory accreditation actions taken during the second quarter of 1988.

FOR FURTHER INFORMATION CONTACT: John Donaldson, Manager, Laboratory Accreditation, ADMIN A527, National Institute of Standards and Technology, Gaithersburg, MD 20899 (301) 975–4016.

SUPPLEMENTARY INFORMATION: This supplement to the 1987–88 NVLAP Directory of Accredited Laboratories (NBSIR 88–3718) is published pursuant to § 7.6(b) of the National Voluntary Laboratory Accreditation Program (NVLAP) Procedures (15 CFR 7.68(b)).

The following table summarizes NVLAP accreditation actions for the period April 1, 1988, through June 30, 1988.

	TIM	CTS	CAR	STO	ACO	CPL	DOS	ECT	Total
Initial		1					2	1	4
Suspended									
Terminate	2	1							3
Balance	34	22	22	4	9	8	58	18	175

The laboratories awarded initial accreditation are:

CTS: Engineering Consulting Services, Ltd., Chantilly, VA, E. Ross Curtis, 703–471–8400.

DOS: Troxler-Radiation Monitoring Services, Research Triangle, NC, Elizabeth Franklin, 919–549–8661.

D.C. Cook Dosimetry Laboratory, Bridgman, MI, James M. Tozser, 616–465–5901.

ECT: Chomerics Radiation Test Services, Woburn, MA, James F. McQueeney, 617–935–4850

The laboratories whose accreditations were terminated are:

TIM: Architectural Testing, Inc., York, PA.

USG Corp., Libertyville, IL

CTS: Engineering Testing Laboratory, Akron, OH

TIM—Insulation

CTS—Construction Testing Services

CAR—Carpet

ACO—Acoustical Testing Services

STO—Stove

CPL—Commerical Products LAP (Paint, Paper, Seals and Sealants)

DOS—Dosimetry

ECT—Electromagnetic Compatibility and Telecommunications

Raymond G. Kammer,

Acting Director.

Date: September 1, 1988.

[FR Doc. 88–20229 Filed 9–7–88; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; National Aquarium in Baltimore (P261C)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:* National Aquarium in Baltimore, Pier 3, 501 E. Pratt Street, Baltimore, Maryland 21202.

2. *Type of Permit Requested:* Public Display.

3. *Species and Number of Marine Mammals:* Atlantic bottlenose dolphin (*Tursiops truncatus*) 9.

4. *Type of Take and Location of Activity:* Capture from the West Coast of Florida and maintain for public display.

5. *Period of Activity:* Two (2) years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described applications have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this notice of application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Services, 1825 Connecticut Avenue NW., Room 805, Washington, DC 20235;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Northeast Region, National Marine Fisheries Service, 14 Federal Building, Elm Street, Gloucester, Massachusetts 01930.

Date: August 31, 1988.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 88–20342 Filed 9–7–88; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for a Certain Wool Textile Product Produced or Manufactured in the Hungarian People's Republic

September 2, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: September 12, 1988.

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the

bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION: The current limit for Category 448 is being increased for special carryforward.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textitle and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 50, published on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 2, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987, as amended, concerning imports of certain wool and man-made fiber textile products, produced or manufactured in the Hungarian People's Republic and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on September 12, 1988 the directive of December 30, 1987 is further amended to include an adjustment to the following category, as provided under the terms of the current bilateral agreement between the Governments of the United States and Hungary:

Category	Adjusted Limit [1]
448	23,925 dozen.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provision of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–20383 Filed 9–7–88; 8:45 am]

BILLING CODE 3510–DR–M

Amendments to the Export Visa Requirement for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Hungarian People's Republic

September 2, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending the export visa arrangement.

EFFECTIVE DATE: September 12, 1988.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION: Under the terms of the current Bilateral Textile Agreement between the Governments of the United States and the Hungarian People's Republic, agreement was reached to further amend the visa arrangement to require visas for the entry of cotton and man-made fiber textile products in Categories 313 and 604.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 49 FR 8659, published on March 8, 1984.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 2, 1988,
Commissioner of Customs, Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on March 5, 1984, by the Chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit entry of certain wool textile products, produced or manufactured in Hungary which were not properly visaed by the Government of the Hungarian People's Republic.

Effective on Sept. 12, 1988, you are directed to also prohibit entry of cotton and man-made fiber textile products in Categories 313 and 604 entered for consumption or withdrawn from warehouse for consumption into the Customs territory of the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) on or after Sept. 12, 1988 which have been produced or manufactured in Hungary and exported from Hungary on and after Sept. 12, 1988 for which the Hungarian People's Republic has not issued an appropriate export visa.

Goods in Categories 313 and 604 which were exported prior to Sept. 12, 1988 shall not be denied entry for lack of a visa.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–20384 Filed 9–7–88; 8:45 am]

BILLING CODE 3510–DR–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Merchantile Exchange Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodities futures contract.

SUMMARY: The Chicago Merchantile Exchange ("CME") has applied for designation as a contract market in futures on the Federal Funds Rate. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation § 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before October 11, 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 CME Federal Funds Rate futures contract.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254–7303.

SUPPLEMENTARY INFORMATION: 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 the above address or by phone at (202) 254–6314.

Other materials submitted by the CME 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 condition of the proposed futures contract, or with respect to other materials submitted by the CME in support of the application, should send such comments to Jean A. Webb, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC on September 2, 1988.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 88–20339 Filed 9–7–88; 8:45 a.m.]

BILLING CODE 6351-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before October 11, 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, Office of Information Resources Management, 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: September 2, 1988.

Carlos U. Rice,

Director for Office of Information Resources Management.

Office of Special Education and Rehabilitation Services

Type of Review: New.

Title: Evaluation of Services Provided to Individuals with Specific Learning Disabilities.

Affected Public: State or local governments.

Frequency: One time only.

Reporting Burden:

Responses: 714.
Burden Hours: 888.

Recordkeeping:

Recordkeepers: 0.
Burden Hours: 0.

Abstract: This study will assess the current delivery of Federal/State Vocational Rehabilitation (VR) services to individuals with specific learning disabilities, and document effective practices through surveys of all VR agencies and local VR counselors in selected States. The Department will use the information to plan future directions in relation to clients with specific learning disabilities.

[FR Doc. 88–20407 Filed 9–7–88; 8:45 a.m.]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Savannah River Operations Office; Financial Assistance Award; Restriction of Eligibility for Grant Award to South Carolina State College

AGENCY: Department of Energy

ACTION: Notice of Restriction of Eligiblity for Grant Award

SUMMARY: DOE announces that it plans to award a grant to South Carolina State College, Orangeburg, SC, in support of research on Composition of Phytoplankton Communities and Their Contribution to Secondary Productivity in Carolina Bays on the Savannah River Plant. The grant will be for a three-year period at a DOE funding level of approximately $200,000. Pursuant to § 600.7 of the Financial Assistance Rules, 10 CFR Part 600, DOE has determined that eligibility for this grant award shall be limited to South Carolina State College.

Procurement Request Number: 09–88SR18049.000

Project Scope

South Carolina State College (SCSC) will conduct research to determine the species composition, seasonal abundance changes, and trophic importance of phytoplankton communities in Carolina Bay ecosystems on the DOE Savannah River Plant site. The study will determine seasonal changes in Carolina Bay phytoplankton communities, their spatial heterogeneity and primary productivity. The relative contribution of phytoplankton to energy flow in these systems will be compared to production by other plant communities and utilization by zooplankton.

South Carolina State College is a minority institution created by the State Legislature of SC in 1895. The participation of Historically Black Colleges and Univerities (HBCUs) in federally-supported research, education and training is relatively limited. In order to overcome some of these limitations, the President's Executive Order 12320, dated September 15, 1981, directed federal agencies to increase the participation of HBCUs in federally-funded research and to strengthen their capabilities to provide quality

education. This award represents an effort to strengthen related research capabilities and academic programs at this college and increase their participation in DOE mission-oriented research.

The DOE has determined that this award to South Carolina State College on a restricted eligibility basis is appropriate.

FOR FURTHER INFORMATION CONTACT: Ronald D. Simpson, Chief, Contracts and Procurement Branch, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801, Telephone: (803) 725–2096.

Issued in Aiken, SC, on August 23, 1988.

P.W. Kaspar,

Manager, Savannah River Operations Office.

[FR Doc. 88–20418 Filed 9–7–88; 8:45 am]

BILLING CODE 6450–01–M

Intent To Award a Grant Agreement to Tecogen, Inc.

AGENCY: Department of Energy (DOE).

ACTION: The U.S. Department of Energy announces that pursuant to 10 CFR 600.7(b) it is awarding a noncompetitive financial assistance instrument under grant number DE–FG01–88CE26561 to perform a study for the selected site for application of a quasi open-cycle heat pump for the utilization of a low temperature heat source in a district heating system.

SUMMARY: The U.S. DOE, Office of Buildings and Community Systems (OBCS) is preparing a request to fund the proposed study. The project "Open-Cycle Heat Pump Development for Local Resource Use" was begun in 1987 and was one of six projects selected through a competitive solicitation. The solicitation included a provision for follow-up complementary research.

The result of the work showed that the water-based quasi open-cycle heat pump, using a screw compressor driven by a reciprocating engine prime mover with a falling film evaporator and a direct contact condenser was an economically viable concept. In particular, the heat pump was found to be best suited for the higher tempertaure heat sources, such as those found in the waste streams of industrial processes Based on these results, a preliminary case study was performed using the Monsanto Chemical Company, in Massachusetts, as an appropriate industrial heat source, and a nearby United States Postal Service Facility, as a user. This case study was used as a basis for an economic evaluation of a quasi open-cycle heat pump system capable of supplying approximately 3 MMBtu/hr of hot water (90 percent of their heating load) into the heating system. The economic analysis indicated a 4 to 5 year payback, which is most attractive for a system of this size.

In the proposed study titled "Quasi Open-Cycle Heat Pump" Tecogen will perform an energy audit for the selected site—Monsanto Chemical Company in Indian Orchard, Massachusetts, (heat source) and a nearby United States Postal Service Facility (a user)—for the integration of a quasi open-cycle heat pump into an existing district heating system. At the end of this study, it is anticipated that all the major engineering ground work leading to the actual construction and installation of a prototype system would be in place.

Eligibility

Award of this effort is restricted to Tecogen.

Tecogen completed a unique project providing research information on the use of a water-based, quasi open-cycle heat pump system as a means of recovering and upgrading heat from low-grade resources for use in hot water district heating systems.

Tecogen has the knowledge and expertise in quasi open-cycle heat pump systems.

Tecogen is the originator of the proposed innovative project, which has a potential for wide applications in using local industrial waste or other local resources.

The project is a continuation of work previously performed.

FOR FURTHER INFORMATION CONTACT: Rosemarie H. Marshall, MA–453.2, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–1061.

Thomas S. Keefe,

Director, Contract Operations Division "B," Office of Procurement Operations.

[FR Doc. 88–20419 Filed 9–7–88; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent To Award Grant Agreement to University of Dayton Research Institute

AGENCY: Department of Energy (DOE).

ACTION: The U.S. DOE announces pursuant to 10 CFR 600.7 (b), it is restricting eligibility for award of Grant number DE–FG01–88CE90028 to the University of Dayton Research Institute for the follow-on of a previous grant for a "Multicomponent Compressor, New Concept for Efficient Energy Conversion and Utilization."

SUMMARY: The U.S. DOE Office of Energy Utilization is preparing a request for the continuation of research originally initiated under DOE Grant, DE–DG01–85CE90234, which was awarded to the University of Dayton Research Institute, to perform experimental and theoretical research on an innovative concept, designed to tailor a multicomponent flow for compressor technology via controlled injection of uniform-size particles into gas flow. Successful results would lead to the design of an energy conserving compressor with performance characteristics which are greatly improved over current technology, including lower work of compression, lower rotor tip speeds, and higher pressure ratios for single stage applications. This procurement is to permit the proposed grantee to modify the design of the experimental setup and to complete the necessary experimental and theoretical investigations on the modified setup. Coordination and integration of this work will involve the ECUT Thermal Sciences Research Program activity at Idaho National Engineering Laboratory (INEL).

Eligibility

Award of this effort is restricted to the University of Dayton Research Institute because the proposed grantee possesses exclusive capability to provide the aforementioned assistance. With experience in the performance of DE–FG01–85CE90234, the proposed grantee possesses an existing experimental facility subject to modification by this action and is prepared to continue follow-on work to the work completed to date without unnecessary additional costs which would be required of the Government if another entity were used.

FOR FURTHER INFORMATION CONTACT: Shari Sterling, MA–453.2, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6191.

Thomas S. Keefe,

Director, Contract Operations, Division "B", Office of Procurement Operations.

[FR Doc. 88–20421 Filed 9–7–88; 8:45 am]

BILLING CODE 6450–01–M

Morgantown Energy Technology Center Cooperative Agreement; Financial Assistance Award to the University of Illinois at Urbana-Champaign

AGENCY: Morgantown Energy Technology Center, DOE.

ACTION: Notice of acceptance of an unsolicited financial assistance application for cooperative agreement award.

SUMMARY: Based upon a determination made pursuant to 10 CFR 600.14(e)(1) the DOE, Morgantown Energy Technology Center gives notice of its plans to award a 36-month Cooperative Agreement to the University of Illinois at Urbana-Champaign, Department of Mechanical and Industrial Engineering, 1206 West Green Street, Urbana, IL 61801. The pending award is based on an unsolicited application for a cooperative research project on Fluidization Employing Computer-Aided Particle Tracking. With the Federal Financial Assistance from the DOE, the University of Illinois will construct a Transportable Computer-Aided Particle Tracking Apparatus (TCAPTA), obtain bed dynamics data on a 12 inch cold fluidized bed and later on a 24 inch warm bed which will help in the development of quantitative and systematic test data necessary to establish scale up procedures which would allow the extrapolation of design parameters from laboratory prototype and pilot plant measurements.

FOR FURTHER INFORMATION CONTACT: Richard B. Wallace, I–07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, West Virginia 26507–0880, Telephone: (304)291–4386, Procurement Request No. 21–88MC25048.000.

Dated: August 31, 1988.

Louie L. Calaway,

Acting Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 88–20420 Filed 9–7–88; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 88–08–NG]

Alenco Resources Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to import and to export natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Alenco Resources Inc. (Alenco) blanket authorization to import and export natural gas from and to Canada. The order issued in ERA Docket No. 88–08–NG authorizes Alenco to import up to 54 Bcf and to export up to 54 Bcf of natural gas over a 2-year period beginning on the date of first import or export.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 31, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–20422 Filed 9–7–88; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 88–38–NG]

Consumers Power Co.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on July 1, 1988, of an application filed by Consumers Power Company (Consumers Power) for authorization to import on a firm basis from four Canadian suppliers up to an aggregate maximum daily quantity of 59,000 Mcf per day of natural gas over a 15-year period beginning on the date of first delivery.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than October 11, 1988.

FOR FURTHER INFORMATION CONTACT:

Tom Dukes, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9590.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Consumers Power, a Michigan corporation and operating subsidiary of CMS Energy Corporation, is a combined natural gas and electric utility that provides electric and natural gas service in Michigan's lower peninsula. The applicant requests authority to import gas on a firm basis from Norcen Energy Resources limited (Norcen), Shell Canada Ltd. (Shell), Canterra Energy Ltd. (Canterra), and TransCanada Pipeline Limited (TransCanada), over contract terms ranging up to 15 years. Consumers Power intends to use the imported gas for system supply. In this regard, the applicant emphasizes that the import will play an integral role in its program of supply diversification and notes reductions in contract demand recently negotiated with Trunkline Gas Company, (Trunkline) Michigan Storage Company (Michigan Gas), and Panhandle Eastern Pipe Line Company (Panhandle).

According to the application, the Canadian suppliers would deliver the gas to a point on the international border near Emerson, Manitoba where the pipeline facilities of TransCanada interconnect with those of Great Lakes Transmission Corporation (Great Lakes). Transportation of the gas in Canada would occur on the systems of NOVA Corporation of Alberta, TransCanada and Northwestern Utilities Limited. The imported volumes would be transported from the international border by ANR Pipeline Company (ANR), Panhandle and Trunkline to negotiated points on either Consumers Power's own system or that of Michigan Gas.

The individual contracts provide for maximum daily quantities (MDQ) of 15,000 Mcf (somewhat less for Norcen), subject in each case to a minimum annual purchase quantity equal to 75% of the MDQ volumes. With the exception of the Norcen agreement, the contracts require a deficiency payment equal to 15% of the commodity price during the last month of the contract year in the event the applicant takes less than the minimum annual quantity. Deficiency payments under the contract between Consumers Power and Norcen would be based on the entire weighted average commodity charge in effect the final month of the contract year, but there is a five-year makeup period and Norcen is required to return any deficiency payments that remain unrecovered at the end of the makeup period.

Consumers Power would pay the four Canadian sellers a contract price determined in accordance with similar

two-part demand/commodity rate structures. The demand charge component would recover the costs of pipeline transportation in Canada. The commodity charge would be a net-back price indexed to track on a monthly basis Consumers Power's weighted average cost (WACOG) of interstate pipeline supplies (currently $2.16 based Trunkline's WACOG of $2.1466 at 400 MMcf/d and Panhandle's WACOG of $2.3254 MMcfd), minus transportation costs computed at 100% load factor and fuel costs for delivery from the international border.

In support of its application, Consumers Power states the import proposal is in the public interest because its contracts with Canadian suppliers contain provisions that will assure a market-responsive supply of gas. Further, the applicant asserts that firm Canadian gas supplies are needed to diversify from existing supply sources and help reduce its overall historical reliance on regional gas suppliers to meet its system demand. Consumers Power also notes that the proximity of its system to Canada and the proven reliability of the four Canadian suppliers assure long-term security of supply. Finally, Consumers Power anticipates no adverse environmental problems since it plans to utilize existing facilities only.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

In addition to the long-term import authority described above, Consumers Power requests authority, in *force majeure* circumstances, to assign its import authorization rights to third party purchasers within the United States. If the ERA approves the import proposal, parties should be aware the ERA may deny the requested assignment authority.

All parties also should be aware that if the ERA approves this requested long-term import, it may condition the authorization on the filing of quarterly reports to facilitate ERA monitoring of its natural gas import and export program.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.d.t., October 11, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issues based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Consumers Power's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 31, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88–20423 Filed 9–7–88; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 88–39–NG]

Midland Cogeneration Venture Limited Partnership

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on July 1, 1988, of an application filed by Midland Cogeneration Venture Limited Partnership (Midland) for authorization to import from four Canadian suppliers up to an aggregate daily contract quantity of 55,000 Mcf per day of Canadian natural gas over a 15-year term beginning on date of initial firm deliveries in 1990. The gas would be imported to fuel a new cogeneration facility to be constructed in Midland County, Michigan, by conversion of a portion of the idled Midland nuclear power project. Midland also requests authorization to import up to 51,500 Mcf per day on an interruptible basis beginning in 1989 and ending in 1990 on the date of initial firm deliveries. If Midland is unable to take all of the imported gas contracted for, Midland requests authority to assign its import authorization to third-party purchasers within the U.S.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and

written comments are to be filed no later than October 11, 1988.

FOR FURTHER INFORMATION CONTACT:

Stanley C. Vass, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9482.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Midland, a limited partnership, was formed in 1987 to acquire and convert a portion of the idled Midland nuclear power project owned by Consumers Power Company (Consumers) into a 1370 megawatt cogeneration facility to be located in Midland County, Michigan. When completed, the cogeneration facility will be operated by Midland as a "qualified facility" under section 201 of the Public Utility Regulatory Policies Act of 1978. The Midland facility will sell electric power to Consumers and steam and electric power to Dow Chemical USA's Michigan Division (Dow). Midland intends to import the Canadian natural gas in order to meet a portion of its natural gas supply needs for operation of the proposed congeneration facility.

According to the application, Midland has entered into natural gas purchase agreements with four Canadian Suppliers to supply natural gas from the date of first firm deliveries, as follows: Norcen Energy Resources Limited, up to 6500 Mcf per day through November 1, 1994, and thereafter up to 10,000 Mcf per day, over a term of 12 years or through November 1, 2001, whichever is earlier; Shell Canada Limited, up to 15,000 Mcf per day for 15 years or such earlier date as may be required by U.S. or Canadian regulatory authorities; Canterra Energy Ltd., up to 15,000 Mcf per day through December 31, 2004; and TransCanada PipeLines Limited (TransCanada), up to 15,000 Mcf per day for 15 years, or such earlier date as may be required by U.S. or Canadian regulatory authorities.

Under the natural gas purchase agreements, Midland is obligated to take a minimum annual quantity of natural gas equal to 75 percent of the maximum daily quantities for the contract year but may make up any deficiency incurred in a particular contract year during the immediately succeeding contract year. If, because of conditions of force majeure, or other cause, Midland is unable to use its total firm contract supply, the natural gas purchase agreements permit Midland to assign its contract gas supply rights to third-party purchasers within the U.S. in order to mitigate the impact of the situation upon Midland and its Canadian suppliers.

According to the applicant, each natural gas purchase agreement provides for a market-responsive pricing mechanism under which the commodity price for the imported gas is indexed to track Consumers' monthly energy charges associated with the fixed and variable expenses of producing electric power. This is accomplished by use of a monthly reference price computed by multiplying $1.95 (U.S.) per MMBtu by a fraction consisting of the monthly fixed and variable expenses of producing electric power for the last month of the previous calendar quarter in the numerator and 2.29 cents per kilowatt hour (U.S.) in the denominator. Midland asserts that by indexing the price of the imported gas to reflect any changes in the net fuel equivalent of the avoided cost rate for generated power, the price formula will ensure that the imported gas is marketable by Midland as part of its fuel cost for generated power.

Further, under the gas purchase agreements, the demand charge portion of the two-part rate consists of the monthly Canadian demand charges for transportation of the gas in Canada. Transportation of the gas in Canada to the point of import near Emerson, Manitoba, will be provided by the pipeline systems of Northwestern Utilities Limited, NOVA Corporation of Alberta, and TransCanada.

Transportation of the gas from the international border to Midland will be through the pipeline systems of Great Lakes Transmission Corporation (Great Lakes), Consumers, and Michigan Gas Storage Company (Michigan). Midland states that while no new U.S. facilities will be required for the interruptible gas service to commence in 1989, new U.S. facilities will be required for the firm gas service. Midland believes that looping of approximately 83.2 miles of 36-inch pipeline facilities of Great Lakes will be required. In addition, Midland will construct approximately 25 miles of 26-inch pipeline between its proposed cogeneration plant and a new point of interconnection with the facilities of Michigan, located in Isabella County, Michigan.

In support of its application, Midland asserts that need for the gas is shown not only by its marketability but also by the requirement for gas to operate the new cogeneration facility in order to supply power under firm, long-term power supply contracts which Midland has with Consumers and Dow. With respect to security of supply, Midland points out that each Canadian supplier is obligated by contract to indemnify Midland for certain costs of alternate supplies in the event of delivery shortfall, and that the Midland facility is close to the Canadian border.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). To the extent there are any issues that are unique to cogeneration facilities, the ERA may consider them in making a public interest determination.

Parties that may oppose this application should comment in their responses on the issues of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.d.t., October 11, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request

that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. A request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Midland's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 30, 1988.

Constance L. Buckley,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-20424 Filed 9-7-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER88-578-000, et al.]

Pacific Gas and Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

September 2, 1988.

Take notice that the following filings have been made with the Commission:

1. Pacific Gas and Electric Company

[Docket No. ER88-5789-000]

Take notice that on August 29, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing a revision to Rate Schedule FERC No. 85. The revision is the incorporation of two Supplemental Agreements which provide for the city of Santa Clara (the City) to interconnect its Black Butte and High Line Canal Hydroelectric Projects (Projects) to PG&E's transmission system. Transmission service for power from the Projects will be provided under the existing Interconnection Agreement between PG&E and the City. The Supplemental Agreements pertain to the rates, terms, and conditions under which PG&E will own, operate, and maintain the facilities specially installed in order to provide the interconnections. Under the Supplemental Agreements, PG&E charges, the City PG&E's special Facilities cost of ownership rates, as filed with the California Public Utilities Commission, for transmission and distribution facilities at the Projects. The cost of ownership rate are expressed as a monthly percentage of the installed cost of the facilities. PG&E has requested an effective date of September 5, 1988.

Copies of this filing were served upon the City and the California Public Utilities Commission.

Comment date: September 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Niagara Mohawk Power Corporation

[Docket No. ER88-579-000]

Take notice that on August 29, 1988, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an Agreement between Niagara Mohawk and the County of Erie (Public Body) dated August 1, 1988. Niagara Mohawk proposes an effective date of October 28, 1988 for the Agreement.

This agreement provides for Niagara Mohawk to allow the use of such portions of its electric system and facilities as are required for the delivery of Preference Power to Eligible customers of the Public Body. The Public Body's agent purchases the Preference Power from the Power Authority of the State of New York.

Niagara Mohawk further states that the proposed rate is the rate per kWhr charged under Niagara Mohawk's applicable, residential rate tariff, minus the cost of fuel included in the retail rates, plus additional A&G expenses incurred by Niagara Mohawk as a result of the services provided the Agency under the Agreement. Niagara Mohawk states that the rate was arrived at through arms-length negotiations between the parties, and that the proposed rate is intended to produce a return to Niagara Mohawk essentially equivalent to which Niagara Mohawk would have received had it supplied at its residential retail rates the amount of power delivered as Preference Power. Niagara Mohawk seeks waiver of the notice requirements, stating that its metering and billing cycle starts on October 28 and that service to other Public Bodies will commence that day.

Copies of this filing were served upon the Public Service Commission of the State of New York and the County of Erie.

Comment date: September 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Albert J. Solecki

[Docket No. ID-2373-000]

Take notice that on August 25, 1988, Albert J. Solecki tendered for filing an application for authorization under section 305(b) of the Federal Power Act and Part 45 of the Regulations of the Federal Energy Regulatory Commission to hold the following interlocking positions:

Position and Corporation

Vice President, Philadelphia Electric Company
Director, Philadelphia Electric Power Company
Director, Susquehanna Power Company
Director, Susquehanna Electric Company

Comment date: September 16, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Union Electric Company

[Docket No. EC88-28-000]

Take notice that on August 29, 1988, Union Electric Company (Applicant) tendered for filing an application with the Federal Energy Regulatory Commission seeking authority pursuant to Section 203 of the Federal Power Act, authorizing it to sell certain electrical facilities to the City of Jackson, Missouri (Jackson).

Applicant is incorporated under the law of the State of Missouri and is authorized to do business in the states of Missouri, Illinois and Iowa, with its principal business office at St. Louis, Missouri. Applicant is engaged in the business of furnishing electric service in the City of St. Louis, in 58 counties in Missouri, seven counties in Illinois, and four counties in Iowa.

The facilities to be sold consist of four segments of Applicant's 34.5kV line within the Jackson city limits: (a) Wedekind substation to Jackson power plant, (b) Old Cape Road to Industrial substation, (c) Industrial substation to West substation, (d) Highway 61/34 and Kent tap to sough city limits of Jackson. At the present time these facilities provide a means for Applicant to sell electricity at wholesale and to provide transmission service to Jackson. After the sale the facilities will be used for the

same purposes. Jackson has agreed to pay $116,118 for the facilities.

Comment date: September 19, 1988, in accordance with Standard paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-20360 Filed 9-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ES88-54-000, et al.]

Texas-New Mexico Power Co., et al; Electric Rate, Small Power Production, and Interlocking Directorate Filings

September 1, 1988.

Take notice that the following filings have been made with the Commission:

1. Texas-New Mexico Power Company

[Docket No. ES88-54-000]

Take notice that on August 25, 1988, Texas-New Mexico Power Company, filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking authority to issue and renew from time to time up to $345,000,000 principal amount of short-term notes with the final maturities to be not later than June 30, 1996, under a Project Loan and Credit Agreement. The issuance date for the initial notes is October 1, 1988.

Comment date: September 15, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. North Jersey Energy Associates, a New Jersey Limited Partnership

[Docket No. QF86-789-002]

On August 16, 1988, North Jersey Energy Associates, a New Jersey Limited Partnership (Applicant), of 87 Elm Street, Cohasset, Massachusetts 02025, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Sayerville, New Jersey. The currently certified facility consists of two combustion turbine generators, two heat recovery steam generators and one extraction/condensing steam turbine generator. Thermal energy recovered from the facility is to be utilized in the cooling process for a cold storage facility and for heating and cooling of industrial buildings located nearby the facility. The net electric power production capacity was to be 295 megawatts. The primary energy source is natural gas, with oil used when natural gas is not available.

The recertification is requested due to a change in the type of generating equipment used in the facility and an increase in the net electric power production capacity from 295 MW to 301 MW. In addition, steam from the facility will no longer be used in a cold storage facility but will be used by National Energetics Company in the production of carbon dioxide. Steam from the facility will continue to be used for heating and cooling of an industrial building located nearby. Installation of the facility will begin on February 1, 1989. In all other respects, the facility is essentially unchanged.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

3. Northeast Energy Associates

[Docket No. QF86-1061-002]

On August 16, 1988, Northeast Energy Associates (Applicant), of Margin Street, P.O. Box 220, Cohasset, Massachusetts 02025, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Bellingham, Massachusetts. The facility currently certified consists of two combustion turbine-generators, two heat recovery steam generators, and one extraction/condensing steam turbine-generator. Steam recovered from the facility will be utilized in an ammonia absorption refrigeration unit to provide refrigerant for the Arctic Circle Cold Storage Corporation's cold/freezer storage facility and by Cove Machinery for steam cleaning and winter space heating. Extraction steam will also be used by National Energetics Company in the production of carbon dioxide. The primary energy source for the facility will be natural gas or oil. The net electric power production capacity of the facility will be 300 MW. The installation of the facility was expected to begin in February 1988.

The recertification is requested due the postponement of the installation date from February 1988 to November 1, 1988, and to reflect the fact that steam will no longer be used by Arctic Circle Cold Storage for a cold/freezer storage facility. The completion date of the facility has been changed from February 1, 1990 to November 1, 1990. In all other respects, the facility is essentially unchanged.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-20361 Filed 9-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ES88-53-000, et al.]

Upper Peninsula Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

September 2, 1988.

Take notice that the following filings have been made with the Commission:

1. Upper Peninsula Power Company

[Docket No. ES88-53-000]

Take notice that on August 21, 1988, Upper Peninsula Power Company filed

an application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, seeking authority to issue $8,000,000 principal amount of short-term notes on or before October 1, 1990 with a final maturity date no later than October 1, 1991.

Comment date: September 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Electric and Gas Company

[Docket No. ER88-580-000]

Take notice that on August 31, 1988, Public Service Electric and Gas Company (PSE&G) tendered for filing an initial Rate Schedule to provide transmission service to SES Gloucester Company, L.P. (SES Gloucester). The Rate Schedule provides for a monthly transmission service charge of $1.48 per kilowatt plus $.00047 per kilowatt hour for the delivery of the net electric power output of SES Gloucester's qualifying solid waste recovery facility to be located in the Township of West Deptford, Gloucester County, New Jersey to Jersey Central Power and Light Company.

PSE&G requests, with the customer's consent, a waiver of the Notice Requirements of § 35.3(a) of the Commission's Regulations so that the Rate Schedule can be submitted for filing at this time and PSE&G further requests that the filing be made effective within sixty (60) day of the date of this filing.

PSE&G states that a copy of this filing has been served by mail upon the customers and the New Jersey Board of Public Utilities.

Comment date: September 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

American REF-FUEL Company of Lehigh Valley

[Docket No. ER88-581-000]

Take notice that on August 31, 1988, American REF-FUEL Company of Lehigh Valley (REF-FUEL), a general partnership of a third tier subsidiary of Air Products and Chemicals, Inc., APCI), and a second tier subsidiary of Browning-Ferris Industries, Inc. (BFI), tendered for filing, pursuant to 18 CFR 35.1 and 35.12, proposed REF-FUEL FERC Rate Schedule No. 1, applicable to sales of energy by REF-FUEL to Pennsylvania Power and Light Company (PP&L) from a biomass-fired facility and electric generating facility to be located at Bethlehem, Pennsylvania (Facility).

On February 11, 1988, REF-FUEL entered into a power sales agreement with PP&L for the sale of the Facility's net electrical output (Agreement). On March 4, 1988, PP&L filed a petition (Petition) requesting the Pennsylvania Public Utility Commission (PUC) to issue an order approving the rates for energy purchased from REF-FUEL and inclusion, on a current basis, of such rates in PP&L's Energy Cost Rate (ECR). On June 9, 1988, the PUC issued an order granting the Petition and approving the rates as just, reasonable and in the public interest. Order Granting Petition of Pennsylvania Power and Light Company for Rate Recognition of Power Purchased from American REF-FUEL Company of Lehigh Valley, Docket No. P-88-0294, issued June 9, 1988. The proposed initial rate is set forth in the Power Purchase Agreement.

REF-FUEL requests waiver of the Commission's rule requiring that rate schedules be filed no more than one hundred twenty (120) days prior to the date on which service is to commence under an initial rate schedule. This requirement is intended to prevent the use of stale data in developing the test period for cost-of service-based rates. Section 35.3(b) of the Commission's regulations allows the Commission to waive the one hundred twenty (120) days notice period in appropriate circumstances.

Additionally, REF-FUEL seeks waiver of the Commission's regulations regarding cost-of-service information. The Commission has recognized that the cost-of-service data requirements contained in §§ 35.12 and 35.13 of its regulations are irrelevant insofar as they require a small power producer to substantiate its cost-of-service, and has indicated in such Declaratory Order that it will grant a request for waiver of these cost-of-service data requirements at such time as REF-FUEL tenders a rate for filing.

Additionally, REF-FUEL seeks waiver of any Commission requirements for filing changes in its REF-FUEL FERC Rate Schedule No. 1 in the event of any change in the actual purchase price for energy calculated pursuant to the formula contained in the Agreement. *See* 18 CFR 35.13.

In addition to the waivers requested above, REF-FUEL further requests waiver of all Federal Power Act (FPA) regulations that the Commission has previously found not to be appropriately applicable to qualifying facilities.

Comment date: September 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-20427 Filed 9-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI88-589-000, et al.]

Union Exploration Partners, Ltd., et al.; Natural Gas Certificate Filings

September 2, 1988.

Take notice that the following filings have been made with the Commission:

1. Union Exploration Partners, Ltd.

[Docket No. CI88-589-000]

Take notice that on August 25, 1988, Union Exploration Partners, Ltd. ("UXP") of 1201 West 5th Street, P.O. Box 7600, Los Angeles, California 90051 filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a blanket certificate with pregranted abandonment authorization for an unlimited term to sell contractually uncommitted gas from any source without geographic limitation, all as more fully described in the application which is on file with the Commission and open to public inspection. UXP additionally requests waiver of any filing and reporting requirements which may be inconsistent with the authority sought under the above application.

Comment date: September 19, 1988, in accordance with Standard Paragraph J at the end of the notice.

Hunt Gas Marketing Corporation, et al.

[Docket No. CI88-592-000, et al.]

Take notice that each Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a blanket certificate with pregranted abandonment authorization

for the term listed herein, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Docket No. and date filed	Applicant	Requested term of authorization
CI88-592-000, 8-26-88 [1].	Hunt Gas Marketing Corp., 1401 Elm Street, Dallas, TX 75202.	Unlimited.
CI88-596-000, 8-26-88 [1].	Premier Gas Co., Samson Plaza, Two West Second Street, Tulsa, OK 74103.	Unlimited.

[1] Application by a natural gas marketer for a blanket certificate with pregranted abandonment authorization.

Comment date: September 19, 1988, in accordance with Standard Paragraph J at the end of this notice.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-20428 Filed 9-7-88; 8:45am]

BILLING CODE 6717-01-M

[EL88-25-000, et al.]

Hydroelectric applications; Iliamna-Newhalen-Nondalton Elec., Coop., Inc., et al; Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1. *a. Type of Application:* Declaration of Intention.

b. Project No.: EL88-25.

c. Date Filed: May 9, 1988.

d. Applicant: Iliamna-Newhalen-Nondalton Electric Cooperative, Inc.

e. Name of Project: Tazimina River Hydroelectric Power Project.

f. Location: Tazimina River, near Iliamna, Alaska.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. §§ 817(b).

h. Applicant Contact: T.M. Olsen, General Manager, INNEC, P.O. Box 210, Iliamna, AK 99607.

i. FERC Contact: Etta Foster, (202) 376-9064.

j. Comment Date: September 28, 1988.

k. Description of Project: The proposed project would consist of: (1) An intake structure, (2) a 4-foot-diameter, 270-foot-long penstock; (3) a powerhouse containing two generating units with a total installed capacity of 700 kilowatts (kW); (4) a 24 kV system transmission line and (5) a 6.7 mile-long and 16-foot wide access road. Applicant estimates the average annual energy production to be 1,971 megawatt hours (MWh). The applicant requests that the Commission investigate and determine if there is, pursuant to the Federal Power Act, section 23(b), federal jurisdiction for the project. The applicant asserts that the Commission lacks jurisdiction for these reasons: (1) No interstate commerce will be involved; (2) the project will not be constructed on federal lands; (3) no navigable waters will be involved; and (4) the project will not utilize an existing federal dam.

l. Purpose of Project: The proposed power produced is to be used on INNEC's system serving the communities of Iliamna, Newhalen, Nondalton and immediate surrounding areas.

m. This notice also consists of the following standard paragraphs: B, C, and D2.

2. *a. Type of Application:* Declaration of Intention.

b. Project No.: EL88-29-000.

c. Date Filed: May 24, 1988.

d. Applicant: Larry Taylor.

e. Name of Project: Taylor's Second Creek Project.

f. Location: Second Creek, Lexington County, South Carolina.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Applicant Contact: Larry Taylor, 201 Meeting Street, West Columbia, SC 29169, (803) 791-1026.

i. FERC Contact: Hank Ecton, (202) 376-9073.

j. Comment Date: September 29, 1988.

k. Description of Project: The proposed Taylor's Second Creek Project, a run-of-river project, would consist of: (1) A 5.5-acre reservoir; (2) a 15-foot-high, 355-foot-long earth and concrete dam; (3) a 20-foot-long steel penstock with a diameter of 48 inches; (4) a hydraulic turbine coupled to a 15-kilowatt induction generator; and (5) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. Purpose of Project: In conjunction with a new aquaculture project, the power generated will supply power to Mr. Taylor's dwelling house. Excess power will be sold to the local public utility (South Carolina Electric and Gas Corporation).

m. This notice also consists of the following standard paragraphs: B, C, and D2.

3 a. Type of Application: Transfer of License.

b. Project No.: 2883-003.

c. Date Filed: July 7, 1988.

d. Applicant: Fries Textile Company & Aquenergy Systems, Inc.

e. Name of Project: Fries Project.

f. Location: On the New River in Grayson County, Virginia.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Robert H. Walker, Jr., Aquenergy Systems, Inc., P.O. Box 512, Greenville, SC 29602.

i. FERC Contact: Robert Bell (202) 376-9237.

j. Comment Date: October 16, 1988.

k. Description of Transfer: On June 10, 1980, a license was issued to Fries Textile Company (licensee), to construct, operate, and maintain the Fries Project. The licensee intends to transfer the license to Aquenergy System Inc. (transferee) because Fries Textile Company has merged with the Aquenergy Systems Inc. The transferee agrees to accept the terms and conditions of the license as if it were the original license.

l. This notice also consists of the following standard paragraphs: B and C.

4 a. Type of Application: Minor License.
b. Project No.: 9236–002.
c. Date Filed: January 21, 1988.
d. Applicant: Gunnison Hydro Associates.
e. Name of Project: Gunnison Hydro Water Power Project.
f. Location: On the San Pitch River in Sanpete County, Utah.
g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).
h. Applicant Contact: Michael J. Graham, Gunnison Hydro Associates, P.O. Box N, Manti, UT 84642, (602) 855–1615.
i. FERC Contact: Nanzo T. Coley, (202) 376–9416.
j. Comment Date: November 3, 1988.
k. Description of Project: The existing Gunnison dam is owned by the Gunnison Irrigation Company. The proposed project would consist of: (1) An existing earthen dam, which is approximately 631 feet long and 64 feet high; (2) an existing reservoir with a surface area of 48 acres and a storage capacity of 18,685 acre-feet at an elevation of 5,378 feet m.s.l.; (3) a proposed 72-inch diameter, 480-foot-long penstock; (4) a proposed powerhouse containing two generating units rated at 250-KW each; (5) a proposed 50-foot-long tailrace; (6) a proposed 400-foot-long, 12,470-volt transmission line; and (7) appurtenant facilities.
l. Purpose of Project: Power produced at the project would be sold to the Utah Power and Light Company.
m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.
5 a. Type of Application: Preliminary Permit.
b. Project No.: 10564–000.
c. Date Filed: March 31, 1988.
d. Applicant: Edwards Energy Systems, Inc.
e. Name of Project: Claiborne Hydropower Project.
f. Location: On the Alabama River near Claiborne, Monroe County, Alabama.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Applicant Contact: Mr. Dean Edwards, Edwards Energy Systems, Inc., 2992 Heather Trail, Clearwater, FL 34621, (813) 799–6460.
i. FERC Contact: Michael Dees (202) 376–9414.
j. Comment Date: October 31, 1988.
k. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Claiborne Lock and Dam and reservoir and would consist of: (1) A proposed intake channel 120 feet wide and 350 feet long; (2) a proposed powerhouse 150 feet wide, 65 feet high, and 125 feet long, housing four hydropower units with a total capacity of 15.2 MW; (3) a proposed tailrace 120 feet wide and 500 feet long; (4) a proposed 115-kV transmission line five miles long; and (5) appurtenant facilities. The estimated annual energy production is 99.5 GWh. Project energy would be sold to Alabama Power Company. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $24,000.
l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.
6 a. Type of Application: Preliminary Permit.
b. Project No.: P–10601–000.
c. Date filed: May 10, 1988.
d. Applicant: Wolverine Power Corporation.
e. Name of Project: Edenville Hydro Project.
f. Location: On the Tittabawassee and Tobacco Rivers near Tobacco, Gladwin County, Michigan.
g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).
h. Applicant Contacts:
Mr. Carl Schilling, P.O. Box 689, 1600 Center Ave., Bay City, MI 48707, (517) 893–5995.
Mr. Louis Rosenman, 1333 New Hampshire Ave., NW., Suite 1100, Wash., DC 20036, (202) 457–7500.
i. FERC Contact: Ed Lee, (202) 376–9116.
j. Comment Date: October 3, 1988.
k. Description of Project: The existing project consists of; (1) A 54.5-foot-high and 600-foot-long earth embankment dam; (2) a 2,650-acre reservoir with a storage capacity of 40,000 acre-feet at elevation 671.5 feet MSL; (3) a reinforced concrete powerhouse housing two 2.4-MW generators for a total installed capacity of 4.8 MW; (4) a circuit breaker bus that feeds to a bank of transformers owned by the Applicant; and (5) appurtenant facilities. Applicant estimates that the average annual generation would be 16,750 MWh, and the cost of the work to be performed under the preliminary permit would be $45,000. All project works and lands are owned by the Applicant.
l. Purpose of Project: The power produced is sold by the Applicant to Consumers Power Company.
m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.
7 a. Type of Application: Preliminary Permit.
b. Project No.: 10602–000.
c. Date Filed: May 10, 1988.
d. Applicant: Wolverine Power Corporation.
e. Name of Project: Second Hydro Project.
f. Location: On the Tittabawassee River near Secord, Gladwin County, Michigan.
g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).
h. Applicant Contact:
Mr. Carl F. Schilling, P.O. Box 689, 1600 Center Ave., Bay City, MI 48707, (517) 893–5995.
Mr. Louis Rosenman, 1333 New Hampshire Ave., NW., Suite 1100, Washington, DC 20036, (202) 457–7500
i. FERC Contact: Ed Lee (202) 376–9116.
j. Comment Date: October 3, 1988.
k. Description of Project: The existing project consists of: (1) A 46.5-foot-high and 2,005-foot-long earth embankment dam; (2) a 1,100-acre reservoir with a storage capacity of 15,000 acre-feet; (3) a reinforced concrete powerhouse housing one 1.5-NW generator; (4) a circuit breaker bus that feeds to a bank of transformers owned by the Applicant; and (5) appurtenant facilities. Applicant estimates that the average annual generation would be 4,000 MWh, and the cost of the work to be performed under the preliminary permit would be $45,000. All project works and lands are owned by the applicant.
l. Purpose of project: The power produced is sold by the applicant to Consumers Power Company.
m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.
8 a. Type of Application: Preliminary Permit.
b. Project No.: 10609–000.
c. Date Filed: May 23, 1988.
d. Applicant: Edwards Energy Systems, Inc.
e. Name of Project: Elba Hydropower.
f. Location: On the Pea River, near the City of Elba, Coffee County, Alabama.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Applicant Contact:
Mr. Dean Edwards, 2992 Heather Trail, Clearwater, FL 34621, (813) 799–6460.
i. FERC Contact: Charles T. Raabe, (202) 376–9778.
j. Comment Date: October 27, 1988.
k. Description of Project: The proposed project would consist of: (1) An existing 29-foot-high, 404-foot-long gravity-type concrete dam having a 160-foot-long ogee-type spillway surmounted by 4-foot-high flashboards; (2) a reservoir having a 95-acre surface area and a 1,650 acre-foot storage capacity at normal water surface elevation 167 feet msl; (3) an inlet structure at the dam's right (west) bank leading to; (4) a 35-foot-wide, 417-foot-long forebay; (5) an

existing powerhouse containing two new generating units having a total capacity of 2,000-kW; (6) a new 200-foot-long, 46-kV transmission line; and (7) appurtenant facilities. The applicant estimates that the average annual generation would be 13,232,000 kWh. The site is owned by the City of Elba, Alabama.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 10614–000

c. Date Filed: June 6, 1988

d. Applicant: Terrence D. Beasley

e. Name of Project: Montville Falls

f. Location: On Dresserville Creek near the Town of Moravia, Cayuga County, New York

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a) – 825(r)

h. Applicant Contact: Terrence D. Beasley, R.D. 2, Box 370, Moravia, NY 13118, (315) 497–2826

i. FERC Contact: Charles T. Raabe, (202) 376–9778

j. Comment Date: October 20, 1988.

k. Description of Project: The proposed project would consist of: (1) An existing 7-foot-high, 40-foot-long gravity-type concrete dam; (2) a reservoir having a 0.1-acre surface area at normal water surface elevation 894.6 feet MSL; (3) an existing 32-inch-diameter, 40-foot-long steel penstock leading to a proposed 24-inch-diameter, 200-foot-long steel penstock; (4) a new powerhouse containing a 150–kW generating unit operated at a 120-foot-head; (5) a 460-v, 150-foot-long transmission line; and (6) appurtenant facilities. Applicant estimates that the average annual generation would be 732,336 kWh and that the cost of the studies under the terms of the permit would be $7,000. Project energy would be sold to New York State Gas and Electric Company. The site is owned by the applicant.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, D2.

10 a. Type of Application: Preliminary Permit.

b. Project No.: P–10620–000.

c. Date Filed: June 23, 1988.

d. Applicant: Hydro Investors, Inc.

e. Name of Project: Diamond Hill Hydro Project.

f. Location: On the Spruce Creek near Salisbury, Herkimer County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Neal F. Dunlevy, 185 Genesee Street, Suite 1518, Utica, NY 13501, (315) 793–0366.

i. FERC Contact: Ed Lee at (202) 376–5786.

j. Comment Date: October 3, 1988.

k. Description of Project: The proposed run-of-river project consists of: (1) An existing dam approximately 100-foot-long and 14-foot-high; (2) a 92-acre reservoir having a storage capacity of 800 acre-feet at 1360 feet m.s.l.; (3) a proposed 1,200-foot-long penstock; (4) a reinforced concrete powerhouse located on the left bank of the river and housing two 700-kW generators for a total installed capacity of 1,400 kW and an average annual generation of 6,000 MWh; (5) a new 1.5-mile-long, 13.2-kV transmission line; and (6) appurtenant facilities. The applicant estimates the cost of the work to be performed under the preliminary permit would be $40,000. The dam and reservoir are owned by the City of Little Falls, New York.

l. Purpose of Project: The generated power will be sold by the applicant to a local utility company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2

11 a. Type of Application: Preliminary Permit.

b. Project No.: 10630–000.

c. Date filed: July 25, 1988.

d. Applicant: White Chuck Water Company.

e. Name of Project: Lime Creek Hydroelectric.

f. Location: On Lime Creek and three tributaries, within Mt. Baker—Snoqualmie National Forest in Snohomish County, Washington. T31 and 32N, R12E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. Applicant Contact: Mr. William F. Fowler, Mitex, Inc., 91 Newbury Street, Boston, MA 02116, (617) 424–1888.

i. FERC Contact: Mr. James Hunter, (202) 376–1943.

j. Comment Date: October 17, 1988.

k. Description of Project: The proposed project would consist of: (1) A diversion wier on Indigo Creek at streambed elevation 3,360 feet; (2) a 5,700-foot-long, 2.0-foot-diameter pipeline; (3) a diversion weir on an unnamed creek at elevation 3,215 feet; (4) a 2,500-foot-long, 2.5-foot-diameter pipeline; (5) a diversion weir on Meadow Creek at elevation 3,200 feet; (6) a 4,100-foot-long, 3.5-foot-diameter penstock; (7) a powerhouse at elevation 2,720 feet containing a generating unit rated at 2.5 MW; (8) a tailrace discharging flows into Lime Creek; (9) a diversion weir on Lime Creek at elevation 2,700 feet; (10) a 13,600-foot-long, 5.0-foot-diameter penstock; (11) a powerhouse at elevation 1,400 feet containing two generating units, one rated at 15 MW and one rated at 2.5 MW; and (12) a transmission line connected the two powerhouses to the local utility grid. The total average annual output would be 80 GWh. The estimated cost of permit activities is $150,000.

l. Purpose of Project: Power produced by the project would be sold.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

12 a. Type of Application: Preliminary Permit.

b. Project No.: 10632–000.

c. Date filed: August 2, 1988.

d. Applicant: Pacific Water & Power, Inc.

e. Name of Project: San Leandro-Chabot Reservoir/Dam Power.

f. Location: On outlet piping from and interconnecting piping between San Leandro and Chabot Reservoirs, which are on San Leandro Creek and use water from Moraga Pumping Plant and Lafayette Aqueduct in Alameda County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Robert R. Doelle, 960 La Mesa Drive, Portola Valley, CA 94025 (415) 854–3574.

i. FERC Contact: Mr. James Hunter, (202) 376–1943.

j. Comment Date: October 27, 1988.

k. Description of Project: The proposed project consist of: (1) The rolled zone earthfill San Leandro Dam and 42,700 acre-foot reservoir; (2) the compacted earthfill buttress Chabot Dam and 10,300 acre-foot reservoir; (3) the penstocks connecting these reservoirs with filter plants; (4) the proposed interconnecting piping between the reservoirs; (5) four powerhouses, to be located on the penstocks and on the interconnecting pipelines, containing 4 or more generating units with a total capacity of 12 MW and an average annual output of 87,600 MWH; and (6) a transmission line connecting to the Pacific Gas & Electric Company (PG&E) distribution system. The estimated cost of permit activities is $20,000 to $30,000.

l. Purpose of Project: Power from the project would be sold to PG&E, for use in desalination projects in Alameda or Contra Costa County.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs:

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or

before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Representative Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. an additional copy must be sent to Dean Shumway, Acting Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 8251(b), that Commission findings as to facts must be supported by substantial evidence.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: September 2, 1988.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–20362 Filed 9–7–88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88–701–000, et al.]

Amoco Gas Co., et al.; Natural Gas Certificate Filings

September 1, 1988.

Take notice that the following filings have been made with the Commission:

1. Amoco Gas Company

[Docket No. CP88–701–000]

Take notice that on August 22, 1988, Amoco Gas Company (Amoco), 200 East Randolph Drive, Chicago, Illinois 60601, filed in Docket No. CP88–701–000 pursuant to § 385.207 of the Commission's Rules of Practice and Procedure a petition for declaratory order finding that the act of purchasing natural gas in the Outer Continental Shelf and having such gas delivered to another entity for further delivery to an ultimate consumer in Texas, without such gas having entered Amoco's system, can be undertaken consistent with its status as a Hinshaw company under section 1(c) of the Natural Gas Act.

Amoco states that it is a Hinshaw pipeline as found by Commission order issued June 13, 1966 in Docket No. CP66–369. Amoco explains that it operates over 400 miles of pipeline in southeast Texas and delivers over 400,000 Mcf per day of natural gas to its customers, primarily industrial users. It is indicated that Amoco's rates are regulated by the Texas Railroad Commission.

Amoco states that it purchases gas from various blocks in the federal waters of the Outer Continental Shelf. It is indicated that such gas is transported to an onshore point near Oyster Lake, Matagorda County, Texas. Amoco states that depending on the location of the offshore blocks, the transportation services are provided either by Northern Natural Gas Company and Seagull Shoreline System or by Cavallo Pipeline Company. At Oyster Lake, Houston Pipeline Company (HPL) receives such gas and transports and redelivers the gas to Amoco which, in turn, uses the gas for system supply.

Amoco notes that it now has the opportunity to make a spot sale of gas to a new plant operated by Texasgulf, an affiliate of Elf Acquitaine, which is located off of HPL's system. Amoco proposed that HPL would transport the gas and that title to such gas would pass from Amoco to Elf Aquitaine at Oyster Lake, where the gas would enter HPL's system. It is indicated that HPL would transport and redeliver the gas for consumption in Elf Aquitaine's sulfur production plant near Wharton, Texas.

Amoco notes that if it makes the contemplated sale, the gas would never be delivered into Amoco's own facilities, but would instead be received by transporters and be delivered to the system of HPL for Amoco's account. Amoco summarizes that the contemplated sales contract would be between Amoco and Elf Aquitaine, with HPL and others providing transportation services.

Amoco states that it is concerned that section 1(c) of the Natural Gas Act provides (in part) that "The provisions of this Act shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all such gas so received is ultimately consumed within such State * * *" Amoco notes that it will not actually handle the gas in its system and questions what the statute means by specifying that the interstate gas be received by "such person".

Amoco states that it considered and rejected the option of owning nominal facilities at the delivery point to the Elf Aquitaine plant in order that the interstate gas be "received" by Amoco pursuant to section 1(c) of the NGA. Amoco asserts that it would not make economic sense to install a meter for the exclusive purpose of making the spot sale. Amoco further asserts that it should be sufficient that its transporters, namely Seagull Shoreline System and Cavallo Pipeline Company have received the gas within Texas in state waters on Amoco's behalf pursuant to transportation contracts, and have agreed to deliver the gas for Amoco's account to HPL.

Based on the above factual situation, Amoco requests that the Commission declare that Amoco would be receiving the OCS gas through its transporters consistent with the requirements of section 1(c) of the Natural Gas Act. Amoco states that it believes that such a ruling would remove uncertainty as to whether there is a mechanical requirement that interstate gas enter Amoco's facilities, constituting a barrier to Amoco's full participation in the spot market.

Comment date: September 22, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2 Panhandle Eastern Pipe Line Company

[Docket No. CP88-702-000 [1], CP88-703-000, CP88-704-000, CP88-705-000, CP88-706-000, CP88-711-000]

Take notice that on August 22, 1988, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP88-702-000, *et al*, requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for various customers under Applicant's blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests which are on file with the Commission and open to public inspection.

Applicant proposes to transport, on an interruptible basis, natural gas for specified customers, as noted in the Appendix hereto. It is stated that transportation agreements between the parties provide for Applicant to receive gas from various existing points of receipt on its system in Texas, Oklahoma, Kansas, Colorado, Wyoming, Illinois, Louisiana, offshore Texas, offshore Louisiana and Canada. It is further stated that Applicant would then transport and deliver the gas, less fuel used and unaccounted-for line loses, at various redelivery points as set forth in the Appendix hereto. Applicant states that each service has commenced in accordance with § 284.223(a) of the Regulations. Applicant states that no new facilities nor expansion of existing facilities are required to provide the proposed service.

Comment date: October 17, 1988, in accordance with Standard Paragraph G at the end of this notice.

[1] These requests are not consolidated.

APPENDIX

Docket No. CP88-	Filed	Customer	Redelivery point	Interruptible peak (dt/d)	Transportation (average (dt/d))	Annual	Docket ST88-[1]
702-000	8/22/88	BP Chemicals America, Inc. (shipper/end user)	ANR Pipeline Co., Defiance Co., OH	90,000	10,000**	3,650,000**	4850
703-000	8/22/88	James River—Norwalk (Shipper/end user)	Michigan Gas Storage, Oakland Co., MI	20,000	20,000**	7,200,000**	5147
704-000	8/22/88	James River—KVP Group (Shipper/end user)	do	30,000	30,000**	10,800,000**	5148
705-000	8/22/88	Consolidated Fuel Supply, Inc. (Marketer)	Calcium Carbonate, Div. of J.M. Huber Corp., Adams Co., IL.	600	300**	109,500**	4805
706-000	8/22/88	Quantum Chemical Corp. (Shipper/end user)	Quantum Chemical Corp., Douglas Co., IL	15,000	3,000**	1,095,000**	4799
711-000	8/22/88	Consolidated Fuel Supply, Inc. (Marketer)	National Refractories and Minerals Corp., Inc., Audrain Co., MO.	2,000	1,000**	365,000**	4803

** Average day and annual volumes are based on shipper's estimates. The actual volumes are dependent upon the shippers' requirements.
[1] Report of service under § 284.223(a) of the regulations.

3. Trunkline Gas Company

[Docket No. CP88-720-000]

Take notice that on August 26, 1988, Trunkline Gas Comapny (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642 filed in Docket No. CP88-720-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more set forth in the request on file with the Commission and open to public inspection.

Trunkline proposes to transport natural gas for Quantum Chemical Corporation (Quantum), an end-user, pursuant to a transportation agreement dated June 22, 1988. Trunkline explains that service commenced August 4, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST88-5182. Trunkline further explains that the peak day quantity would be 15,000 dekatherms, the average daily quantity would be 3,000 dekatherms, and that the annual quantity would be 1,095,000 dekatherms. Trunkline explains that it would receive natural gas for Quantum's account at over 200 points of receipt located on its system in Illinois, Lousiana, Texas, Tennessee, and Offshore Louisiana and would redeliver the gas for Quantum's account to Panhandle Eastern Pipe Line Company in Douglas County, Illinois. Trunkline indicates that the natural gas to be transported is for ultimate consumption by Quantum in the state of Illinois.

Comment date: October 17, 1988, in accordance with Standard Paragrpah G at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protests, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-20363 Filed 9-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-642-000, et al.]

Trunkline Gas Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Trunkline Gas Company

[Docket No. CP88-642-000]

September 1, 1988.

Take notice that on July 28, 1988, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77001, filed in Docket No. CP88-642-000 an application pursuant to section 7(b) of the Natural Gas Act for an order permitting and approving abandonment of certificates of public convenience and necessity which authorized the transportation of natural gas on behalf of Panhandle Eastern Pipe Line Company (Panhandle), all as more fully set forth fully set forth in the application which is on file with the Commission and open for public inspection.

By this application, Trunkline specifically requests Commission authorization to abandon the transportation services authorized in Docket Nos. CP78-43, CP78-50, CP78-336, CP78-337, CP78-338, and CP80-195/CP85-558. It is stated that such authorizations provide for the transportation of an aggregate daily contract quantity of 39, 850 Mcf from points of receipt located offshore Louisiana and Texas to a point of redelivery located in Douglas County, Illinois. Trunkline advises that its abandonment request is prompted by a letter from Panhandle stating that the transportation services were no longer needed, because Panhandle was unable to renegotiate new purchase contracts for the affected gas supplies. Trunkline further advises that on July 27, 1988, it entered into Termination Agreements with Panhandle for each of the underlying transportation agreements. Finally, upon receipt of the authorization sought herein, Trunkline states that it would cancel Rate Schedules T-31, T-43, T-48, T-42, T-44 and T-59 of its FERC Gas Tariff, Original Volume No. 2., the affected rate schedules.

Comment date: September 15, 1988, in accordance with Standard Paragraph F at the end of his notice.

2. Southern Natural Gas Company

[Docket No. CP88-710-000]

September 1, 1988.

Take notice that on August 22, 1988, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP88-710-000 a request, pursuant to § 157.205 and 284.223 of the Commission's Regulations, for authorization to provide an interruptible transportation service for Colony National Gas Corporation (Colony), a marketer, under Southern's blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to transport natural gas for Colony from various receipt points in Texas, Louisiana and Alabama for delivery in Mississippi.

Southern indicates that transportation service for Colony initially started June 30, 1988, pursuant to the self-implementing provision of § 284.223, as reported in Docket No. ST88–4741. Further, Southern states that the peak day quantities would be 2,000 MMBtu, the average daily quantities would be 1,250 and the annual quantities would be 456,250 MMBtu.

Comment date: October 17, 1988, in accordance with Standard Paragraph G at the end of his notice.

3. Natural Gas Pipeline Company of America

[Docket No. CP88–725–000]

September 1, 1988.

Take notice that on August 26, 1988, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP88–725–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas (18 CFR 157.205) for authorization to transport, on an interruptible basis, up to a maximum of 200,000 MMBtu (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) for Enron Gas Marketing, Inc. (Enron), under Natural's blanket certificate issued in Docket No. CP88–582–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

Natural states that pursuant to an interruptible transportation agreement dated June 7, 1988, as amended July 28, 1988, it proposes to transport the aforementioned quantity of natural gas for Enron, a marketer of natural gas, from points of receipt located in Oklahoma, Texas, offshore Texas, Louisiana, and offshore Louisiana and Texas. Natural further states that while MMBtu, the quantity transported on an average day is expected to be 50,000 MMBtu. Based on that average day quantity, the annual transportation volume is estimated to be 18,250,000 MMBtu. Finally, Natural advises that the transportation service commenced on July 1, 1988, under § 284.223(a), as reported in Docket No. ST88–5287.

Comment date: October 17, 1988, in accordance with Standard Paragraph G at the end of this notice.

4. Tennessee Gas Pipeline Company

[Docket No. CP88–716–000]

September 1, 1988.

Take notice that on August 24, 1988, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88–716–000 a request, pursuant to §§ 157.205 and 284.223 of the Commission's Regulations, for authorization to provide a transportation service for Citizens Gas Supply Corporation (Citizens), a marketer, under Applicant's blanket certificate issued in Docket No. CP87–115–000 on June 18, 1987, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request of file with Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement dated July 12, 1988, it proposes to transport natural gas for Citizens from various receipt points located offshore Louisiana and in the States of Louisiana, Texas, Kentucky, New Jersey, Alabama, New York, Massachusetts, and Mississippi to various delivery points off Tennessee's system, in multiple states.

The Applicant further states that the peak day quantities would be 150,000 dekatherms, the average daily quantities would be 194 dekatherms, and that the annual quantities would be 70,810 dekatherms. Applicant states that service under § 284.223(a) commenced July 26, 1988, as reported in Docket No. ST88–5152 (filed August 10, 1988).

Comment date: October 17, 1988, in accordance with Standard Paragraph G at the end of this notice.

5. CNG Transmission Corporation

[Docket No. CP88–712–000]

September 2, 1988.

Take notice that on August 23, 1988, CNG Transmission Corporation (CNG Transmission), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP88–712–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a pipeline to render long-term firm sales service to Virginia Natural Gas, Inc. (VNG) and the City of Richmond, Virginia (Richmond) and transportation and interruptible storage service to Hanover Energy Associates (HEA) and Virginia Electric and Power Company (Virginia Power), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that to provide the proposed sales service, CNG Transportation would construct and operate 27 miles of 24-inch pipeline from its PL–1 pipeline near Leesburg, Virginia, to VNG's proposed pipeline facilities near the Prince William-Fauquier County line, Virginia, and an 8,000 horsepower compressor station and related facilities near Doylesburg, Pennsylvania. It is further stated that VNG has proposed to construct approximately 80 miles of 24-inch pipeline to connect the proposed CNG Transmission facilities to pipeline facilities to be constructed by VNG, Virginia Power, and the City of Richmond in Hanover County, Virginia. VNG has also proposed to construct approximately 40 miles of 10-inch pipeline facilities from the Hanover County terminus of the 24-inch VNG pipeline to reinforce its existing distribution system and to connect that system through the VNG pipeline to CNG Transmission's PL–1 line.

CNG Transmission also proposes to render certain services as follows:

1. Make sales of natural gas to VNG of 30,000 dekatherms per day and Richmond of 25,000 dekatherms per day under CNG Transmission's CD rate schedule;

2. Transport natural gas for HEA and Virginia Power in the amount of 120,000 and 37,500 dekatherms per day, respectively, on a firm bais under CNG Transmission's Rate Schedule TF; and

3. Render interruptible storage serve for HEA and Virginia Power under special contract.

It is alleged that HEA and Virginia Power both will use the firm transportation services to furnish gas for electric power generation; Virginia Power for its own utility services as system supply and HEA for co-generation usage for sale to Virginia Power. Both HEA and Virginia Power would contract for interruptible storage in order to meet demands for gas fueled power generation during the winter season. It is further alleged that HEA would contract for 9 million dekatherms of interruptible storage with 30 days of interruptibility during the winter season. Virginia Power would contract for 2.1 million dekatherms of interruptible storage with 30 days of interruptibility during the winter season. The storage rate would be CNG Transmission's GSS rate with modifications for interruptions and refunds as further detailed in the letters of intent filed in the application.

It is asserted that the rate for the proposed gas sales services are cost-based, Commission approved tariff rates, subject to the Commission's determinations in CNG Transmission's settlement proceeding in Docket No. RP85–169–000, *et al.* It is asserted that the rates to be charged by CNG Transmission for rendering the proposed service are non-discriminatory and fully compensatory. CNG indicates that its existing customers would not be required to subsidize the service. It is stated that the estimated total cost of

the proposed facilities is $34,156,700, exclusive of filing fees. The proposed facilities would be financed from funds to be obtained from CNG Transmission's parent, Consolidated Natural Gas Company, or from funds on hand.

It is alleged that source of the gas to be sold is CNG Transmission's general system supply. CNG Transmission anticipates having available substantial supplies of natural gas in excess of its requirements in the foreseeable future.

Comment date: September 23, 1988, in accordance with Standard Paragraph F at the end of this notice.

6. Florida Gas Transmission Company

[Docket No. CP65-393-006]

September 2, 1988.

Take notice that on August 18, 1988, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP65-393-006 a petition pursuant to section 7(c) of the Natural Gas Act, to amend to the certificate of public convenience and necessity issued in Docket No. CP65-393 authorizing the firm transportation service by FGT for Florida Power & Light Company (FPL) currently being provided under Rate Schedule T-3 of FGT's FERC Gas Tariff, Second Revised Volume No. 1 to extend the authorized term, to remove any limitation that the gas be purchased under a warranty contract dated March 12, 1965, with a producer, and to specify certain receipt points, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

FGT states that it seeks Commission authority to permit an extension of the term of the underlying transportation agreement, dated March 12, 1965, as amended, 9T-3 Agreement) through the earlier of (1) The effective date of certificate authority from the Commission authorizing FGT to provide a substitute firm transportation service for FPL under a new Rate Schedule T-4, which FGT indicates is included in the amendment to applications filed by FGT with the Commission on October 30, 1987, as Appendix A to the Stipulation and Agreement of Settlement in the consolidated proceedings at Docket Nos. CP68-179, *et al.*, or (2) June 10, 1995, and year to year thereafter unless terminated by either party upon written notice to the other received at least twelve months prior to June 10, 1995, or any extension of the T-3 Agreement, as amended.

FGT also seeks authority to remove any limitation in the certificate that the natural gas to be transported by FGT be purchased by FPL under a gas purchase contract dated March 12, 1965, with Amoco Production Company (successor in interest to Pan American Petroleum Corporation), Austral Oil Company and other producers, and to specify receipt points to be utilized under the T-3 Agreement as amended, and maximum daily quantities at such receipt points.

Comment date: September 23, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-20364 Filed 9-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-144-001]

ANR Pipeline Co.; Tariff Filing

September 2, 1988.

Take notice that on August 26, 1988, ANR Pipeline Company ("ANR") tendered for filing the following revised tariff sheets to its F.E.R.C. Gas Tariff, Original Volume No. 1, to become effective June 1, 1988:

Substitute First Revised Sheet No. 75
Substitute Second Revised Sheet No. 76
Substitute Second Revised Sheet No. 77
Substitute Second Revised Sheet No. 78
Substitute Second Revised Sheet No. 78A
Substitute Second Revised Sheet No. 79
Substitute Second Revised Sheet No. 80
Substitute Second Revised Sheet No. 80A
Substitute Second Revised Sheet No. 81
Substitute Second Revised Sheet No. 82
Substitute Second Revised Sheet No. 83

ANR states that, as directed by Letter Order of July 29, 1988, ANR is submitting certain tariff language revisions to bring its PGA Clause in compliance with Order Nos. 483 and 483-A.

Copies of the filing have been served upon ANR's customers and interested state Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before Sept. 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-20367 Filed 9-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-1-67-000]

Canyon Creek Compression Co; Proposed Change In FERC Gas Tariff

September 2, 1988.

Take notice that on August 29, 1988, Canyon Creek Compression Company (Canyon) tendered for filing Seventh Revised Sheet No. 4 to be a part of its FERC Gas Tariff, Original Volume No. 1, to be effective October 1, 1988.

Canyon states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Canyon to recover from its customers annual charges assessed it by the Commission pursuant to Part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1988 is .18¢ per Mcf.

Canyon requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet to become effective October 1, 1988.

A copy of the filing is being mailed to Canyon's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-20368 Filed 9-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-235-000 and TM89-1-32-000]

Colorado Interstate Gas Co.; Filing

September 6, 1988.

Take note that on August 29, 1988, Colorado Interstate Gas Company ("CIG") submitted for filing an FERC Annual Charge Adjustment provision pursuant to Order No. 472 issued May 29, 1987, to be effective August 22, 1988.

CIG states Second Substitute Thirty-Fifth Revised Sheet No. 7 and Second Substitute Thirty-Fifth Revised Sheet No. 8 of CIG's Volume No. 1 tariff and Substitute Second Revised Sheet No. 4 of Volume No. 1-A reflect a reduction in CIG's Docket No. RP87-30, base sales "motion rates" of 1¢ per Mcf of demand charges and .10¢ per Mcf of commodity charges and a reduction in its base transportation "motion rates" (maximum rates) of .04¢ per Mcf for commodity charges. CIG states that these amounts are included in the Docket No. RP87-30 motion rates based on CIG's estimate of ACA charges. At the same time, with this filing, CIG has instituted the 0.21¢ per Mcf commodity charge ACA adjustment. Thus, effectively CIG's rates change through this filing (1) by the net difference between the costs included in the base tariff commodity rates and the 0.21¢ ACA charge, and (2) by a decrease of 1¢ per Mcf in the sales demand charges. CIG states that these adjustments, taken together, assure that it will not "double recover" the ACA charges during the period that Docket No. RP87-30 rates are in effect. CIG states that it will continue to argue for recovery of its ACA billing in the Docket RP87-30 proceeding, and such recovery shall be subject to the outcome of this issue in Docket No. RP87-30, and will terminate as of the effective date of these tariff sheets.

Copies of this filing are being served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before September 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-20369 Filed 9-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-2737-006. et al.]

Conoco, Inc., et al; Applications for Certificates, Abandonment of Service and Amendment of Certificates [1]

September 6, 1988.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce, to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 22, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-2737-006, B, Aug. 22, 1988.	Conoco Inc., P.O. Box 2197, Houston, Tx 77252.....	Williams Natural Gas Company, West Panhandle Field, Carson and Gray Counties, Texas and Texas County, Oklahoma.	(1)

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-3894-034, D, Aug. 16, 1988.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, TX 75221.	United Gas Pipe Line Company, West Mustang Island Field, Nueces County, Texas.	(2)
G-4267-000, D, Aug. 15, 1988.	Sohio Petroleum Company, P.O. Box 4587, Houston TX 77210.	Tennessee Gas Pipeline Company, Rachal Field, Brooks County, Texas.	(3)
G-4579-053, D, Aug. 15, 1988.	OXY USA Inc., Box 300, Tulsa, OK 74102	El Paso Natural Gas Company, State "A" Account #3 lease, Section 10-T23S-R36E, Lea County, New Mexico.	(4)
G-11414-003, B, Aug. 2, 1988.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Northern Natural Gas Company, Division of Enron Corp., El Dorado Gas Plant, Scheicher County, Texas.	(5)
CI62-1184-001, D, Aug. 8, 1988.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Arkla Energy Resources, a division of Arkla, Inc., Arkoma Field, Coal, Haskell, Latimer, LeFlore, and Pittsburg Counties, Oklahoma.	(6)
CI64-1053-001, D, Aug. 29, 1988.	Tenneco Oil Company, P.O. Box 2511, Houston, TX 77252.	Arkla Energy Resources, a division of Arkla, Inc., Lonstreet Field, De Soto Parish, Louisiana.	(7)
CI66-701-002, B, Aug. 24, 1988.	Tenneco Oil Company	Tennessee Gas Pipeline Company, Urschell Field, Starr County, Texas.	(8)
CI67-182-003, D, Aug. 22, 1988.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Northern Natural Gas Company, Division of Enron Corp., Gatesby, Gage, Milder, et al. Fields, Ellis County, Oklahoma.	(9)
CI88-502-000, F, Aug. 26, 1988.	Terra Resources, Inc., 5416 South Yale Avenue, P.O. Box 2329, Tulsa, Oklahoma 74101.	Arkla Energy Resources, a division of Arkla, Inc., Lowery #1, Sec. 24-7N-23E, Leflore County, Oklahoma.	(10)
CI88-557-000, (CI8-240), D, Aug. 5, 1988.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Natural Gas Pipeline Company of America, Burton Flat Area, Eddy County, New Mexico.	(11)
CI88-558-000, (CI62-1168), D, Aug. 8, 1988.	Amoco Production Company, P.O. Box 3092, Houston, TX 77253.	Transwestern Pipeline Company, South Kermit Field, Winkler County, Texas.	(12)
CI88-559-000, (G-9393), D, Aug. 8, 1988.	ARCO Oil and Gas Company, Division of Atlantic, Richfield Company.	Williams Natural Gas Company, N.W. Sharon, Rhodes and Hardtner Fields, Barber County, Kansas.	(13)
CI88-571-000, F, Aug. 15, 1988.	Tenneco Oil Company	ANR Pipeline Company, Cedardale NE Field, Woodward County, Oklahoma.	(14)
CI88-573-000, (CI61-1791), E, Aug. 18, 1988.	Mitchell Energy Corporation, 2001 Temberloch Place, P.O. Box 4000, The Woodlands, Texas 77387-4000.	Texas Eastern Transmission Corporation, Acreage in Lavaco County, Texas.	(15)
CI88-575-000, (G-4163), D, Aug. 5, 1988.	Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, CA 94120-7309.	Mississippi River, Transmission Corporation, Woodlawn Field, Harrison County, Texas.	(16)
CI88-576-000 (G-13126), D, Aug. 16, 1988.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Northern Natural Gas Company, Division of Enron Corp., McKinney Field, Clark County, Kansas.	(17)
CI88-577-000 (CI61-498), D, Aug. 16, 1988.	....do	Transwestern Pipeline Company, Kermit and South Kermit Fields, Winkler County, Texas.	(18)
CI88-578-000 (G-3894), D, Aug. 18, 1988.	....do	Transcontinental Gas Pipe Line Corporation, Arneckeville, et al, Fields, DeWitt, et al. counties, Texas.	(19)
CI88-579-000 (G-14569), D, Aug. 18, 1988.	Sohio Petroleum Company	Texas Gas Transmission Corporation, Ramos Field, St. Mary and Assumption Parishes, Louisiana.	(20)
CI88-580-000 (CI76-332), D, Aug. 22, 1988.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	El Paso Natural Gas Company, Parkway West Unit, Eddy County, New Mexico.	(21)
CI88-582-000 (G-4544), D, Aug. 19, 1988.	....do	Transcontinental Gas Pipe Line Corporation, Arneckeville, et al. Fields, DeWitt, et al. Counties, Texas.	(22)
CI88-583-000 (CI64-426), D, Aug. 22, 1988.	....do	El Paso Natural Gas Company, Lancaster Hills Field, Crockett County, Texas.	(23)
CI88-584-000 (CI77-740), D, Aug. 22, 1988.	....do	Northwest Pipeline Corporation, Baxter Pass, South Rio Blanco and Garfield Counties, Colorado.	(18)
CI88-585-000 (CI63-514), D, Aug. 19, 1988.	Sohio Petroleum Company	El Paso Natural Gas Company, North Pembrook Unit, Upton & Reagan Counties, Texas.	(24)
CI88-586-000 (CI66-27), (CI70-981), B, Aug. 22, 1988.	Union Texas Products Corporation, 1330 Post Oak Blvd., Houston, TX 77056.	Panhandle Eastern Pipe Line Company, Chaney Dell Processing Plant, Major County, Oklahoma.	(25)
CI88-587-000 (CI76-226), D, Aug. 22, 1988.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	El Paso Natural Gas Company, Tapacito PC, Balco PC, Rio Arriba County, New Mexico.	(26)
CI88-588-000 (CI74-182), D, Aug. 23, 1988.	....do	Transwestern Pipeline Company, Atoka Field, Eddy County, New Mexico.	(26)
CI88-590-000, B, Aug. 24, 1988.	Tenneco Oil Company	William Basin Interstate Pipeline Company, Pavillion Field, Fremont County, Wyoming.	(27)
CI88-593-000, B, Aug. 25, 1988.	....do	Western Transmission Corporation, Sugar Creek Field, Carbon County, Wyoming.	(28)
CI88-594-000, B, Aug. 25, 1988.	....do	Williston Basin Interstate Pipeline Company, Pavillion Field, Fremont County, Wyoming.	(29)
CI88-595-000 (CI81-510-000), D, Aug. 25, 1988.	Multistate Oil Properties, N.V., P.O. Box 2511, Houston, TX 77001.	Western Gas Interstate Company, Guyman-Hugoton Field, Texas County, Oklahoma.	(30)
CI88-597-000, F, Aug. 29, 1988.	Conoco Inc.	Transcontinental Gas Pipe Line Corporation, Vermillion 39 Field, Offshore Louisiana.	(31)
CI88-598-000, F, Aug. 29, 1988.	Conoco Inc.	Southern Natural Gas Company, Vermillion 39 Field, Offshore Louisiana.	(31)
CI88-599-000 (CI76-363), D, Aug. 26, 1988.	Tenneco Oil Company	Montana-Dakota Utilities Company, Fairview Field, Richland County, Montana.	(32)

[1] Applicant states the J.G. Noel No. 1 well is plugged and abandoned, and the lease has expired.
[2] Effective June 1, 1987, Applicant assigned its interest in certain acreage to Texaco Producing Inc.

[3] By assignment executed September 28, 1972, Applicant assigned leases 412-5610, and 414-5614 thru 412-5619 to Charles S. Beck insofar as rights from surface to 4800'. By assignment executed April 29, 1975, Applicant assigned leases 412-5614 thru 412-5619 to Capital Resources, Inc. insofar as rights from 4800' to 6600'.

[4] Effective September 1, 1987, Applicant assigned its interest in certain acreage to Sun Operating Limited Partnership.

[5] Applicant requests authorization to abandon a sale of residue gas from its plant attributable to gas purchased from Lone Wolf Producing Company. The percentage-of-proceeds contracts with Lone Wolf, which dedicated the Tucker #2, #5 and #7 wells, have expired. Lone Wolf filed for and received authorization to abandon its sale to Applicant in Docket No. CI88-158-000 by Commission Order dated March 25, 1988.

[6] By assignment executed February 27, 1987, Applicant assigned certain acreage to Hondo Oil and Gas Company.

[7] Effective January 1, 1977, Applicant assigned its interest in the Jeff Booten and Cleophus R. Samuels leases to Kalda Company. Applicant also assigned the Charlie Samuels lease to G.R. Goodwill. Four other leases were surrendered by Midstates Oil Corporation prior to Applicant's succession.

[8] By lease release dated September 24, 1982, Applicant released certain acreage back to its lesssor, Conoco Inc. By assignment dated January 1, 1986, Applicant reassigned certain acreage back to Conoco Inc.

[9] By assignments effective January 1, 1987, and May 7, 1987, Applicant assigned certain interests to Amoco Production Company.

[10] Terra Resources, Inc. is filing as successor-in-interest to James C. Meade with respect to interests acquired by assignment effective December 31, 1986.

[11] Applicant previously requested partial abandonment; such application was noticed in the FEDERAL REGISTER on July 28, 1988 (53 FR 28434). Applicant now requests complete abandonment because it has determined that the acreage previously assigned to Hondo Oil and Gas Company covered all of its interest in the property.

[12] By assignment executed March 2, 1987, Applicant assigned certain aceage to Petrus Management Corporation.

[13] By assignment executed February 27, 1987, Applicant assigned certain acreage to Hondo Oil and Gas Company.

[14] Tenneco Oil Company is filing as successor-in-interest to E.H. Unger, Josephine Uri Stowe and Petroleum International, Inc. with respect to the Essie Hensley 1-10 well and Petroleum International, Inc. and KP/Templeton Oil and Gas Income Fund, Ltd.-1983 and KP/Templeton Institutional Oil and Gas Fund, Ltd.-1983 with respect to the Essie Hensley 1-10 and Mackey 1-4 wells.

[15] Mitchell Energy Corporation is filing as total successor to interests previously covered under Union Oill Company of California FERC Gas Rate Schedule No. 139 and the related certificate in Docket No. CI61-1791.

[16] By assignment executed June 29, 1988, effective July 1, 1988, Applicant assigned its interest under its FERC Gas Rate Schedule No. 216 to TIPCO Operating Company, Inc.

[17] By order issued September 21, 1987, Applicant's certificate was amended to permit deletion of acreage assigned to Hondo Oil and Gas Company. Applicant now requests complete abandonment because it has determined that the acreage previously assigned to Hondo covered all of Applicant's interest in the property.

[18] By order issued September 10, 1987, Applicant's certificate was amended to permit deletion of acreage assigned to Hondo Oil and Gas Company. Applicant now requests complete abandonment because it has determined that the acreage previously assigned to Hondo covered all of Applicant's interest in the property.

[19] By assignment dated December 11, 1985, Applicant assigned certain interest to Sue-Ann Oil & Gas Company. By assignment dated January 16, 1986, Applicant assigned certain interests to William Herbert Hunt Trust Estate. Effective May 1, 1986, Applicant assigned its interest in certain acreage to Petrus Oil Company. The remaining properties have been released or surrendered or have ceased to produce.

[20] Effective May 1, 1988, Applicant assigned certain interests to Black Gold Production Company. Effective March 1, 1988, Applicant assigned certain interests to Devon Energy Corporation. The remaining two wells under the contract have been plugged and abandoned.

[21] By assignment effective January 1, 1987, Applicant assigned certain acreage to Hondo Oil and Gas Company.

[22] By assignment dated December 11, 1985, January 16, 1986, and October 1, 1986, Applicant assigned certain interests to Sue-Ann Oil & Gas Compny, William Herbert Hunt Trust Estate and Petrus Oil Company, respectively. All other properties have been released, surrendered or have ceased to produce.

[23] On July 7, 1988, Applicant requested partial deletion of its sale to El Paso due to the acreage being assigned to Hondo Oil and Gas Company; that application is being reported separately. Here, Applicant requests complete abandonment since it has determined that the acreage assigned to Hondo covered all of Applicant's interest in the property.

[24] By assignment dated and effective May 1, 1988, Applicant assigned certain interests to Cass Oil Company.

[25] Applicant states that Panhandle has reduced substantially its takes of gas resulting in an outstanding imbalance of 2.5 Bcf of gas that Applicant is obligated to deliver to Panhandle. Applicant requests a permanent abandonment of sales to Panhandle and authorization to abandon the imbalance owed to Panhandle. The contract is due to expire on February 1, 1996.

[26] By assignment effective January 1, 1987, Applicant assigned certain acreage to Hondo Oil & Gas Company.

[27] The property was shut-in October 2, 1978, and plugged and abandoned in 1980. The leases were released.

[28] All acreage was either sold or released back to land owner.

[29] The property was plugged and abandoned on October 15, 1980, and the lease(s) surrendered to land owner on May 14, 1981.

[30] Applicant assigned all interest under its FERC Gas Rate Schedule No. 44 to Maple Properties Corporation effective December 1, 1986.

[31] Effective January 1, 1988, Conoco Inc. acquired interests previously held by Shell Offshore, Inc. in Vermillion Blocks 21 and 22.

[32] By assignment executed February 23, 1982, Applicant assigned certain acreage to Consolidated Oil & Gas Company.

Filing Code

A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 88-20365 Filed 9-7-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-148-001, 002]

Equitrans, Inc.; Proposed Changes in FERC Gas Tariff

September 2, 1988.

Take notice that Equitrans, Inc. ("Equitrans") on August 29, 1988, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, an original and six copies each of the following tariff sheets:

Substitute First Revised Sheet No. 172
Substitute First Revised Sheet No. 173
Substitute First Revised Sheet No. 174
Substitute First Revised Sheet No. 175
Substitute First Revised Sheet No. 176
Substitute First Revised Sheet No. 177
Original Sheet No. 177A
Original Sheet No. 177B
Original Sheet No. 177C

Equitrans states the purpose of this filing is to make revisions to Equitrans' May 4, 1988 tariff filing in Docket No. RP88-148-000 as required by the Commission's July 21, 1988 Letter Order.

The proposed effective date of the tariff sheets listed above is June 1, 1988, the effective date of the initial tariff sheets filed in this proceeding.

Copies of the filing were served on Equitrans' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-20370 Filed 9-7-88; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM89-1-65-000]

Jupiter Energy Corp.; Proposed Changes in FERC Gas Tariff

September 2, 1988

Take notice that Jupiter Energy Corporation ("Jupiter Energy" or the "Company") on August 26, 1988 tendered for filing the following sheets of its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet No. 4A
First Revised Sheet No. 5A
First Revised Sheet No. 6A

Jupiter Energy states that the filed tariff sheets reflect revision, pursuant to § 154.38(d)(6) of the Commission's regulations, of Jupiter Energy's Annual Charge Adjustment surcharge to recover

during the Commission's upcoming fiscal year the $20,578 Jupiter Energy payment of the Commission's annual charges billing. The new ACA surcharge rate is 0.187¢ per Mcf.

Jupiter Energy proposes an effective date of October 1, 1988.

Jupiter Energy states that copies of the filing have been served on the Company's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Jupiter Energy's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-20371 Filed 9-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-153-001]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

September 2, 1988

Take notice that K N Energy, Inc., on August 30, 1988 tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1 pursuant to Order No. 483 and 483-A to be effective June 1, 1988. The filing proposes changes in K N's FERC Gas Tariff to make certain changes to K N's PGA clause as directed by a Letter Order dated July 21, 1988 from the Director, Office Pipeline and Producer Regulation.

Copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-20372 Filed 9-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-1-37-000]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

September 6, 1988.

Take notice that on August 26, 1988, Northwest Pipeline Corporation ("Northwest"), submitted for filing, to be a part of its FERC Gas Tariff, the following tariff sheets:

First Revised Volume No. 1

Forty-Second Revised Sheet No. 10
Twenty-Fourth Revised Sheet No. 10-A

Original Volume No. 2

Sixth Revised Sheet No. 2.3

Original Volume No. 1-A

Fifteenth Revised Sheet No. 201

Northwest states the tariff sheets are filed for the purpose of changing the stated ACA surcharge. The Commission decreased the annual charge factor from .21 cents per Mcf to .18 cents per Mcf effective October 1, 1988. The ACA surcharge unit equates to .17 cents per MMBtu based on 1,030 Btu per cubic foot of gas and is to be applied to the appropriate sales and transportation rate schedules.

Northwest requests an effective date of October 1, 1988.

A copy of this filing has been mailed to all jurisdictional customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-20373 Filed 9-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM-1-64-000]

Pacific Interstate Offshore Co.; Change in Sales Rates

September 6, 1988.

Take notice that on August 26, 1988, Pacific Interstate Offshore Company ("PIOC") submitted for filing, to be a part of its FERS Gas Tariff, Original Volume No. 1, the following tariff sheet:

Original Volume No. 1

Eighth Revised Sheet No. 4

PIOC states the purpose of this filing is to set forth the applicable Annual Charge Adjustment (ACA) surcharge in its sales rate schedule as provided by Order No. 472. PIOC requests an effective date of October 1, 1988.

A copy of this filing has been served on PIOC's sole customer, Southern California Gas Company and the Public Utilites Commission of the State of California.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-20374 Filed 9-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-240-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

September 2, 1988.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on August 29, 1988, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1:

Original Sheet No. 3–C.7
Original Sheet No. 3–C.8
Original Sheet No. 3–C.9
Original Sheet No. 43–14

Panhandle proposed a September 28, 1988 effective date.

Panhandle states that the foregoing tariff sheets are being filed pursuant to Order No. 500 to recover take-or-pay settlement and contract reformation cost fixed surcharges which its pipeline supplier, Trunkline Gas Company billed to Panhandle. As a downstream pipeline, Panhandle proposes to recover such costs on an as-billed basis, pursuant to § 2.104(e) of the Commission's General Policy and Interpretations. For fixed costs billed to Panhandle by its pipeline supplier, Panhandle will allocate such costs to its customers utilizing the same deficiency-based formula which its pipeline supplier utilized in allocating its fixed-charge or take-or-pay settlement and contract reformation costs to Panhandle.

Copies of the filing were served upon Panhandle's jurisdictional customers and interested state commissions.

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, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 13, 1988. 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Panhandle's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–20375 Filed 9–7–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP86–94–010]

Sea Robin Pipeline Co.; Compliance Tariff Filing

September 6, 1988.

Take notice that on August 29, 1988, Sea Robin Pipeline Company (Sea Robin) submitted Substitute Revised Fourth Revised Sheet No. 4–2A as part of Sea Robin's FERC Gas Tariff, Original Volume No. 1, in compliance with the Letter Order dated August 18, 1988.

Sea Robin states the new tariff sheet provides that Sea Robin's Authorized Overrun Rate for Rate Schedule FTS is equal to the maximum rate charged for interruptible open access transportation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests should be filed on or before September 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–20376 Filed 9–7–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP88–96–006 and RP88–210–002]

Southern Natural Gas Co.; Proposed Changes In FERC Gas Tariff

September 6, 1988.

Take notice that on August 29, 1988, Southern Natural Gas Company (Southern) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, as listed in Appendix A (attached to the filing). The proposed tariff sheets are to have respective dates of June 1, 1988, August 1, 1988, and September 1, 1988, as specified in Appendix A.

Southern states that the proposed tariff sheets are being submitted in compliance with the Commission's orders of July 29, 1988 in Docket No. RP88–210–000 and August 1, 1988 in Docket No. RP88–96–000, relative to Southern's two Order No. 500 cost recovery proceedings. Southern states that the proposed tariff sheets reflect among other things, a revised volumetric surcharge based on utilization of the throughput volumes underlying Southern's most recent approved rates; revised fixed charges based on an adjustment of the purchase deficiency of Chattanooga Gas Company and the consequent reallocation of costs to all customers; and a number of changes in the provisions of Southern's tariff relating to the passthrough of buy-out and buy-down costs incurred by Southern.

Southern states that copies of the filing were mailed to all of Southern's jurisdictional purchasers, shippers, and interested state commissions as well as the parties to these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before September 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–20377 Filed 9–7–88; 8:45 a.m.]

BILLING CODE 6717–01–M

[Docket No. RP88–17–015]

Southern Natural Gas Co.; Changes in FERC Gas Tariff

September 6, 1988.

Take notice that on August 26, 1988, Southern Natural Gas Company (Southern) tendered for filing the following tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective November 1, 1988:

Eleventh Revised Sheet No. 40
Seventh Revised Sheet No. 40B
Original Sheet No. 40B.1
Second Revised Sheet Nos. 45R.13–45R.15

Southern states that the filing is in compliance with Part 154 of the Federal Energy Regulatory Commission's (Commission) Regulations and the Commission's Order on Certified Questions dated May 27, 1988, and Order Denying Rehearing and Granting in Part and Denying in Part Clarification dated July 27, 1988.

Southern states that copies of the filing were mailed to all of Southern's jurisdictional purchasers, shippers, and interested state commissions, as well as the parties listed on the Commission's official service list compiled in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 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 September 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-20378 Filed 9-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-1-69-000]

Stingray Pipeline Co.; Change in Tariff

September 2, 1988.

Take notice that on August 29, 1988, Stingray Pipeline Company (Stingray) tendered for filing Sixteenth Revised Sheet No. 4 to its FERC Gas Tariff, Original Volume No. 1.

The proposed effective date of this revised tariff sheet is October 1, 1988.

On June 30, 1988, the Commission issued a revision to the unit rate of the Annual Charge Adjustment Clause (ACA) to be applied to rates for recovery of 1988 Annual Charges pursuant to Order No. 472 in Docket No. RM87-3-000. This revision will permit Stingray Pipeline Company (Stingray) to collect 1.8 mills per Mcf (0.17¢ per Dt) of natural gas transported for the 1988 Annual Charges assessed Stingray by the Commission under Part 382 of the Commission's Regulations.

To the extent required, if any, Stingray requests that the Commission grant such waivers as may be necessary for acceptance of the tariff sheet submitted herewith, to become effective October 1, 1988, as previously described.

Copies of this letter and enclosure are being served on all customers subject to the tariff sheet.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-20379 Filed 9-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-234-000]

Texas Gas Pipe Line Corp.; Petition For Waiver of Electronic Media Filing Requirements

September 1, 1988.

Take notice that on August 29, 1988 Texas Gas Pipe Line Corporation (TGPL) filed a petition for waiver of the electronic media filing requirements of Order No. 493 when filing tariff sheets, certain rate filings, certificate and abandonment applications, blanket certificate applications, FERC forms, and any other information required to be filed on electronic media.

TGPL states that it does not have the computer capability necessary to comply with the Commission's new electronic media requirements under § 385.2011. TGPL states that given its small system size and small volume of gas purchases, the acquisition, lease purchase and/or contracting of the data processing technology which would be necessary to comply with the provisions of § 385.2011 would cause TGPL severe economic hardship and be financially impractical.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before September 12, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-20366 Filed 9-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-1-68-000]

Trailblazer Pipeline Co.; Proposed Change In FERC Gas Tariff

September 6, 1988.

Take notice that on August 29, 1988, Trailblazer Pipeline Company (Trailblazer) tendered for filing Sixth Revised Sheet No. 4 to be a part of its FERC Gas Tariff tariff, Original Volume No. 1, to be effective October 1, 1988.

Trailblazer states that the purpose of the filing is to implement the Annual Charges Adjustment (ACA) charge necessary for Trailblazer to recover from its customers annual charges assessed it by the Commission pursuant to Part 382 of the Commission's Regulations. The rate authorized by the Commission to be effective October 1, 1988 is .18¢ per Mcf.

Trailblazer requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet to become effective October 1, 1988.

A copy of the filing is being mailed to Trailblazer's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 13, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-20380 Filed 9-7-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM88-2-29-000]

Trancontinental Gas Pipe Line Corp.; Proposed Changes In FERC Gas Tariff

September 1, 1988.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on August 26, 1988 certain revised tariff sheets included in Appendix A attached to the filing. The purpose of this filing is to track, pursuant to Section 4 of Transco's LSS Rate Schedule and section 26 of the General Terms and Conditions of

Volume No. 1 of Transco's tariff, rate changes in storage services purchased from Penn-York Energy Corporation (Penn-York) and Texas Eastern Transmission Corporation (TETCO) which are included in Transco's Rate Schedules LSS and S–2, respectively.

Transco states that as a result of the Stipulation and Agreement in Docket No. RP87–78, approved by Commission Order dated June 23, 1988, Penn-York modified its SS–1 storage rate design and revised its rates effective January 1, 1988. In addition, on June 1, 1988, Penn-York revised its SS–1 rates to reflect a change in customer service levels pursuant to the Agreement and the Commission Order dated May 16, 1988 in Docket No. CP 88–258. Transco's proposed tariff sheets track these changes in its Rate Schedule LSS rates effective January 1, 1988 and June 1, 1988.

Transco states that TETCO filed in Docket TQ88–2–17 its PGA which included an electric power adjustment effective August 1, 1988. Included therein was a decrease in TETCO's demand charge under Rate Schedule X–28 which service is utilized by Transco to render service under Rate Schedule S–2. Transco's proposed tariff sheet effective August 1, 1988 reflects the resulting rate reduction in its Rate Schedule S–2 demand charges.

Transco states that also filed are revised tariff sheets proposed to be effective February 1, 1988, April 22, 1988 and May 1, 1988. Such sheets incorporate the revised Rate Schedule LSS rates filed herein to be effective January 1, 1988 into tariff sheets which have been accepted and made effective by the Commission subsequent to January 1, 1988.

Transco states that copies of the filing are being mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before Sept. 12, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–20381 Filed 9–7–88; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2785–005]

Wolverine Power Corp.; Disposing of Pleading

September 1, 1988.

On July 8, 1988, the City of Midland, Michigan, appealed staff action [1] denying its late motion to intervene and for extension of time in which to file an appeal of the December 1, 1987 order issuing a license to Wolverine Power Corporation (Wolverine) for the Sanford Water Project No. 2785.[2] The order requires a change in the operation of the project from a peaking to a run-of-the-river mode of operation. Wolverine also filed an appeal of the license order on the issue of change in operation. The Commission has stayed those portions of the license order pertaining to the change in operation pending action on Wolverine's appeal.

Midland contends on appeal that it did not receive written notice of the application from the Commission, as required by section 4(e) of the Federal Power Act (FPA), 16 U.S.C. 797(e).[3] Review of Commission records indicates that Midland and certain other municipalities were not provided with the written notice required by section 4(e) of the FPA. Accordingly, by letter dated September 1, 1988, Midland and the other municipalities were provided with a copy of the original public notice issued regarding the application for Project No. 2785 and given 60 days in which to respond to the notice, including filing motions to intervene.

Given the cirumstances of this case, the 30-day limit on the filing of appeals [4] should be waived. Midland is therefore granted an extension until the expiration of the 60-day period specified in the letter transmitting the notice to it in which to file an appeal of the December 1, 1987 order issuing a license to Wolverine for Project No. 2785. In light of the above, Midland's July 8, 1988 appeal is moot and is dismissed.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–20382 Filed 9–7–88; 8:45 am]

BILLING CODE 6717–01–M

[1] Notice Denying Later Interventions and Extensions of Time, June 9, 1988 (unreported).

[2] Wolverine Power Company, 41 FERC ¶62,192 (1987). The project is located on the Tittabawasee River in Midland County, Michigan.

[3] This section provides that notice of a license application is to be provided, in writing, to any state or municipality likely to be interested in or affected by such application.

[4] 18 CFR 385.1902(b) (1988).

Office of Hearings and Appeals

Extension of Filing Deadline in Special Refund Proceeding No. HEF–0591

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of extension of time for filing applications for refund in special refund proceeding HEF–0591.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy hereby officially extends the deadline for Applications for Refund from the escrow account established pursuant to a consent order entered into between the DOE and the Atlantic Richfield Company (ARCO). *Special Refund Proceeding No. HEF–0591.* The previous deadline was August 31, 1988. The new deadline is May 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Paul, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–3054.

SUPPLEMENTARY INFORMATION: On January 28, 1988, the Office of Hearings and Appeals of the Department of Energy (DOE) issued an Order Implementing Special Refund Proceedings, Case No. HEF–0591, in order to distribute the monies in the escrow account established in accordance with the terms of a Consent Order entered into by the DOE and the Atlantic Richfield Company (ARCO). *See Atlantic Richfield Co.,* 17 DOE ¶85,069 (1988), 53 FR 3254 (February 4, 1988). Pursuant to that Order, all Applications for Refund in the ARCO proceeding had to be filed no later than August 31, 1988. That date is hereby extended to May 1, 1989. Therefore, all Applications for Refund from the ARCO Consent Order fund must be postmarked by May 1, 1989.

Dated: August 31, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 88–20425 Filed 9–7–88; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in disbursing to adversely affected parties $1,500,000 (plus accrued interest) obtained by the DOE under the terms of a consent order entered into with Carlson Companies, Inc. and Ferrell Companies, Inc., owners of Indian Wells Oil Company. The funds are being held in escrow following the settlement of claims and disputes arising from an Economic Regulatory Administration audit of Indian Wells' records. Indian Wells was a refiner and natural gas processor and engaged in the extraction, fractionation and sale of natural gas liquids and natual gas liquid products.

DATE AND ADDRESS: Comments must be filed on or before October 11, 1988, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a reference to case number KEF–0103.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director *or* Laurie Breslin, Staff Analyst, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2860 (Dugan), (202) 586–4921 (Breslin).

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order tentatively establishes procedures to distribute to eligible claimants $1,500,000, plus accrued interest, obtained by the DOE under the terms of a consent order entered into with Carlson Companies, Inc. (Carlson) and Ferrell Companies, Inc. (Ferrell) on November 30, 1987. The funds were paid by Carlson and Ferrell to settle all claims and disputes between Carlson, Ferrell and the DOE regarding the manner in which Indian Wells Oil Company, a refiner and natural gas processor applied the federal price regulations with respect to its sales of natural gas liquids (NGLs) and natural gas liquid products (NGLPs) during the period September 1, 1973 through January 31, 1976 (consent order period).

The DOE has tentatively determined that the consent order funds should be distributed to identifiable purchasers of Indian Wells that purchased NGLS and NGLPs during the consent order period. However, Applications for Refund should *not* be filed at this time. Appropriate public notice will be provided prior to the acceptance of claims.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments should be submitted by Octoer 11, 1988, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, 1000 Independence Avenue, SW, Washington, DC between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays.

Dated: September 1, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order; Implementation of Special Refund Procedures

Name of Firm: Indian Wells Oil Company.

Date of Filing: February 12, 1988.

Case Number: KEF–0103.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures for making refunds to remedy the effects of alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. On February 12, 1988, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a Consent Order entered into by the DOE and Carlson Companies, Inc. (Carlson) and Ferrell Companies, Inc. (Ferrell), owners of Indian Wells Oil Company (Indian Wells).

I. Background

Indian Wells was a "refiner" (as defined in 6 CFR 150.352 and 10 CFR 212.31) and "natural gas processor" (as defined in 10 CFR 212.162) and its sales were subject to DOE price regulations. During the period covered by the Consent Order, Indian Wells engaged in the extraction, fractionation and sale of natural gas liquids (NGLs) and natural gas liquid products (NGLPs). An ERA audit of Indian Wells' records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subparts E and K, in specified transactions during the period from September 1, 1973 through September 1, 1976 (the audit period).[1] Consequently, the ERA issued a Proposed Remedial Order (PRO) to Indian Wells on June 4, 1982, alleging pricing violations in the sale of natural gas liquids and natural gas liquid products (propane, butane, and natural gasoline) during the audit period. After considering and rejecting the firm's objections to the PRO, the DOE issued a final Remedial Order on December 3, 1986. *Indian Wells Oil Co.*, 15 DOE ¶ 83,010 (1986). In order to settle all claims and disputes between Carlson, Ferrell, Indian Wells, and the DOE regarding the firm's compliance with the Mandatory Petroleum Price and Allocation Regulations during the period September 1, 1973 through January 31, 1976 (the consent order period),[2] Carlson and Ferrell and the DOE entered into a Consent Order on November 30, 1987. The Consent Order refers to the ERA's allegations of regulatory violations. It also includes Carlson's and Ferrell's denials that any such violations occurred or that Carlson or Ferrell were responsible for the activities of Indian Wells.

Under the terms of the Consent Order, Carlson and Ferrell were each required to deposit $750,000 into an interest-bearing escrow account maintained by the Department of the Treasury for ultimate distribution by the DOE. The consent order monies ($1,500,000) were paid in full on December 30, 1987, and deposited into a subaccount in the name of Indian Wells Oil Company. As of July 31, 1988, the Indian Wells consent order fund has earned $56,013.06 in interest. This Decision concerns the distribution of the funds in the Indian Wells escrow account.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. It is DOE policy to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to

[1] These alleged violations were committed by Indian Wells Operating Company (IWOPCO) and Kathol Petroleum, Inc. (Kathol) (the former owner of IWOPCO), the predecessors-in-interest of Indian Wells.

[2] The Consent Order period is shorter than the audit period since the overcharges alleged by the ERA occurred during the September 1973 through January 1976 period only.

distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). After reviewing the record in the present case, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the settlement fund. We therefore propose to grant the ERA's petition and assume jurisdiction over distribution of the fund.

III. Proposed Refund Procedures

Our experience with Subpart V cases leads us to believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will provide refunds to identifiable purchasers of Indian Wells products who have been injured by Indian Wells' pricing practices. Any funds remaining after all meritorious first-stage claims have been paid will be distributed in accordance with the Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C.A. 4501–4507, *reprinted in* Fed. Energy Guidelines ¶ 11,703.

A. Refund Claimants

Insofar as possible, the settlement amount of $1,500,000 plus accrued interest will be distrubted to those Indian Wells customers who were injured by Indian Wells' pricing practices during the period September 1, 1973 through January 31, 1976. A list of the firm's customers during the audit period, together with a schedule of the amounts they were allegedly overcharged, was attached to the June 4, 1982 PRO. The customers on that list, whose names are set forth in the Appendix to this Proposed Decision and Order, all purchased directly from Indian Wells during the consent order period and are potential refund claimants from whom we propose to accept refund applications.[3] We propose to accept refund applications both from the firms listed in the Appendix and from any of their customers that made indirect purchases of Indian Wells NGLs and NGLPs during the consent order period.

1. Showing of Injury

As an initial matter, each claimant will be required to document that it purchased Indian Wells' MGLs and NGLPs on a regular basis during the consent order period. We propose to require a reseller applicant (including retailers and refiners) to show that at the time it purchased Indian Wells' products, market conditions would not permit it to increase its prices to pass through to its customers the additional cost associated with the overcharges. *See National Helium Corp./Atlantic Richfield Co.*, 11 DOE ¶ 85,257 (1984), *aff'd sub nom. Atlantic Richfield Co. v. DOE*, 618 F. Supp. 1199 (D Del. 1985); *Palo Pinto Oil & Gas/Gulf Oil Corp.*, 10 DOE ¶ 85,049 (1983). In order to demonstrate that it did not subsequently recover the increased costs associated with Indian Wells' alleged overcharges by raising its prices, a reseller will also have to show that it had a bank of unrecovered increased costs. We realize that some applicants may be unable to provide actual cost bank records for the consent order period. We therefore are willing to accept information establishing with reasonable likelihood that a claimant had banks. *Seminole Refining Inc.*, 12 DOE ¶ 85,188 (1985); *Bayou State Oil Corp.*, 12 DOE ¶ 85,197 (1985). The maintenace of a bank does not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982).

2. Small Claims Presumption

We also propose to adopt the small claims presumption of injury that has been used in many previous special refund cases. We recognize that making a detailed showing of injury may be too complicated and burdensome for some resellers. For example, such firms may have limited accounting and data-retrieval capabilities and therefore may be unable to produce the records necessary to prove either the existence of banks of unrecovered costs, or that they did not pass the alleged overchanges on to their own customers. We also are concerned that the cost to the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of injury not exceed the amount of the refund. *See e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). We propose to adopt such a procedure in this case. Therefore, we propose that any reseller applicant who wishes to limit its refund claim to $5,000 or less, need document only its purchase volumes rather than make a detailed showing of injury in order to be eligible to receive a refund.

3. End-Users

As in many other refund proceedings, we are making a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges covered by the Indian Wells settlement agreement. Unlike regulated firms in the petroleum industry, members of this group were generally not subject to price controls during the audit period, and were not required to keep records which justified selling price increases by reference to cost increases. *See, Marion Corporation*, 12 DOE ¶ 85,014 (1984) at 88,030; *Thornton Oil Corp.*, 12 DOE ¶ 85,112 (1984). We therefore propose that end-users of Indian Wells products need document only their purchase volumes to make a sufficient showing that they were injured by the alleged overcharges.[4]

4. Indirect Purchasers

We propose that firms which made indirect purchases of Indian Wells NGLs and NGLPs during the consent order period from any of the firms listed in the Appendix may also apply for refunds. If an applicant did not purchase directly from Indian Wells but believes that products it purchased from one of the firms listed in the Appendix originated with Indian Wells, the applicant must establish its basis for that belief and identify the reseller from whom the products were purchased. Indirect purchasers who either fall within a class of applicant whose injury is presumed, or who can prove injury, may be eligible

[3] Both Ferrell and Propose Industrial Inc. (PII), one of the Indian Wells customers on the list, are wholly-owned subsidiaries of Ferrell Companies, Inc.-Kansas (Ferrell-Kansas). Accordingly, if PII were to receive a refund, the funds would go to Ferrell's corporate parent. This would effectively return to Ferrell and James T. Ferrell, who owns 80 per cent of Ferrell-Kansas, funds that Ferrell paid to the DOE in order to settle the enforcement proceeding arising out of Indian Wells' alleged violations of the DOE regulations. This result is clearly unreasonable and does not comport with the goal of Subpart V refund proceedings, which is to provide restitution to injured persons. 10 CFR 205.280. Accordingly, we propose that PII not be eligible to receive a refund in this proceeding. *See, e.g., Marathon Petroleum Co./EMRO Propane Co.*, 15 DOE ¶ 85,288 (1987); *Warren Holding co./Puritan Oil Co.*, 13 DOE ¶ 85,337 (1985); *Bayside Fuel Oil Depot Corp.*, 13 DOE ¶ 85,139 at 88,361–82 (1985). However, customers of PII who made indirect purchases of Indian Wells NGLs and NGLPs through PII during the consent order period may apply for refunds.

[4] One of the identified firms, Farmland Industries, is a cooperative association whose profits are distributed to its customers by means of "patronage dividends." Thus, although Farmland Industries is also a reseller, its Application will be treated as an end-users application with respect to sales to its members. In addition to submitting documentation of its purchase volumes and specifying what portion of those volumes was resold to its members, Farmland Industries must certify that it will pass any refund received through to its member-customers and provide us with a full explanation of how it plans to accomplish the restitution. The firm must also certify that it will notify its membership group of its receipt of the refund. With respect to sales to non-members, Farmland Industries will be treated in the same manner as sales by other resellers. *See Marathon Petroleum Co.*, 14 DOE ¶ 85,269 (1986).

for a refund if the reseller of Indian Wells' products passed through Indian Wells' alleged overcharges to its own customers.[5] *See Dorchester Gas Corp.* 14 DOE ¶ 85,240 at 88,451–52 (1986).

5. Spot Purchasers.

We also are adopting the rebuttable presumption that a refiner, reseller, or retailer who made only spot purchases from Indian Wells did not suffer injury as a result of those purchases.[6] Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases from Indian Wells. In prior proceedings we have stated that refunds will be approved for spot purchasers who demonstrate that: (i) They made the spot purchases for the purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases, and (ii) they were forced by market conditions to resell the product at a loss that they did not subsequently recoup. *See Quaker State Oil Refining Corp./Certified Gasoline Co.*, 14 DOE ¶ 85,465 (1986).

B. Calculation of Refund Amount

As indicated above, the schedule of Indian Wells' customers attached to the June 4, 1982 PRO lists the firm's purchasers during the audit period and the amount by which each was allegedly overcharged. We propose to use this information in order to calculate each identified customer's potential refund. Since the settlement amount differs from the total overcharge amount alleged in the PRO, we have multiplied each customers' percentage of the total alleged overcharge amount by the settlement amount. The potential refund amounts derived from these calculations are set forth in the Appendix to this Decision. In addition, successful applicants will receive a pro rata share of the interest which has accrued since the deposit of the funds into the escrow account.

[5] An indirect purchaser will receive a pro rata share of the direct purchaser's potential refund amount after the deduction of any refund granted to the direct purchaser.

[6] As we have previously stated, spot purchasers tend to have considerable discretion as to the timing of purchases and the market in which to make purchases and therefore would not have made spot market purchases from a firm at increased prices unless they were able to pass through the full amount of the firm's selling price to their own customers. *See Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396–97 (1981).

IV. Conclusion

Refund applications in this proceeding should not be filed until issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in that final Decision. Before distributing any of the Indian Wells consent order fund, we intend to publicize the distribution process and to provide an opportunity for any affected party to file a claim. In addition to publishing copies of the proposed and final decisions in the Federal Register, we will provide copies to the Indian Wells customers whose names are listed in the Appendix.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Carlson Companies, Inc. and Ferrell Companies, Inc., owners of Indian Wells Oil Company pursuant to the Consent Order executed on November 30, 1987, will be distributed in accordance with the foregoing decision.

APPENDIX

Identified purchasers	Potential refund
Bueling, Groebner Associates	$14,165
Farmland Industries, Inc	160,157
Gates Lear Jet	5,010
Permian Petroleum	63,922
Petroleum Products	24,181
T&T Gas Products	221,630
Union Texas Petroleum	63,595
Propane Industrial, Inc. (PII)*	947,340
Total	1,500,000

*See footnote 3 in text.

[FR Doc. 88–20426 Filed 9–7–88; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3444–5]

National Drinking Water Advisory Council; Open Meeting

Under section 10(a)(2) of Pub. L. 92–423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*), will be held on September 23, 1988 from 1:00 p.m. until 3:00 p.m. in Room #13, Conference Center, U.S. Environmental Protection Agency (EPA) Headquarters, 401 M Street SW., Washington, DC. Council members will be participating by Conference Call.

The purpose of the meeting is to prepare recommendations for the Administrator of EPA on the Agency's Proposed Primary Enforcement Responsibility Regulation published in the August 2, 1988, **Federal Register** and the Proposed Drinking Water Regulations; Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for Lead and Copper published in the August 18, 1988, **Federal Register.**

(Note: Public Hearings are scheduled on the Proposed Drinking Water Regulations for Lead and Copper Rule on September 28 and 29, 1988 in Washington, DC; October 3 and 4, 1988 in Chicago, IL; and October 6 and 7, 1988 in Seattle, WA. See August 18 Notice for further details.)

This meeting will be open to the public. The Council encourages the hearing of outside statements and will allocate the first hour of their conference call for this purpose. Oral statements will be limited to five minutes and it is preferred that only one person present the statement. Any outside parties interested in presenting an oral statement should petition the Council by telephone at (202) 382–2285 before September 19, 1988.

Any person who wishes to file a written statement can do so before or after a Council meeting. Accepted written statements will be recognized at the Council meeting and will become part of the permanent meeting record.

Any member of the public that would like to attend the Council meeting, present an oral statement, or submit a written statement, should contact Ms. Charlene Shaw, Executive Secretary, National Drinking Water Advisory Council, Office of Drinking Water (WH–550), 401 M Street, SW., Washington, DC 20460.

The telephone number is Area Code (202) 382–2285.

Dated: September 2, 1988.

James M. Conlon,

Acting Assistant Administrator for Water.

[FR Doc. 88–20494 Filed 9–7–88; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

American Banc Savings Association, Dallas TX; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for

American Banc Savings Association, Dallas, Texas on August 18, 1988.

Dated: September 1, 1988.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-20433 Filed 9-7-88; 8:45 am]

BILLING CODE 6720-01-M

Commerce Federal Savings and Loan Association, Commerce, TX; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Commerce Federal Savings and Loan Association, Commerce, Texas on August 18, 1988.

Dated: September 1, 1988.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-20434 Filed 9-7-88; 8:45 am]

BILLING CODE 6720-01-M

Commerce Federal Savings Bank, Knoxville, TN; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Commerce Federal Savings Bank, Knoxville, Tennessee, on August 19, 1988.

Dated: September 2, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-20435 Filed 9-7-88; 8:45 am]

BILLING CODE 6720-01-M

Federated Savings and Loan Association, Brady, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Commerce Federal Savings and Loan Association, Brady, Texas on August 19, 1988.

Dated: September 2, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-20436 Filed 9-7-88; 8:45 am]

BILLING CODE 6720-01-M

First City Savings Association, Irving, TX; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for First City Savings Association, Irving, Texas, on August 19, 1988.

Dated: September 2, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-20437 Filed 9-7-88; 8:45 am]

BILLING CODE 6720-01-M

Gladewater Federal Savings and Loan Association, Gladewater, TX; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Gladewater Federal Savings and Loan Association, Gladewater, Texas on August 18, 1988.

Dated: September 1, 1988.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-20438 Filed 9-7-88; 8:45 am]

BILLING CODE 6720-01-M

Independent American Savings Association, a Federal Savings and Loan Association, Irving, TX; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in Section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Independent American Savings Association, a Federal Savings and Loan Association, Irving, Texas on August 19, 1988.

Dated: September 2, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-20439 Filed 9-7-88; 8:45 am]

BILLING CODE 6720-01-M

Irving Savings Association, Irving, TX; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in Section 406(c)(1)(B) of National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Irving Savings Association, Irving, Texas on August 18, 1988.

Dated: September 1, 1988.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-20440 Filed 9-7-88; 8:45 am]

BILLING CODE 6720-01-M

Longview Savings and Loan Association, Longview, TX; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B) of National Home Act as amended, 12 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Longview Savings and Loan Association, Longview, Texas on August 18, 1988.

Dated: September 1, 1988.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-20441 Filed 9-7-88; 8:45 am]

BILLING CODE 6720-01-M

Majestic Savings Association, McKinney, TX; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in Section 409(c)(1)(B) of the National Home Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Majestic Savings Association, McKinney, Texas on August 18, 1988.

Dated: September 1, 1988.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-20442 Filed 9-7-88; 8:45 am]

BILLING CODE 6720-01-M

MultiBanc Savings Association, Alice, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for MultiBanc Savings Association, Alice, Texas on August 19, 1988.

Dated: September 2, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-20443 Filed 9-7-88; 8:45 am]

BILLING CODE 6720-01-M

Paris Savings and Loan Association, Paris, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Paris Savings and Loan Association, Paris, Texas on August 18, 1988.

Dated: September 1, 1988.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-20444 Filed 9-7-88; 8:45 am]

BILLING CODE 6720-01-M

Richardson Savings and Loan Association, Dallas, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Richardson Savings and Association, Dallas, Texas on August 18, 1988.

Dated: September 1, 1988.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-20445 Filed 9-7-88; 8:45 am]

BILLING CODE 6720-01-M

Skyline Savings Association, Dallas, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Skyline Savings Association, Dallas, Texas on August 18, 1988.

Dated: September 1, 1988.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-20446 Filed 9-7-88; 8:45 am]

BILLING CODE 6720-01-M

Southland Savings Association, Longview, TX; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Southland Savings Association, Longview, Texas on August 18, 1988.

Dated: September 1, 1988.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-20447 Filed 9-7-88; 8:45 am]

BILLING CODE 6720-01-M

Summit Savings Association, Dallas, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Summit Savings Association, Dallas Texas on August 19, 1988.

Dated: September 2, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-20448 Filed 9-7-88; 8:45 am]

BILLING CODE 6720-01-M

Sunbelt Savings Association of Texas, Dallas, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Sunbelt Savings Association of Texas, Dallas, Texas, on August 19, 1988.

Dated: September 2, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-20449 Filed 9-7-88; 8:45 am]

BILLING CODE 6720-01-M

Western Federal Savings and Loan Association, Dallas, TX; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Western Federal Savings and Loan Association, Dallas, Texas on August 19, 1988.

Dated: September 2, 1988.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-20450 Filed 9-7-88; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-736]

First Federal Savings and Loan Association of the Wiregrass, Enterprise, AL; Final Action Approval of Conversion and Holding Company Applications

Dated: August 30, 1988.

Notice is hereby given that on August 26, 1988, the General Counsel, and the Director of the Office of Regulatory Activities (or their respective designees), acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of the Wiregrass, Enterprise, Alabama ("First Federal") for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion, and the application of Southeastern Financial, Inc., Tuscaloosa, Alabama to acquire control of First Federal.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88-20451 Filed 9-7-88; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-734]

Heritage Federal Savings Bank, Elwood, IN; Final Action Approval of Conversion Application

Dated: August 24, 1988.

Notice is hereby given that on August 16, 1988, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Heritage Federal Savings Bank, Elwood, Indiana, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agency at the Federal Home Loan Bank of Indianapolis, 1350 Merchants Plaza, South Tower, 115 West Washington Street, Indianapolis, Indiana 46204.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secreatary.

[FR Doc. 88-20452 Filed 9-7-88; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-735]

Waynesboro Savings Association Waynesboro, PA, Final Action, Approval of Conversion Application

Dated: August 24, 1988.

Notice is hereby given that on August 12, 1988, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Waynesboro Savings Association, Waynesboro, Pennsylvania, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Pittsburgh, One Riverfront Center, Twenty Stanwix Street, Pittsburgh, Pennsylvania 15222-4893.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secreatary.

[FR Doc. 88-20453 Filed 9-7-88; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before commmunicating with the Commission regarding a pending agreement.

Agreement No.: 224-200017-003.
Title: Philadelphia Port Corporation.
Parties:

Philadelphia Port Corporation
Delaware River Stevedores, Inc.

Synopsis: The agreement extends the term of the basic agreement for the Packer Avenue Container Terminal until December 31, 1988.

Agreement No.: 224-200150.
Title: Indiana Port Commission Terminal Agreement.
Parties:

Indiana Port Commission (IPC)
Pacific Great Lakes Transport Burns Harbor, Inc. (Pacific).

Synopsis: The proposed agreement provides for Pacific's lease of IPC's Transit Shed No. 1 and preferential use of Berth No. 10 and Berth No. 11 as well as exclusive use of the outside storage areas adjacent to each of these two berths located in the Port of Indiana/Burns International Harbor.

By Order of the Federal Martime Commission.

Dated: September 2, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88-20357 Filed 9-7-88; 8:45 am]

BILLING CODE 6730-01-M

[Petition No. P8-88]

American Trucking Associations; Filing of Petition

Notice is given that a petition was filed by the American Trucking Associations (ATA) on August 24, 1988, requesting that the Federal Maritime Commission issue an order to show cause why carriers serving Pacific Coast ports should not be ordered to cease and desist from implementing the 50-Mile Container Rule at those particular ports.

The basis for the petition is the August 9, 1988, decision of the U.S. Court of Appeals for the District of Columbia Circuit in *New York Shipping Association,* v. *FMC,* (No. 82-1347 and No. 87-1370) affirming the Commission's final decision in Docket No. 81-11, *"50 Mile Container Rules" Implementation By Ocean Common Carriers Serving the U.S. Atlantic and Gulf Coast Ports—Possible Violations of the Shipping Act, 1916.* In its decision, the Court of Appeals did not lift its stay of this agency's order that the respondent carriers in Docket No. 81-11 remove the container rules from their tariffs. Petitions to the Court for a rehearing may be filed on or before September 23, and direct review by the U.S. Supreme Court may be sought on or before November 7, 1988.

Because of these possible court actions, the Commission has determined to accept the filing but temporarily withhold any request for comments as to the merits of the petition until further clarification of the status of the Commission's order on review in Docket No. 81-11.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 88-20358 Filed 9-7-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First Southern Bancorp, Inc., 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 persentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and sumamrizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 30, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1.*First Southern Bancorp, Inc.*, Stanford, Kentucky; to acquire 100 percent of the voting shares of Peoples Bank of Paint Lick, Kentucky, Paint Lick, Kentucky.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

11 *P.C.B. Bancorp, Inc.*, Largo, Florida, to become a bank holding company by acquiring 100 percent of the voting shares of Pinellas Community Bank, Largo, Florida.

Board of Governors of the Federal Reserve System, September 1, 1988.

James McAfee,

Associated Secretary of the Board.

[FR Doc. 88-20310 Filed 9-7-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological and Communicative Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Neurological Disorders Program Project Review B Committee, National Institute of Neurological and Communicative Disorders and Stroke, October 14–16, 1988, Holiday Inn, Civic Center, 50 Eight Street, San Francisco, California which was published in the **Federal Register** on August 12, 1988 (53 FR 30474).

This Committee was to have convened at 8:00 p.m. on October 14, but the time has been changed to 8:30 a.m. on October 14.

The meeting will be open to the public from 8:00 a.m. to 8:30 a.m. on October 14, and will be closed from 8:30 a.m. to adjournment on October 16, for the review of grant applications.

Dated: August 29, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-20317 Filed 9-7-88; 8:45 am]

BILLING CODE: 4140-01-M

NIH/ADAMHA-Industry Collaboration Forum

With the passage of the Federal Technology Transfer Act of 1986 (FTTA), incentives have been provided that encourage collaboration between government scientists and industry in the hope that some of these endeavors may lead to a mutually profitable patent or license agreement.

As part of a government-wide effort to implement the FTTA, the National Institutes of Health (NIH) and the Alcohol, Drug Abuse and Mental Health Administration (ADAMHA) will sponsor an NIH/ADAMHA-Industry Collaboration Forum, to be held on Tuesday, October 25, 1988, at the Omni Shoreham Hotel in Washington, DC. Although eligibility for registration is unrestricted, the forum will be most useful to those for-profit organizations with capabilities and resources to conduct research with biomedical or behavioral applications. The registration fee is $150.00.

The forum will begin at 8:30 a.m. with a brief plenary session, followed by a poster session displaying the goals and research capabilities of various NIH and ADAMHA laboratories. Due to space availability, early registration is strongly encouraged. Deadline for registration is October 1, 1988. Requests for registration after this date may not be honored. To obtain registration information, call (202) 639–4940 or write to: Pat Davenport, Courtesy Associates, Inc., Suite 300, 655 15th Street NW., Washington, DC 20005, (202) 639–4940.

Dated: August 26, 1988.

James D. Wyngaarden,

Director, NIH.

[FR Doc. 88-20316 Filed 9-7-88; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-070-08-4050-91]

District Advisory Council Meeting; Butte District, MT

AGENCY: Bureau of Land Management, Butte District Office, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Butte District Advisory Council will be held Wednesday and Thursday, October 5 and 6. The meeting will begin with a field tour which will start at 8:00 a.m. on October 5 from Jorgenson's Motel, 1714 11th Avenue, Helena, Montana.

The tour will include an active mining site, mining reclamation, the Holter Lake/Sleeping Giant area and the Limestone Hills area near Townsend.

A business meeting will be held on Thursday, October 6, starting at 8:00 a.m. in the conference room at Jorgenson's Restaurant, 1720 11th Avenue, Helena. The agenda will include (1) discussion and council's observations on field sites visited the previous day; (2) an update on coordination since the council's April meeting with the East Pioneer Stewardship Committee regarding access to public lands in western Montana; and (3) a discussion of the bureau's "Recreation 2000" and "Fish and Wildlife 2000" programs. Following this, there will be a round table discussion with members of the Miles City and Lewistown district's advisory councils on topics of mutual interest.

The meeting and the field tour are open to the public, although transportation for members of the public cannot be guaranteed on the field tour.

Interested persons may make oral statements to the council or file written statements for the council's consideration. Anyone wishing to make an oral statement should make prior arrangements with the district manager. Summary minutes of the meeting will be maintained in the district office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: James A. Moorhouse, District Manager, Butte District, Bureau of Land Management, Box 3388, Butte, Montana 59702.

Dated: August 26, 1988.

J.A. Moorhouse,

District Manager.

[FR Doc. 88-20432 Filed 9-7-88; 8:45 am]

BILLING CODE 4310-DN-M

[CO-010-88-4133-17]

Road Closure and Restriction to Entry and Use

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of road closure and restriction to entry and use.

SUMMARY: Pursuant to 43 CFR 8364 the BLM will close or restrict certain roads located on public lands in the White River Resource Area:

Blue Mountain Area approximately 8.4 miles of road closed and 17.8 miles of road restricted.

Township 4 N., Range 102 W.,
Sections 7, 8, 17, 18, 19, 20.
Township 4 N., Range 103 W.,
Sections 10, 12, 13, 14, 15, 23, 24.
Township 5 N., Range 102 W.,
Sections 19, 31, 32.
Township 5 N., Range 103 W.,
Sections 24, 25, 26, 35.

Certain roads on public land in the above described area will be closed to public access, restricted to use by permit only, or restricted to use by vehicles which are 45 inches or less in width. This road closure and restriction will be in effect for a period from October 1, 1988, to July 15, 1989. All motorized vehicular uses in this area will be restricted to prevent excessive erosion of fragile soils, provide protection to wildlife values and habitat in the area, protect public safety and prevent interference with oil and gas exploration activity in the area. Administrative motorized vehicular access by Federal and State agencies, private landowners within the area and access associated with oil and gas activity may be approved for certain roads by the authorized officer.

DATES: This action is effective October 1, 1988, and will remain in effect until July 15, 1989.

ADDRESSES: Maps showing the location of and information pertaining to the above closures and restrictions will be available at the BLM White River Resource Area Office in Meeker, Colorado; BLM Craig District Office in Craig, Colorado; Dinosaur National Monument Headquarters in Dinosaur, Colorado; and on County Road 16 and the Dinosaur National Monument Access Road.

FOR FURTHER INFORMATION CONTACT: B. Curtis Smith, Area Manager, BLM White River Resource Area, PO Box 928, Meeker, Colorado 81641, (303) 878–3601.

B. Curtis Smith,

Area Manager.

Date: August 30, 1988.

[FR Doc. 88–20313 Filed 9–7–88; 8:45 am]

BILLING CODE 4310–JB–M

[WY–010–08–4311–11]

Closure and Restrictions on Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure and restrictions on public lands pursuant to 43 CFR 8364.1.

EFFECTIVE DATE: August 29, 1988.

SUMMARY: The following activities are prohibited or restricted on BLM administered public lands in the Worland District until further notice:

—Using chain saws on public lands west on Wyoming Highway 120 is prohibited without a special permit obtained from the BLM. For forests and woodlands on the West Slope of the Bighorn Mountains chain saw use may occur if one dry fire extinguisher (two and a half pounds or larger) and one shovel are kept in the immediate vicinity of the chain saw operation.

—Building, maintaining, attending of using a fire, campfire or open charcoal grill in all forests and woodlands in the District, except at designated developed recreation sites is prohibited. Stoves using propane or white gas may still be used.

—Smoking is prohibited, except within an enclosed vehicle or building, a developed recreation site or while stopped in an area at least three feet in diameter that is barren or cleared of all flammable material.

ADDRESS: Bureau of Land Management, 101 South 23rd, Worland, WY 82401.

FOR FURTHER INFORMATION CONTACT: Stephen Christy, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401, telephone (307) 347–9871.

SUPPLEMENTARY INFORMATION: These restrictions are imposed as part of a coordinated effort with the Shoshone and Bighorn National Forests in this portion of Wyoming. The counties that are involved in this notice are Big Horn, Park, Hot Springs and Washakie. These restrictions will remain in effect until weather conditions improve and the extreme fire danger has passed.

Applications for special permits to operate chain saws in the closed areas may be obtained from the Worland District Office of the Bureau of Land Management.

Date: August 29, 1988.

Darrell C. Barnes,

District Manager.

[FR Doc. 88–20308 Filed 9–7–88; 8:45 am]

BILLING CODE 4310–22–M

[ID–020–08–4322–12]

Meeting and Agenda For Burley District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting and agenda for Burley District Grazing Advisory Board.

SUMMARY: Notice is hereby given that the Burley District Grazing Advisory Board will meet on October 17, 1988.

The meeting will convene at 9:30 a.m. on October 17, 1988 in the conference room of the Bureau of Land Management Office at 200 South Oakley Highway, Burley, Idaho.

Agenda items for the meeting will include: (1) Impact of drought and fires regarding livestock use; (2) secretary/Treasurer's report; (3) take action on proposed Advisory Board funded projects; (4) review fiscal year 1989 proposed Range Improvement projects.

The public is invited to attend the meeting. Interested persons may make an oral statement to the Board beginning at 10:30 a.m. or they may file written statements for the Board's consideration. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager. Anyone wishing to make an oral statement or file a written statement must contact the District Manager by October 14, 1988 for inclusion in the meeting schedule.

Detailed minutes of the Board meeting will be maintained in the District Office, 200 South Oakley Highway, burley, Idaho, and will be available for public inspection during regular business hours, (7:45 a.m. to 4:30 p.m., Monday thru Friday) within 30 days following the meeting.

DATE: October 17, 1988.

ADDRESS: Bureau of Land Management, Burley District Office, 200 South Oakley Highway, Burley, Idaho 83318.

FOR FURTHER INFORMATION CONTACT: Marvin Bagley, Associate District Manager, (208) 678–5514.

Date: August 30, 1988.

Marvin R. Bagley,

Associate District Manager.

[FR Doc. 88–20311 Filed 9–7–88; 8:45 am]

BILLING CODE 4310–GG–M

[CO–050–4830–12]

Canon City District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579 that the Canon City District Advisory Council (DAC) Meeting will be held Wednesday, September 21, 1988, 10:00 a.m. to 5:00 p.m. and Thursday, September 22, 1988, 8:00 a.m. to 2:00 p.m. at the Canon City District Office, 3170 East Main, Canon City, Colorado.

The meeting agenda will include:

1. Update on public comments received to date on the Arkansas River Recreation Management Plan and Environmental Analysis.

2. DAC discussion to reach a consensus about the Arkansas River Recreation Management Plan and Environmental Analysis based on public comments from council constituents.

3. Council presentation of consensus to District Manager.

4. Tour of Dinosaur Fire burn area and discussion of revegetation plans.

5. Public presentations to the council (open invitation).

The meeting is open to the public. Persons interested may make oral presentations to the council at 1 p.m. September 21, or they may file written statements for the council's consideration. The District Manager may limit the length of oral presentations depending on the number of people wishing to speak.

The public is welcome to attend the tour of the Dinosaur Fire area, however due to limited transportation they are asked to provide their own transportation.

ADDRESS: Anyone wishing to make an oral or written presentation to the council should notify the District Manager, Bureau of Land Management, P.O. Box 311, 3170 East Main, Canon City, Colorado 81212 by September 20, 1988.

FOR FURTHER INFORMATION CONTACT: Ken Smith, (719) 275–0631.

SUPPLEMENTARY INFORMATION: Summary minutes of the meeting will be available for public inspection and reproduction during regular working hours at the District Office approximately 30 days following the meeting.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 88–20312 Filed 9–7–88; 8:45 am]

BILLING CODE 4310–JB–M

[ID–030–08–4212–21]

Realty Action, Serial Number I–3312, Concession Lease of Public Lands at Crystal Ice Caves, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Serial Number I–3312, Concession Lease of Public Lands at Crystal Ice Caves, Idaho.

This notice of Realty Action involves long term lease on public lands administered by the Bureau of Land Management in Idaho. The lease is intended to authorize through competitive bidding the operation, maintenance and improvement of public service facilities at Crystal Ice Caves. The caves were opened for paid public tours in 1965, and were operated by three lessees until 1987 when they were closed due to noncompliance with the lease agreement.

Crystal Ice Caves are located 29 miles northwest of American Falls, Idaho, on public lands administered by the BLM. Access from American Falls is over six miles off State Higway 39, 26 miles of all weather county road and seven miles of partially graveled dirt road. The dirt road is generally passable from May to November.

The public lands to be leased include 60 acres more or less. The legal description of these lands is as follows:

Township 5 S., Range 28E., Boise Meridian, State of Idaho,
Section 29: W½SW¼SW¼SE¼, SE¼SE¼SW¼, E½SW¼SE¼SW¼;
Section 32: E½NE¼NW¼, E½W½NE¼NW¼, W½W½NW¼NE¼.

The proposed use of the lands and facilities will be conducting guided tours of the Crystal Ice Caves, providing tourists goods and supplies as deemed appropriate and other related services. Maintenance and improvement of the existing facilities will be part of the lease agreement. All buildings, facilities and equipment are the property of the U.S. Government and are considered to be in poor condition. Numerous repairs and improvements are needed to reopen the caves to the public, and will require a substantial capital investment by the new lessee.

All applications must include a reference to this notice and a complete description of the proposed facilities and services to be offered. Such development plans must be in sufficient detail to allow evaluation of the feasibility of the proposed land use, public benefits from the land use, and the approximate cost of the proposal. This can be accomplished by providing details of the proposed use and activities; a description of all facilities and access needs; schedule for improvement and development; and any other information that may aid in evaluating the proposal. Applicants will be required to furnish evidence satisfactory to the BLM that they have the technical and financial capability to operate, maintain and improve the facilities.

For a PROSPECTUS and INSTRUCTION ON HOW TO SUBMIT A PROPOSAL for this lease, contact either LeRoy Cook, Big Butte Area Manager or John Butz, District Outdoor Recreation Planner at the following address: Tours of Crystal Ice Caves may also be scheduled for interested applicants. Bureau of Land Management, Idaho Falls District, 940 Lincoln Road, Idaho Falls, ID 83401, (208) 529–1020.

The concession lease will be issued on a competitive basis. Applications will be accepted at the Idaho Falls District Office until November 1, 1988. Applications may be hand carried or mailed to the address above.

For a period of 45 days from the date of this **Federal Register** Notice, interested parties may submit comments to the Idaho Falls District Manager at the above address. Any adverse comments will be evaluated by the District Manager who may vacate or modify this Realty Action and issue a final determination. In the absence of any action by the District Manager, this Realty Action will become the final determination of the BLM.

Dated: August 30, 1988.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 88–20307 Filed 9–7–88; 8:45 am]

BILLING CODE: 4310–GG–M

[CO–942–08–4520–12]

Colorado; Filing of Plats of Survey

August 26, 1988.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., August 26, 1988.

The plat (in four sheets) representing the dependent resurvey of a portion of the Tenth Guide Meridian West (west boundary), a portion of the subdivisional lines and portions of certain mineral claims, and the survey of the subdivision of certain sections, T. 9 S., R. 80 W., Sixth Principal Meridian, Colorado, Group No. 520, was accepted August 17, 1988.

The plat (in ten sheets) representing the dependent resurvey of portions of the south boundary, Homestead Entry Survey (H.E.S.) No. 340 and certain mineral claims, the independent resurvey portion of the subdivisional lines, and the survey of the subdivision of sections 10 and 15, and a portion of the Leadville National Fish Hatchery, T. 9 S., R. 81 W., Sixth Principal Meridian, Colorado, Group No. 520, was accepted August 17, 1988.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the survey of the subdivision of section 1 and a portion of

the Leadville National Hatchery, T. 10 S., R. 81 W., Sixth Principal Meridian, Colorado, Group No. 529, was accepted August 17, 1988.

These surveys were executed to meet certain administrative needs of the Bureau of Reclamation.

The plat representing the dependent resurvey of portions of the east, west, and north boundaries and a portion of the subdivisional lines and the survey of the subdivision of certain sections, T. 35 N., R. 6 W., New Mexico Principal Meridian, Colorado, Group No. 793, was accepted August 5, 1988.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Marlin G. Livermore,

Acting, Chief, Cadastral Surveyor for Colorado.

[FR Doc. 88-20306 Filed 9-7-88; 8:45 am]

BILLING CODE 4310-JB-M

Minerals Management Service

Development Operations Coordination Document; Huffco Petroleum Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Huffco Petroleum Corporation has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 4436 and 4523, Blocks 234 and 235, respectively, South Marsh Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Freshwater City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 30, 1988. Comments must be received on or by September 23, 1988 or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at th Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: August 30, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-20303 Filed 9-6-88; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Mobile Exploration and Producing U.S. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Mobil Exploration & Producing U.S. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 8691, Block 129A, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on August 25, 1988. Comments must be received on or by September 23, 1988 or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Joseph; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: August 30, 1988.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 88-20309 Filed 9-6-88; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Assateague Island National Seashore; Insignia Prescription

I hereby precribe the Assateague Island National Seashore symbol, which is depicted below, as the official insignia of the Assateague Island National Seashore, a unit of the National Park System, United States Department of the Interior

In making this prescription, I give notice that, under section 701 to Title 18 of the United States Code, whoever manufactures, sells or possesses any badge, identification card, or other insignia of the design herein prescribed, or any colorable imitation thereof, or photographs, prints, or in any other manner makes or executes any engraving, photograph, print, or impression in the likeness of any such badge, identification card, or other insignia, or any colorabe imitation thereof, except as authorized under regulations made pursuant to law, shall be fined not more than $250 or imprisoned not more than 6 months, or both.

Notice is given in order to prevent proliferation of the distinctive Assateague Island National Seashore insignia and to assure against its use for purpose other than marking seashore, marking interpretive exhibits and informational literature for seashore visitors, and those purposes which, in the determination of the National Park Service, are consistent with the purpose for which the seashore was established. The National Park Service will proceed to secure trademark registration under section 1115 of Title 15 of the United States Code for the Assateague Island National Seashore insignia.

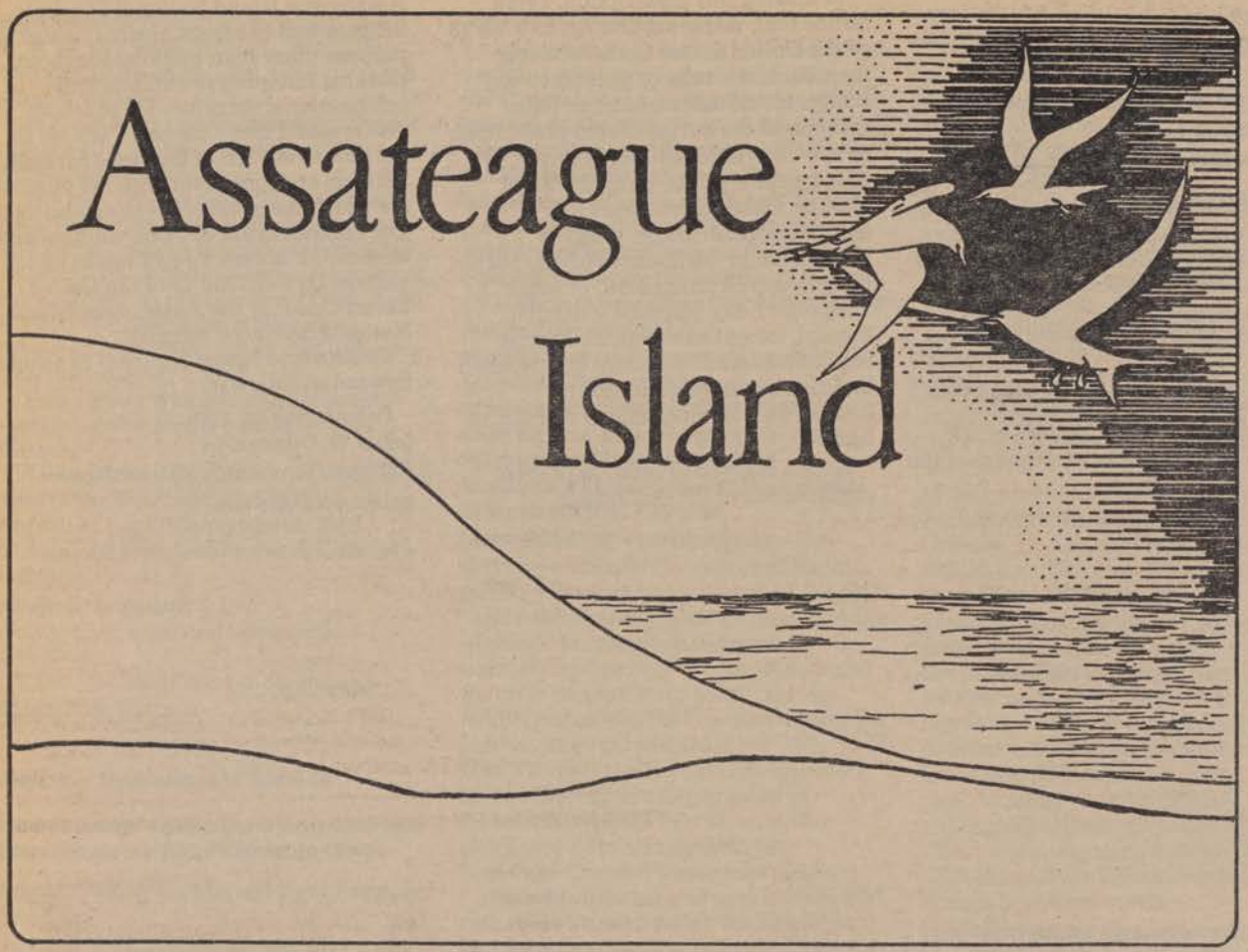
Assateague Island National Seashore Symbol as follows:

Date: August 26, 1988.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

BILLING CODE 4310-70-M



[FR Doc. 88-20402 Filed 9-7-88; 8:45 am]
BILLING CODE 4310-70-C

Amendment to Master Plan for Whiskeytown Unit; Whiskeytown-Shasta-Trinity National Recreation Area; Availability of Environmental Assessment

SUMMARY: The National Park Service has prepared an amendment, addressing minerals management issues, for the 1976 Master Plan for the Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area, Shasta County, California. The environmental assessment for the amendment analyzes three alternatives for mineral development within the Unit. These include the preferred alternative of allowing 4% of the unit to remain open for mineral development, a second alternative of 60% of the unit open for mineral development, and a third alternative of closing the entire unit to mineral development.

Copies of the assessment may be obtained from: Superintendent, Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area, P.O. Box 188, Whiskeytown, CA 96095.

Comments on the assessment should be received no later than October 31, 1988 and directed to the above address.

Date: August 29, 1988.

W. Lowell White,

Acting Regional Director, Western Region.

[FR Doc. 88-20390 Filed 9-7-88; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

September 2, 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 title of the form or collection; (2) the agency form number, if any and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of estimated time it takes each respondent to respond; (6) an estimate of the total public burden hours associated with the collection; and, (7) an indication as to whether section 3504(h) of Pub. L. 96-511 applies. Comments and/or questions regarding the item(s) contained in this notice, especially regarding the estimated response time, should be directed to the OMB reviewer, Mr. Sam Fairchild, on (202) 395-7340 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 who can be reached on (202) 633-4312.

New Collection

(1) National Legalization Survey.
(2) No form number, Immigration and Naturalization Service.
(3) One time.
(4) Individuals and households. Section 404 of Pub. L. 99-403 mandates a report on legalized aliens to include a description of the demographic characteristics and a general profile of this population.
(5) 6,000 respondents at one hour each.
(6) 6,000 estimated annual public burden hours.
(7) Not applicable under 3504(h).
(1) Guidelines for Prison Industries.
(2) No form number, National Institute of Corrections.
(3) One time.
(4) State or local governments. The survey will collect information not currently available from existing data bases to provide information for the general management of correctional industry programs.
(5) 50 annual respondents at one hour each.
(6) 50 estimated annual burden hours.
(7) Not applicable under section 3504(h).
(1) School Crime Supplement to the National Crime Survey.
(2) NCS-1, NCS-2, NCS-7, NCS-500.
(3) One time.
(4) Individuals or households. The School Crime Supplement is a program designed to gather, analyze, publish and disseminate information on crimes which occur in school. Respondents include students 12 to 19 years old living in 66,000 households throughout the United States.
(5) 17,000 respondents at .167 hours each.
(6) 2,839 estimated annual burden hours.
(7) Not applicable under 3504(h).
(1) National Study of Law Enforcement Agencies Policies and Procedures Regarding Missing Children and Homeless Youth; Phase III Interviews.
(2) No form number, Office of Juvenile Justice and Delinquency Prevention.
(3) One time.
(4) Individuals or households. This is a study of law enforcement agencies' policies and practices for handling reported cases of missing children from the parent or other guardian's perspective.
(5) 3,198 respondents at .31 hours each.
(6) 989 estimated annual burden hours.
(7) Not applicable under section 3504(h).

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

(1) Application for Waiver of Grounds of Excludability.
(2) I-690, Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Form is used to determine waiver of grounds for inadmissability.
(5) 100,000 respondents at .25 hours each.
(6) 25,000 estimated annual burden hours.
(7) Not applicable under section 3504(h).
(1) Agreement by Transportation Line to Assume Responsibility for Removal of Alien.
(2) I-259A, Immigration and Naturalization Service.
(3) On occasion.
(4) Businesses or other for-profit. Form is used for agreement between the master or agent of a vessel or aircraft and the INS for such masters or agents to assume responsibility for the removal of aliens who are or may be excludable under section 212(a) of 8 U.S.C. 1223.
(5) 1,000 respondents at .05 hours each.
(6) 50 estimated annual burden hours.
(7) Not applicable under section 3504(h).

Reinstatement of a Previously Approved Collection for Which Approval Has Expired.

(1) Intracompany Transferee Certificate of Eligibility.
(2) I-129A, Immigration and Naturalization Service.
(3) On occasion.
(4) Businesses or other for-profit. This form is completed by an organization

which has an approved blanket petition to certify the eligibility of an employee outside the United States for an L–1 visa classification (labor).

(5) 5,000 respondents at .5 hours each.

(6) 25,000 estimated annual burden hours.

(7) Not applicable under section 3504(h).

Larry E. Miesse,

Department Clearance Officer, Department of Justice.

[FR Doc. 88–20300 Filed 9–6–88; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Order Pursuant to the Clean Water Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on August 23, 1988, a proposed consent order in *United States v. LTV Steel Tubular Products Co.* Civil Action No. C87–1068, was lodged with the United States District Court for the Northern District of Ohio. The proposed consent order resolves a judicial enforcement action brought by the United States against LTV Steel Tubular Products Co. under the Clean Water Act for violations of the sampling and reporting obligations and pretreatment standards contained in the company's NPDES permits for its plants at Ferndale, Michigan and Cleveland, Ohio.

The proposed consent order requires the company to maintain compliance with the general pretreatment regulations and categorical standards for their products. It also requires the company to provide additional sampling and reporting with respect to both plants. In addition, the Order requires LTV Steel Tubular Products Co. to pay a civil penalty of $450,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent order. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, U.S. Department of Justice, Washington, DC and should refer to *United States v. LTV Steel Tubular Products Co.*, D.J. Refs. 90–5–1–1–2653 and 90–5–1–1–2655.

The proposed consent order may be examined at the office of the United States Attorney, 1404 E. Ninth Street, Suite 500, Cleveland, Ohio 44114–1748 and at the Region V office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the consent order may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 6317, Tenth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent order may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.70 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–20391 Filed 9–7–88; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Worker Adjustment Assistance; Worker Adjustment and Retraining Notification; Trade Adjustment Assistance; Proposed Implementation Plans

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The recently enacted Worker Adjustment and Retraining Notification Act, which establishes mandatory advance notice requirements in certain cases of plant closings and mass layoffs, directs the Secretary of Labor to prescribe such regulations as may be necessary to carry out that Act.

The recently enacted Omnibus Trade and Competitiveness Act of 1988 revised Title III of the Job Training Partnership Act to establish a new worker adjustment program, and substantially revised the existing Trade Adjustment Assistance (TAA) program under Chapter 2 of Title II of the Trade Act of 1974. The purpose of this notice is to announce the Department of Labor's overall proposed plan for implementing and revising the above programs.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs, (Telepone: (202) 535–0577) regarding the worker adjustment and retraining notification program and worker adjustment program; and Ms. Carolyn M. Golding, Administrator, Office of Employment Security, (Telephone: (202) 535–0600) regarding the trade adjustment assistance program. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On August 4, 1988, the Worker Adjustment and Retraining Notification Act (WARN), Pub. L. 100–379, 102 Stat. 890, was enacted into law. On August 23, 1988, the Omnibus Trade and Competitiveness Act of 1988 (OTCA), Pub. L. 100–418, 102 Stat. 1107, was enacted into law. These two laws charge the Department of Labor (Department or DOL) with implementing three programs relating to assistance to dislocated workers. The three programs are described below.

- *The Worker Adjustment and Retraining Notification Act (WARN)* which requires that, with certain exceptions, companies with at least 100 workers give 60 days or more advance notice of a plant closing that would affect 50 or more full-time workers, or a 6-month or longer layoff that would affect at least one-third of the workforce (or 500 workers). The Secretary of Labor is directed to prescribe such regulations as may be necessary to carry out the Act, including, at a minimum, "interpretative regulations describing the methods by which employers may provide for appropriate service of notice as reqired by the Act."
- *The Economic Dislocation and Workers Adjustment Assistance (EDWAA) Program*, established by Subtitle D of Title VI of OTCA, is a new program of training and employment services under Title III of the Job Training Partnership Act (JTPA) to assist eligible dislocated workers. Significant provisions, as compared to the earlier program, include a new delivery system, a system of rapid response units to provide assistance to workers and communities undergoing major layoffs and a number of new and innovative approaches to serving dislocated workers. Regulations for this program must be prescribed by November 1, 1988.
- *The Trade Adjustment Assistance (TAA) Amendments* were enacted in Part 3 of Subtitle D of Title I of OTCA and amended or affected Chapter 2 of Title II of the Trade Act of 1974, which provides benefits and services for workers displaced from their jobs due to imports. Significant changes include requirements for active participation in training, expansion of potential eligibility for certain oil and gas industry workers, and provisions for increased coordination with other training and employment programs.

This notice provides information on the general approach and policies the Department intends to follow in implementing programs authorized under the above cited laws. Separate policy papers are provided for the new worker adjustment program and the amended TAA program outlining the

key steps in the implementation process for each, and providing target dates for the issuance of regulations and other materials. For the plant closing legislation, only a schedule of events is being provided at this time.

General Approach

The Department of Labor intends to conduct the implementation process for these new laws in as open and public a manner as possible and to solicit the participation of all interested parties, through requests for comments, public meetings, and the provision of informational materials. However, the Congress has imposed a very tight timeframe for implementation of these laws and it is, therefore, critical that the process move expeditiously.

The Department intends to publish regulations for the new law at the earliest possible time and to allow ample time for comment, subject to the need to meet the time exigencies and other guiding principles in the legislation, such as the requirement to coordinate activities under the several programs authorized by the new legislation.

The development of regulations will conform to the Department's regulatory policy, which is to follow the statutory language as closely as possible where it is clear and explicit in the legislation, or where the intent is clear from the legislative history; and to provide as much flexibility as possible, consistent with the statute, to State and local areas in the development and administration of training and employment programs at the local level. This regulatory policy of reducing prescriptive Federal rules, relying on the content of the basic law as far as possible, and allowing State and local officials the maximum flexibility, has proved generally effective in the training and employment field. That same philosophy will continue to be followed in the development of regulations under these new laws. However, to assure effective implementation, there will be instances where more detailed clarifications and explanations of specific provisions will be provided.

The Department intends to treat the new worker adjustment program and TAA as separate and identifiable programs. However, it is the Department's intent, in so far as possible and consistent with the authorizing legislation, to implement and conduct the programs authorized under this legislation as a comprehensive approach to worker dislocation. Although the Congress specifically mandated the continuation of two separate adjustment assistance programs for dislocated workers under the Omnibus Trade and Competitiveness Act, it clearly recognized the potential benefits of closer cooperation between the programs and included language requiring coordination in the provisions authorizing each of the programs under OTCA.

Both the Administration and the Congress have expressed the intent that dislocated workers not be faced with a fragmented and confusing system when they seek the types of assistance they need. Consistent with this goal, it is the Department's intention, through its implementing regulations, policy guidance, operating instructions, and technical assistance, to promote a comprehensive approach to responding to the problem of worker dislocation. The Department believes that there is a potential for substantial savings and increased effectiveness through close cooperation or integration between the programs. Accordingly, wherever feasible, States will be encouraged to establish linkages between TAA, WARN, and the new worker adjustment program and to provide for joint responsibility where there are specific functions common to the three programs. For example, linkages can take place in providing early intervention services, in developing a common intake point and application process, in providing technical assistance and training, and in establishing labor-management committees for dealing with worker dislocations.

Some of the specific areas where such coordination between TAA and the worker adjustment services may be desirable include:

—Utilization of the early intervention services established by the new worker adjustment program to provide information to workers on these programs;

—Utilization of labor-management committees to provide basic information about worker adjustment programs and services to both trade impacted and other dislocated workers;

—Utilization of the State agreement under the TAA program and the State and substate plan required under JTPA Title III to outline the way the State will coordinate or integrate these programs;

—Development of linkages with the UI system which will foster early identification and referral of dislocated workers to adjustment assistance under the TAA and JTPA Title III programs; and

—Provisions of training and technical assistance designed to maximize coordination between the programs.

The following sections outline the timetable for implementing the mandatory advance notice law and the general approach that will guide the implementation of the new worker adjustment program and the changes to the TAA program with planned dates for publication of regulations and other key events.

Implementation of Plant Closing Notification Legislation

While the Department has no enforcement role under the WARN Act, the Department is authorized to issue regulations to facilitate the implementation of the Act. The requirements of Pub. L. 100–379 become effective on February 4, 1989. It is the Department's intention to publish final regulations no later than January 20, 1989. The Department intends to provide all interested parties with ample opportunity to review and comment on the concept of and the process for the development of the plant closing and mass layoff notification regulations and to review and comment on the regulations themselves. To this end, following publication of this notice, the Department proposes to follow the schedule outlined below.

Date, Product, or Event

9/13/88—Publish in the **Federal Register** a summary of the law and applicable legislative reports on the WARN Act. The notice will solicit comments to assist the Department in the development of policy and regulations for implementing the new law.

9/13/88—Forward a letter to umbrella business and labor organizations providing actual notice of the process and the Department's schedule for development and publication of the regulations.

10/7/88—All comments on the September 13 notice will be due to the Department.

10/18/88—The Department will publish in the **Federal Register** a basic policy paper on the plant closing and mass layoff notice legislation, establishing the basic principles to be used in developing the regulations. This notice will also solicit comments.

11/8/88—All comments on the basic policy paper shall be due to the Department.

11/30/88—The Department will publish proposed regulations for the plant closing and mass layoff notice legislation. These proposed regulations will be based on the policy paper and will consider comments submitted regarding that paper.

Comments will be solicited on the proposed regulations.

12/30/88—All comments on the proposed regulations shall be due to the Department.

1/20/89—All comments received on the proposed regulations will be reconciled and final regulations published.

2/4/89—Effective date of Pub. L. 100–379 and implementing regulations.

It is the Department's intent to attend meetings and to confer with parties interested in the plant closing and mass layoff notice regulations throughout the process outlined above.

Principles To Guide Implementation Of The Economic Dislocation And Worker Adjustment Assistance Program

The new Economic Dislocation and Worker Adjustment Assistance (EDWAA) program is built upon the lessons learned from the implementation of the JTPA Title III dislocated worker program and incorporates new features that are designed to result in the delivery of more effective training and employment services to dislocated workers. Incorporated in this program are several principles which are critical to successful implementation. These include:

Broad coverage of the eligible population—The new program continues the basic eligibility criteria established under Title III of JTPA, including the JTPA Amendments of 1986, in order to serve the broadest range of eligible dislocated workers. Included are individuals who lost or are about to lose their jobs due to a layoff or plant closing, long term unemployed individuals, and individuals who were self-employed and are unemployed because of general economic conditions. These individuals may be served without reference to their State or local residence. Where such services will not adversely affect the delivery of services to eligible participants, the Governor may also elect to assist displaced homemakers.

Broadened delivery system to improve effectiveness—Under the current system, the Governor has had wide latitude in designing the State program, including the delivery system. Some States have run essentially Statewide programs with little local involvement, while others have operated through the JTPA substate delivery system. The new OTCA worker adjustment program provides for a new structure, in which the Governor continues to play a significant role. But the program is operated largely through mandated substate areas. The statute requires that a substantial portion of the funds allotted to a State be passed down to designated substate areas for the delivery of services. This is similar to the pattern established under Title II of JTPA and brings a local delivery capability into the mainstream of dislocated worker programs.

This means that local entities will assume a greater responsibility for response to worker dislocation. It also means that in many cases entities which have little or no experience with services to dislocated workers will now have to develop this capability.

The new system also emphasizes the coordination of programs which serve dislocated workers. So, while the new local delivery capability is being developed, a new series of relationships will also be emerging. For example, there will be new relationships between the State and substate grantees and between the new worker adjustment program, TAA, and UI, in the area of information on worker dislocation and rapid response. There will also need to be new relationships involving the private sector such as Chambers of Commerce, labor organizations, private industry councils, and other groups and associations. These entities may have information on dislocation or may be in a position to affect the actions of business on the areas of voluntary notice (where mandatory notice is not required), labor-management cooperation, or other actions to improve the effectiveness of program services.

In addition, new program relationships will need to be developed, since the new worker adjustment program envisions greater coordination and linkage among major program components such as the Unemployment Compensation system and the Trade Adjustment Assistance (TAA) program. There will also need to be a familiarity with the provisions of the new Worker Adjustment and Retraining Notification Act which lay out mandatory advance notice requirements for certain plant closings and mass layoffs.

Importance of labor-management cooperation in responding to worker dislocation—In a variety of recent studies, and as an outgrowth of the Secretary's Task Force on Economic Adjustment and Worker Dislocation, there has been an emphasis on the beneficial effects of labor-management cooperation in the delivery of services to dislocated workers. This is an important principle, since it assumes that those involved in and affected by worker dislocation may be in the best position and sufficiently motivated to decide the best approach to readjustment. The Department, through the cooperative efforts of the Employment and Training Administration (ETA) and the Bureau of Labor-Management Relations and Cooperative Programs, has already conducted training for States and issued information on joint labor-management committees. This approach is commonly referred to as the "Canadian model," a series of activities regularly conducted by the Canadian Industrial Adjustment Service. This emphasis has been incorporated in the new worker adjustment program, which allows for State support of labor-management committees and labor-management cooperative efforts.

The need to begin the adjustment process as early as possible—Rapid response to worker dislocation may be the single most important element of an effective dislocated worker program. It encompasses the ability to initiate important program services either before, or shortly after, the dislocation takes place. This permits individuals to begin preparing for adjustment early, before the trauma of dislocation has set in and when they can be reached and guided on the range of training and employment options available to assist them in making new career choices. It also permits the effective utilization of Unemployment Insurance payments as an important source of personal and family income support while readjustment and/or retraining services are being provided.

While variations of rapid response teams and capabilities existed under Title III of JTPA, the new system will require this activity across the system and provide for a certain level of uniformity to encompass the initiation and delivery of a range of basic readjustment and retraining services. One of the most important duties of the rapid response team will be to assist in the establishment of labor/management committees.

Services tailored to the needs of individual workers—Apart from responding quickly to worker dislocation, it is critically important that the services to be provided meet the needs of the target population. The new program incorporates this important principle in at least four ways. First, it anticipates that each worker will be provided a solid assessment of the worker's needs and wants, to begin to tailor a program of services to match. Second, it allows a broad range of program services to be available to meet the worker's needs. Third, it places an emphasis on training and allows for a level of participant support while in training, so that the participant may pursue a longer range career strategy, rather than just focusing on the short-

term need for a job. Finally, it allows the dislocated worker to receive a certificate of continuing eligibility that permits the acquisition of services at a later date without having to reestablish eligibility if the worker needs more time to evaluate his/her career situation and pursues an immediate employment opportunity when first enrolled in the program.

Improved resource management—One of the major problems which surfaced under the JTPA Title III program was that of under-utilization of funds as the result of (1) problems arising from initial allocations coupled with a later inability to then apply funds to areas in need; (2) unwieldy requests for proposal (RFP) systems; and (3) an inability to effectively utilize available funds. The new program provides for systems under which the Secretary will monitor State use of funds and will reallot funds where necessary, as required by the Act.

Performance standards—The new program provides an opportunity to implement more effective performance standards for dislocated worker programs under JTPA by providing for the application of performance standards at the substate level and providing for substate reporting. The Secretary will be able to establish standards and recommend adjustments, while Governors will set standards for each substate area.

Importance of Department leadership—As Title III of JTPA has evolved, it has become increasingly apparent that the Department of Labor needs to play a more active leadership role in the training and employment system. The Department intends to assume this role as the new worker adjustment system is implemented. This will take the form of an increased emphasis upon technical assistance and training and a regular and ongoing exchange of views with the system and with interest groups. The Department will also provide a leadership role by advising on basic standards of program content, operation and results.

Operations to commence on July 1, 1989—Section 6305 of OTCA makes the new worker adjustment assistance program effective on July 1, 1989. Program Year 1988 (July 1, 1988 through June 30, 1989) is a transition year. The Department intends to implement the new system on a schedule which will meet the July 1, 1989 date, but also allow for maximum input to the system from the various partners. Other key dates required in the Act are the publication of regulation by November 1, 1988 and the reestablishment of the State Job Training Coordinating Council (SJTCC) by January 1, 1989. In order to meet the July 1, 1989 implementation date, the Department believes States should complete the SJTCC redesignations before the legislatively mandated date.

The Department's proposed implementation schedule is as follows:

Date, Product, or Event

8/23/88—Enactment of Pub. L. 100-418.
8/24/88—Letters forwarded to Governors from Secretary covering initial advice on implementing new worker adjustment programs, trade adjustment assistance, and plant closing/mass layoff notification. (Completed)
9/8/88—**Federal Register** notice issued on program principles and implementation schedules (this document).
9/8/88—Letters forwarded to Governors from Assistant Secretary providing more detailed guidance on worker assistance program implementation.
9/15/88—Governors initiate process for reconstitution of SJTCC and establishment of substate areas.
9/20/88—The Department conducts initial meeting with State worker adjustment liaisons. Provides key policy direction, detailed scheduling and other guidance related to implementation.
9/30/88—Interim final regulations published in **Federal Register** to afford early guidance on SJTCC reconstitution and substate designation and to conform to statutory 11/1/88 regulations publication deadline. Comment opportunity follows. Proposed planning instructions shared with public for comment, published in **Federal Register**.
10/1-11/30/88—Public meetings, comment, and consultation on interim final regulations, proposed reporting instructions, proposed performance standards and proposed planning instructions.
11/1/88—Proposed reporting requirements provided for comment through **Federal Register** notice. Reconstitution of SJTCC should be completed.
11/15/88—State worker adjustment office established.
12/1/88—Preliminary work begins or continues in each State on substate planning, formula for fund distribution, reallocation procedures, performance standards, and coordination plans with UI, TAA, economic development and education. Substate area designations should be completed.
12/12/88—Proposed performance standards and instructions published in **Federal Register** for comment.
12/30/88—All substate grantees designated.
12/30/88—Final regulations and planning guidance issued and published in **Federal Register**.
1/16/89—Final reporting instructions published in the **Federal Register**.
3/1/89—Deadline for substate grantee designation, planning instructions and schedule. Final performance standards issued and published in **Federal Register**.
5/1/89—Substate plans due to Governor. Governor's plan submitted to Secretary, who advises of problems within 30 days or approves within 45 days.
7/1/89—Program operations begin.

Principles To Guide Implementation Of Changes To The Trade Adjustment Assistance Program

Trade Adjustment Assistance for Workers, in Chapter 2 of Title II of the Trade Act of 1974, is available to workers who lose their jobs or whose hours of work and wages are reduced as a result of increased import competition.

Under the Trade Act, workers whose employment is adversely affected by increased imports may be eligible for trade adjustment assistance (TAA). TAA includes a variety of benefits and services to help dislocated workers prepare for and obtain jobs, including training, job search and relocation assistance, and other reemployment services. Eligible workers may also receive weekly trade readjustment allowances (TRA) following their exhaustion of unemployment benefits.

Under an agreement with the Secretary of Labor, States serve as agents of the United States for administering the benefit provisions of the TAA program for workers whose separation from employment is linked to import competition.

The Omnibus Trade and Competitiveness Act of 1988 amends the TAA program by making a number of substantive programmatic changes to the TAA program, including:

—Making training for certified eligible workers an entitlement and requiring worker participation in a training program, when feasible and appropriate, as a condition for receiving trade readjustment allowances;

—Expanding the scope of eligibility for TAA to oil and gas workers engaged in exploration and drilling;

—Making workers previously certified for TAA, who were separated from employment during the period from August 13, 1981 to April 7, 1986, eligible for trade readjustment allowances,

under certain conditions, if the worker is enrolled in training;

—Relating individual worker eligibility periods for TAA to the worker's most recent qualifying separation from adversely affected employment, rather than first qualifying separation, under a certification issued by the Department; and

—Requiring trade impacted workers to be notified through written and newspaper notices of benefits available under certifications of eligibility to apply for TAA issued by the Department.

The 1988 amendments call for improved coordination between the TAA and worker adjustment programs to help dislocated workers—regardless of the cause of their dislocation. States will continue to serve as agents of the United States and provide adjustment assistance services and pay TRA to workers adversely affected by foreign imports.

Most of the provisions of the 1988 amendments are effective on the date of enactment (August 23, 1988). Several provisions are effective 30 and 90 days after date of enactment, but this delay is to allow time for planning and preparation so that the provisions can be fully implemented on their effective dates.

Implementation of the 1988 amendments to TAA will be guided by the following principles:

Continuation of TAA as a separate program—The Department intends to keep TAA as a separate identifiable program. However, in its implementation of the 1988 amendments the Department is encouraging productive linkages with the new worker adjustment program under JTPA and a coordinated delivery system at the State and local levels to enhance services to trade impacted and other dislocated workers.

Public notice—Prompt public notice will be given of all TAA certifications issued by the Department to workers and other interested parties.

Oil and gas workers—Prompt public notice will be given of the one-time opportunity for oil and natural gas workers engaged in exploration or drilling, who were separated after September 30, 1985, to file petitions within 87 days after enactment of the OTCA under new eligibility rules.

Emphasis on training—Training will be encouraged early in the workers's UI eligibility period, if training is required to return to suitable employment.

Conditions for receipt of income support—Active participation in training will be required to receive income maintenance (TRA payments) except when a waiver is granted when certain specified conditions are met.

Early identification of displaced workers—Early identification of trade related worker displacements as well as early assessment of affected individuals' adjustment and reemployment service needs will be encouraged.

Shared Resources—In order to maximize resources, program deliverers will be encouraged to utilize the provisions in the Act that allow costs of training trade impacted workers to be shared with funds from other Federal program sources and from State and private sources.

Coordination—Provisions and guidance governing training enrollment and participation will be as similar as possible with respect to program elements common to TAA and the new JTPA worker adjustment program.

The Department will issue operating guidance to the States and encourage a coordinated delivery system responsive to the need of trade impacted workers. Our plans call for immediately issuing necessary operating guidance to cooperating State agencies to implement those provisions of the TAA amendments that are effective upon enactment and then to proceed with formal rulemaking as quickly as possible so that program regulations, which would supersede the operating guidance, can be published for comment early this fall.

Implementation schedule for the 1988 TAA Amendments—The Department's proposed implementation schedule for the Trade Adjustment Assistance Amendments is as follows:

Date, Product, or Event

8/23/88—Notify the public via a press release and issue administrative guidance to State Employment Security Agencies on the one-time period, to November 18, 1988, for oil and gas workers engaged in exploration or drilling who were separated after September 30, 1985, to file petitions for TAA and retroactive TRA payment under new eligibility rules. (Completed)

8/31/88—Transmit to Governors the new TAA agreement between the Secretary of Labor and the State for administering the benefit provisions of TAA, as amended by the Omnibus Trade and Competitiveness Act of 1988. (Completed)

9/9/88—Issue technical operating guidance to the cooperating State agencies for implementing those provisions of the TAA amendments which are effective upon enactment or within 90 days thereafter. Publish guidance in the **Federal Register** promptly following issuance.

10/14/88—Complete multiple training sessions for State and regional program staff on the 1988 amendments to the TAA program, and on the technical operating guidance.

10/14/88—Publish interim final regulations implementing the 1988 TAA amendments in the **Federal Register**; request public comment.

11/18/88—Deadline for receipt by Department of petitions for oil and gas workers engaged in exploration or drilling who were separated from employment after 9/30/85 and are applying for retroactive TRA benefits.

11/21/88—As of this date, all workers required to be enrolled or participating in approved training as a condition for receipt of TRA payments, unless such training has been completed, or a waiver is issued.

1/4/89—Issue revised State reporting instructions.

1/13/89—Publish final regulations in the **Federal Register**, implementing the 1988 TAA amendments.

2/23/89—Study and prepare a report to Congress on expediting worker certifications, in consultation with the Secretary of Commerce.

Signed at Washington, DC, this 2nd day of September, 1988.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

[FR Doc. 88-20403 Filed 9-7-88; 8:45 am]

BILLING CODE 4510-30-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: 10 CFR Part 70—Domestic Licensing of Special Nuclear Material.

3. The form number if applicable: Not applicable.

4. How often the collection is required: Applications for new licenses and amendments may be submitted at any time. Applications for renewal are submitted every five years. Reports are submitted as events occur. Nuclear material control and accounting information is submitted in accordance with specified instructions.

5. Who will be required or asked to report: Applicants for and holders of specific licenses to receive title to, own, acquire, deliver, receive, possess, use, and initially transfer special nuclear material.

6. An estimate of the number of responses: 1,089.

7. An estimate of the total number of hours needed to complete the requirement or request: Approximately 50 hours per response for applications and reports, plus approximately 145 hours annually per recordkeeper. The total industry burden is 91,071.5 hours.

8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract: NRC regulations in 10 CFR Part 70 establish procedures and criteria for the issuance of licenses to own, acquire, receive, possess, use, and initially transfer special nuclear material. The information in the applications, reports and records is used by the NRC staff to assess the adequacy of the applicant's physical plant, equipment, organization, training, experience, procedures and plans for protection of public health and safety and the common defense and security.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Nicolas B. Garcia, (202) 395–3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 1st day of September 1988.

For the Nuclear Regulatory Commission.

William G. McDonald,

Director, Office of Administration and Resources Management.

[FR Doc. 88–20386 Filed 9–7–88; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Reliability Assurance; Cancellation

The **Federal Register** published Monday, August 22, 1988 (53 FR 31945) contained notice of a meeting of the ACRS Subcommittee on Reliability Assurance scheduled for September 16, 1988. This meeting has been cancelled.

Date: August 31, 1988.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 88–20387 Filed 9–7–88; 8:45 am]

BILLING CODE 7590–01–M

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

[Docket Nos. 50–295 and 50–304]

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses DPR–39 and DPR–48 issued to Commonwealth Edison Company (the licensee), for operation of Zion Nuclear Power Station, Units 1 and 2 located in Lake County, Illinois. These amendments consist of proposed changes to the Zion Technical Specification Sections 3.2, 3.4, 3.8, and 3.9 that would authorize Zion Station to remove the Boron Injection Tank (BIT) and the associated piping, valves and heat trace for recirculation between the BIT and the Boric Acid Tanks (BAT). These amendments will result in operational and safety benefits for the station. Presently, the negative effect of the high boric acid concentration in the BIT and BAT systems necessitates frequent BAT transfer pump seal repairs, heat trace repairs and entering into Technical Specification Limiting Conditions of Operation to accomplish these repairs. The detrimental consequences of high boric acid concentrations are also potential contributing factors to Emergency Core Cooling System inoperability. Improved analytical techniques used for Final Safety Analysis Report accident analyses show that the BIT concentrations could be reduced or the entire BIT could be removed from the Westinghouse plants.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By October 11, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice of Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary of the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a part to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to

present evidence and cross-examine witnesses.

A request for a hearing or petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Daniel R. Muller: petitioner's name and telephone number; date Petition was mailed; plant; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and Michael Miller, Esquire, Sidley and Austin, One First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petition and/or request for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 109 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated June 9, 1988 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Waukegan Public Library, 128 N. County Street Waukegan, Illinois 60085.

Dated at Rockville, Maryland this 26th day of August 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III–2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88–20388 Filed 9–7–88; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. STN–50–566, STN 50–567]

Tennessee Valley Authority Yellow Creek Nuclear Plant, Units 1 and 2; Order Revoking Construction Permits

I

On November 29, 1978, the United States Nuclear Regulatory Commission (Commission) issued Construction Permits CPPR–172 and CPPR–173 to Tennessee Valley Authority, authorizing construction of the Yellow Creek Nuclear Plant, Units 1 and 2, two pressurized water reactors, at a site in Tishomingo County, Mississippi. The latest construction completion dates set forth in the permits were May 1, 1985 and May 1, 1986, respectively. Tennessee Valley Authority submitted a timely request, by letter dated January 21, 1983, to extend the latest construction completion date for both units to September 1, 1987.

II

By letter dated October 24, 1985, Tennessee Valley Authority requested that the construction permits for Yellow Creek be withdrawn. The letter stated that Yellow Creek was canceled on August 29, 1984. A cancellation plan, which included a site stabilization plan, was also transmitted by the October 24 letter.

III

The site stabilization plan provides for the stabilization of the site by grading, revegetation and the use of holding ponds to limit erosional runoff until revegetation is completed. It also provides for control of unauthorized access and prevention of unauthorized use. The plan will remain in effect until the most appropriate long-term use of the site is determined, at which time it will be incorporated into that use. Pursuant to 10 CFR 51.32, the Commission has determined that the revocation of these construction permits will have no significant impact on the environment. An Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on December 17, 1987 (52 FR 47983).

The applicant's letter dated October 24, 1985, and the NRC staff's letter and evaluation of the request for withdrawal of the permit, and the staff's evaluation of the Site Stabilization Plan, dated August 29, 1988, are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555.

It is hereby ordered that Construction Permits CPPR–172 and CPPR–173 are revoked.

This Order is effective upon issuance.

Dated at Rockville, Maryland, this 29th day of August 1988.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 88–20389 Filed 9–7–88; 8:45 am]

BILLING CODE 7590–01–M

POSTAL SERVICE

Privacy Act of 1974; Systems of Records

AGENCY: Postal Service.

ACTION: Notice.

SUMMARY: On July 1, 1988 (53 FR 25025), the Postal Service published notice of the addition of a routine use to each of its systems USPS 120.120, Personnel Research and Test Validation Records, and USPS 050.020, Finance Records—Payroll System. This notice clarifies and corrects the textual description of the related matching program given in the "Supplementary Information" section of that notice.

That segment of the program that involves a computer match of male applicants for postal employment against Selective Service System's (SSS) file of registrants under the SSS Registration Program will be conducted on a continuous basis at selected intervals and as described in the SSS's notice of February 19, 1987 (52 FR 5232), amended by notice of July 18, 1988 (53 FR 27097). Further, the Postal Service will disclose the described limited information about all males born in years of birth of the age groups which are required to register; thus, disclosure will not necessarily be limited to those born in the years 1963 through 1970 and living in particular geographical areas as stated in the July 1, 1988 notice.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office, (202) 268–5158.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 88–20343 Filed 9–7–88; 8:45 am]

BILLING CODE 7710–12–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Application for Hospital Insurance Benefits.

(2) *Form(s) submitted:* AA–6, AA–7, AA–8.

(3) *OMB Number:* 3220–0082.

(4) *Expiration date of current OMB clearance:* 10–31–88.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Total annual responses:* 1,700.

(9) *Estimated annual number of respondents:* 1,700.

(10) *Average time per response:* .1453 minutes.

(11) *Total annual reporting hours:* 247.

(12) *Collection description:* The Board administers the Medicare program for persons covered by the railroad retirement system. The collection obtains information about non-retired employees and survivor applicants needed for enrollment in the plan.

Additional Information or Comments: Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justin Kopco (202–395–7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information Resources Management.

[FR Doc. 88–20305 Filed 9–7–88; 8:45 am]

BILLING CODE 7905–01–M

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Evidence of Marital Relationship-Living With Requirements.

(2) *Form(s) submitted:* G–124, G–124a, G–237, G–238, G–238a.

(3) *OMB Number:* 3220–0021.

(4) *Expiration date of current OMB clearance:* 10–31–88.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households, State or local governments.

(8) *Total annual responses:* 1,100.

(9) *Estimated annual number of respondents:* 1,100.

(10) *Average time per response:* .17818 minutes.

(11) *Total annual reporting hours:* 196.

(12) *Collection description:* Under the RRA, to obtain a benefit as the spouse of an employee annuitant or as the widow(er) of the deceased employee, applicants must submit information to be used in determining if they meet the marriage requirements for such benefits. The collection obtains information supporting claimed common-law marriages, termination of previous marriages and residency requirements.

Addition Information or Comments: Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312–751–4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justin Kopco (202–395–7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Pauline Lohens,

Director of Information Resources Management.

[FR Doc. 88–20304 Filed 9–7–88; 8:45 am]

BILLING CODE 7505–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–26053; File No. CSE–88–1]

Self-Regulatory Organizations; Cincinnati Stock Exchange, Inc.; Order Approving Proposed Plan for Reporting Minor Disciplinary Rule Violations.

On March 14, 1988, the Cincinnati Stock Exchange ("CSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(d)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19d–1(c)(2) thereunder,[2] a proposed rule change to establish a minor rule violation enforcement and reporting plan.[3] Amendment No. 1, submitted by the CSE on July 13, 1988, removes three violations from the original proposal and establishes a reporting system for minor disciplinary rule violations subject to the proposed plan.[4]

The proposed rule change was noticed in Securities Exchange Act Release No. 25923 (July 18, 1988), 53 FR 28094 (July 26, 1988). No comments were received by the Commission on the proposed rule change.

CSE's proposed plan encompasses two systems: (1) A minor rule violation disciplinary system, and (2) a reporting system to the Commission for minor rule violations. Proposed CSE Rule 8.14 authorizes the Exchange, in lieu of commencing a disciplinary proceeding before a hearing panel, to impose a fine not to exceed $2,500, on any member, member organization, or registered or non-registered employee of a member organization for any violation of an Exchange rule which the CSE determines to be minor in nature.[5]

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[1] 15 U.S.C. 78s(d)(1).

[2] 17 CFR 240.19d–1(c)(2).

[3] *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23838 (June 8, 1984). The Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow self-regulatory organizations ("SROs") to submit, for Commission approval, plans for the abbreviated reporting of minor rule violations. Under the amendments, any disciplinary action taken by the SRO for violation of an SRO Rule that has been designated a minor rule violation pursuant to the plan shall not be considered "final" for purposes of section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies.

[4] On August 15, 1988, the Commission received a letter from the CSE amending Exhibit C (Sample Report) of its July 13, 1988 filing. *See* letter from David Colker, General Counsel, CSE to George Scargle, Division of Market Regulation, dated August 11, 1988.

[5] Although the CSE's Board of Trustees makes the initial determination of whether a CSE rule violation

Continued

Alternatively, proposed CSE Rule 8.14 permits any person to contest the Exchange's imposition of the fine through the submission of a written answer, at which time the matter will become a disciplinary proceeding subject to CSE Rules 8.1 through 8.13 and, where applicable, the reporting provisions of paragraph (c)(1) of Commission Rule 19d–1.

For covered minor disciplinary rule violations, the proposed plan would relieve the Exchange from the current reporting requirement otherwise imposed by section 19(d)(1) of the Act for "final" disciplinary actions. In accordance with paragraph (c)(2) of the Commission Rule 19d–1, the CSE's proposed Rule 8.14 specifies those uncontested minor rule violations with sanctions not exceeding $2,500 that would not be subject to the current reporting provisions of paragraph (c)(1) of Commission Rule 19d–1, provided the Exchange gives notice of such violations to the Commission on a quarterly basis. The Exchange proposes to incorporate violations of the following CSE Rules into proposed CSE Rule 8.14: (1) CSE Rule 14.3 (requirement to issue Intermarket Trading System ("ITS") preopening notifications); (2) CSE Rule 14.9 (requirement to comply with ITS trade-through rule); and (3) CSE Rule 14.10 (requirement to comply with ITS block-trade policy).

The fine schedule under CSE Rule 8.14 is as follows: (1) first offense, a fine of $100 for an individual and $500 for a member organization; (2) second offense, a fine of $300 for an individual and $1,000 for a member organization; and (3) subsequent offenses, a fine of $500 for an individual and $2,500 for a member organization. Violations of CSE Rules 14.3, 14.9 and 14.10 will be reported to the Commission on a quarterly basis. Such quarterly reports include (1) the Exchange's internal file number for the case, (2) the Securities and Exchange Commission's file number, (3) the name of the individual or member organization, (4) the nature of the violation, (5) the specific rule provision violated, (6) the date of violation, (7) the fine imposed, (8) an indication of whether the fine is joint and several, (9) the number of times the violation has occurred, and (10) the date of disposition.

The Commission finds that the proposed plan is consistent with the requirements of the Act and the rules and regulations thereunder, and in particular, with the requirements of section 6(b)(5) and section 19(d). The proposed rule change would establish a simplified disciplinary system that enables the Exchange to achieve compliance with rules that are essentially administrative in nature in a more efficient manner than resorting to formal disciplinary proceedings. Moreover, because the proposed plan permits disciplined persons to contest the Exchange's imposition of the fine and request a full disciplinary proceeding, the proposed plan is consistent with the disciplinary proceedings required under section 6(b)(7) of the Act. Finally, because the substantive minor rule violations to be subject to the proposed plan are essentially administrative in nature, it is reasonable for them to be included in such an abbreviated periodic reporting plan.[6]

It is therefore ordered, pursuant to Rule 19d-1(c)(2) under the Act, that the above mentioned proposed plan be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Dated: September 1, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–20345 Filed 9–7–88; 8:45 am]

BILLING CODE 8010–01–M

is "minor" for purposes of proposed CSE Rule 8.14, this determination is subject to Commission approval pursuant to section 19(d)(1) of the Act and paragraph (c)(2) of Commission Rule 19d–1.

[6] *See* Securities Exchange Act Release No. 22300 (August 8, 1985), 50 FR 32818 (August 14, 1988) (approval of New York Stock Exchange minor disciplinary rule violations plan).

[7] *See* 17 CFR 200.30–3(a)(44).

[Release No. 34–26051; File No. SR–DTC–88–6]

Self-Regulatory Organization; Depository Trust Company; Order Approving Proposed Rule Change

On May 3, 1988, the Depository Trust Company ("DTC") filed a proposed rule change (File No. SR–DTC–88–6) under Section 19(b) of the Securities Exchange Act of 1934 ("Act"). The proposed rule change would approve on a permanent basis DTC's Same-Day Funds Settlement ("SDFS") Service. The Commission published notice of the proposal in the **Federal Register** on May 17, 1988.[1] No comments were received. Pilot operation of the SDFS Service began on June 26, 1987, when the Commission approved the SDFS Service on a temporary basis until January 31, 1988.[2] Subsequently, in January 1988, the Commission extended temporary approval through August 31, 1988.[3] For the reasons discussed below, the Commission is granting permanent approval to the SDFS Service.

[1] Securities Exchange Act Release No. 25591 (May 11, 1988) 53 FR 17522.

[2] *See* Securities Exchange Act Release No. 24689 (July 9, 1988) 52 FR 26613.

[3] *See* Securities Exchange Act Release Nos. 25870 (June 30, 1988) 53 FR 26124, and 25308 (February 4, 1988) 53 FR 6900.

I. Description of the Proposal

The proposal will approve permanently DTC's SDFS Service, which provides full depository and transaction settlement services for certain securities transactions that settle in same-day funds.[4] Under the SDFS Service, DTC accepts deposits of SDFS-eligible securities certificates for safekeeping and provides a full range of depository services for those securities. Those services include deposits, deliver orders, withdrawals, pledges, Institutional Delivery System trade confirmation and affirmation, and underwriting distributions.

DTC began pilot operation of the SDFS Service in June 1987 with a small number of municipal notes eligible for the service. Over the past year, DTC has expanded the list of eligible securities to include: (1) Zero-coupon bonds; [5] (2) variable rate demand orders; [6] (3) medium-term notes; [7] (4) negotiable certificates of deposit; [8] and (5) collateral mortgage obligations.[9]

DTC's rules and procedures applicable to the SDFS Service cover account maintenance, transaction processing, risk management, money settlement, and loss allocation. SDFS transactions are processed separately from NDFS transactions and each SDFS transaction must be fully collateralized. In addition to collateralization procedures, DTC imposes a debit limit on each DTC participant ("Participant") and has added a new component to its Participant Fund ("SDFS Fund"), to protect against risks associated with handling SDFS securities and related transactions. Net money settlement occurs daily between DTC and SDFS Settling Banks using money transfers through the Federal Reserve System

[4] DTC's depository operating procedures for SDFS securities in many instances is similar to those used currently by DTC for settlement of securities that settle in next-day funds ("NDFS securities").

[5] *See* Securities Exchange Act Release No. 25031 (October 15, 1987) 52 FR 38982 (October 20, 1987).

[6] *See* Securities Exchange Act Release No. 25317 (February 5, 1988) 53 FR 4249 (February 19, 1988).

[7] *See* Securities Exchange Act Release No. 25478 (March 17, 1988) 53 FR 9530 (March 23, 1988).

[8] *See* Securities Exchange Act Release No. 25670 (May 6, 1988) 53 FR 16923 (May 12, 1988).

[9] *See* Securities Exchange Act Release No. 25586 (April 13, 1988) 53 FR 12841 (April 19, 1988).

("Fedwire").[10] Finally, the SDFS Service generally will allocate losses due to Participant default to Participants that effected transactions with a defaulting Participant.

Each Participant in the SDFS Service is required to maintain sufficient collateral on all SDFS transactions to cover that Participant's projected settlement obligations. On each transaction DTC "haircuts" (or discounts the value of) SDFS securities coming into a Participant's account. A receiving Participant must have sufficient collateral [11] to cover the differenece between the value paid for the SDFS securities and their discounted value.[12] Before DTC acts on a Participant's instructions, it verifies that: (1) The Participant will have sufficient collateral in its account after the transaction to cover any projected net settlement debit in the account; (2) the Participant on the other side of the transaction ("*contra*-Participant") will have sufficient collateral in its account immediately after the transaction to cover any projected debit balance, and (3) both the Participant and the *contra*-Participant's collateral (on a real-time, on-line basis) is equal to or greater than that Participant's current net settlement debit. If a Participant does not have sufficient collateral to cover the resulting net settlement debit from a proposed transaction, it may pledge more collateral to enable DTC to act on the transaction instructions.

Each Participant in the SDFS Service must make a required deposit, consisting of cash and/or government securities, into the SDFS Fund. DTC calculates required deposits monthly based upon a formula of 5% of each Participant's average daily gross SDFS debits and credits during the prior month, except for qualifying brokers whose required deposits are based on 2% of average daily gross SDFS debits for the prior month. DTC requires a minimum cash deposit of $200,000 from each SDFS Participant. The remainder of the required deposit (if any) may be made in cash or securities of the same type that qualify for deposit in the NDFS System Fund (*e.g.*, U.S. Government securities). A Participant also may make voluntary deposits into the SDFS Fund to increase its collateral.

DTC also imposes a Net Debit Cap on each SDFS Participant. Each SDFS Participant is limited throughout the processing day to a net debit that is no higher than the least of: (1) An amount ten time the Participant's mandatory and voluntary deposits in the SDFS Fund, (2) an amount equal to 75% of DTC's lines of credit with its lenders, [13] (3) an amount, if any, determined by the Participant's Settling Bank or (4) an amount, if any, determined by DTC. A Participant may wire funds to DTC at any time during the day and, thereby, may increase the number of transactions that can be processed without exceeding its Net Debit Cap.

Money settlement occurs daily in immediately available funds through Fedwire transfers to and from DTC's account at the FRBNY. Each Participant must make arrangements with a bank Participant ("Settling Bank") and DTC to have the Settling Bank settle payment obligations on its behalf with DTC. The Settling Bank must have on-line access to DTC [14] and Fedwire. Throughout the processing day, DTC provides each Settling Bank with on on-line report of its net credit or debit positions and the net credit or debit positions of each Participant it represents. At the end of the processing day, DTC provides each Settling Bank with a "net-net" settlement amount, which is the aggregate of the end-of-day net debits and credits in the account of each Participant for which the Settling Bank settles, including its own account. If at the end of the processing day the Settling Bank has a net-net debit amount, it must pay that amount, no later than 4:30 p.m., by Fedwire transfer to DTC's account at the FRBNY.[15] DTC then pays, through similar means (at approximately 4:45 p.m.,) each Settling Bank with a net-net settlement credit.

The proposal provides for specific steps DTC will take if an SDFS Participant fails to pay a net debit balance. First, DTC will use the defaulting Participant's mandatory and voluntary cash contributions to the SDFS Funds. Second, DTC will pledge to lenders the defaulting Participant's securities deposits to the SDFS Fund for a loan to apply to the default.[16] Third, DTC will pledge to lenders other collateral of the defaulting Participant, including securities classified as net additions (*e.g.*, securities credited to the defaulting Participant that day ("incomplete deliveries") that have not been paid for).

If those procedures are insufficient to cover the default, DTC is authorized to take the following emergency steps. DTC can reduce *pro rata* net credits of Participants who delivered SDFS securities to the defaulting Participant on the day of default. Those reductions are limited to the amount of the net credit balance of each Participant resulting from transactions with the defaulting Participant. As an alternative, DTC also can resell to delivering Participants SDFS securities that those Participants sold to the defaulting Participant on the day of default.[17] Finally, if the preceding step does not cover the default, DTC is authorized to make *pro rata* net credit reductions, on an emergency basis, from all SDFS Participants with net credit balances, including those Participants that did not make deliveries to the defaulting Participant.

If the defaulting Participant is solvent and pays its debit balance in same-day funds by 10:00 a.m. on the day after the default, DTC generally will reverse the procedures followed on the day of default. DTC will repay lenders and restore pledged securities. DTC also will repay , with interest, any Participants whose net credits had been reduced. DTC will collect appropriate interest charges from the defaulting Participant. DTC also is authorized to assess failure

[10] DTC delivers and receives same-day funds over the Fedwire at its account at the Federal Reserve Bank of New York ("FRBNY"). Money settlement is on a net-net basis. *See* description *infra*.

[11] Acceptable forms of collaterail includes: (1) The Participant's mandatory deposits to the SDFS Fund (cash and U.S. government securities); (2) the Participant's voluntary deposits to the SDFS Fund; (3) SDFS U.S. government securities in the Participant's account at the beginning of the processing day which are classified as collateral by the Participant; (4) net additions of SDFS U.S. government securities to the Participant's account during the processing day which are the subject of deliveries versus payment from other Participants and reflected on DTC's books as incomplete transactions; (5) net additions to the Participant's account during the processing day from unvalued transactions in SDFS securities (*e.g.*, deposits) that are not classified as customer U.S. government securities by the Participant; and (6) net additions of customer SDFS U.S. government securities (*e.g.*, margin securities) classified as collateral by the Participant during the processing day.

[12] Collateralization requirements also apply to withdrawals, free deliveries, and intra-day segregation of customer securities.

[13] DTC's current line of credit is $114 million.

[14] Settling Banks maintain on-line access with DTC through DTC's Participant Terminal System.

[15] The proposal allows a Settling Bank to decide not to settle for a particular Participant(s) by notifying DTC by 4:00 p.m. That aspect of the proposal recognizes the practice of many banks to act only as agent in effecting settlement of securities transactions and not to be liable as a principal. If the Participant fails to arrange for a back-up Settling Bank to act on its behalf, DTC will treat the Participant as having defaulted and will follow the procedures for Participant defaults. *See* text accompanying notes, 11–14 *supra*.

[16] As an alternative, DTC could sell those securities. DTC also is authorized to pledge all securities in the SDFS Fund, including securities of non-defaulting Participants, subject to the requirement that it restore those securities as other funds are collected under DTC's default procedures.

[17] Those resales are at the same price originally credited to the delivering Participant. Cash credits reversed under the resale procedure are not subject to the net credit reduction procedure above.

to-settle fees against the defaulting Participant.[18]

If the defaulting Participant does not cure the default (*e.g.*, is insolvent), the proposal is designed to allocate any loss to Participants that made deliveries to the defaulting Participant. If it is necessary for DTC to assess, on an emergency basis, all Participants with net credit balances on the day of default, DTC will repay those Participants that did not make deliveries versus payment to the defaulting Participant and assess, *pro rata*, those Participants that had made deliveries to the defauting Participant.

If the defaulting Participant also is a Settling Bank, DTC will first apply that Participant's collateral to the default and follow the procedures outlined above. In addition, DTC is authorized to recover any interest loss *pro rata* from Participants represented by the defaulting Settling Bank and who had net credit balances on the day of default. Participants with net debit balances represented by the Settling Bank will remain obligated to pay those debits to DTC; however, those Participants in the aggregate are obligated only to the extent of the Settling Bank's unpaid net-net debit.[19]

II. DTC's Rationale

DTC states that the proposed rule change is consistent with the requirements of the Act, in that it promotes the prompt and accurate clearance and settlement of transactions in securities that settle in same-day funds. DTC states that the proposal will be implemented in a manner designed to safeguard the securities and funds in DTC's possession or under its control. DTC states that the SDFS System is a tightly controlled system requiring receivers of attempted securities deliveries to have collateral in their accounts adequate to support settlement debits that would result from the deliveries. It permits the depository to accomplish daily settlement when a Participant with a net debit fails to settle for any reason.

III. Discussion

As discussed below, the Commission believes that DTC's SDFS Service provides an efficient and safe environment for the centralized clearance and settlement of SDFS securities. The SDFS Service has operated smoothly over the last year as the number of eligible securities has increased. Accordingly, the Commission is approving DTC's proposal on a permanent basis.

During its first year of operation, DTC's SDFS Service has experienced rapid growth in both membership and use. For example, as of July 15, 1988, DTC had 135 direct and 15 indirect SDFS Participants with 229 and 154 accounts, respectively (up from 46 total Participants with 76 accounts at the end of July 1987). Currently, approximately 50 banks participate in SDFS as Settling Banks. Average daily settlements have grown steadily as the number of Participants and SDFS-eligible securities have grown, from approximately $2.4 million in July 1987 to approximately $404.9 million in June 1988.[20] DTC has represented to the Commission that it is capable of handling all foreseeable increases in transaction volume in the future. In order to complete settlement in the case of Participant default or insolvency, DTC currently has committed lines of credit of $114 million. These lines of credit also serve as a limitation on DTC's potential exposure from Participant defaults, because each SDFS Participant's daily net debit cannot exceed, at most, 75% of DTC's lines of credit.[21]

The Commission has examined the SDFS Service rules and procedures and DTC's experience with the program over the last year. Special attention was focused on those aspects of the proposal that are designed to protect DTC and its Participants against default and operational arrangements for the payment of redemption and interest proceeds. Based on that review, the Commission believes that the SDFS Service is consistent with DTC's obligation under the Act to safeguard securities and funds under its custody or control or for which it is responsible.

The Commission believes DTC's SDFS Service rules and procedures protect DTC and SDFS Participants from financial loss associated with member defaults and insolvencies. The SDFS Service rules and procedures contain a number of protections designed to decrease the chance of member default and to limit loss in the event of a default. Those protections include: initial and continuing financial qualifications for SDFS Participants, the SDFS component of the Participant Fund, full collateralization of all transactions, a Net Debit Cap, and procedures which allocate loss to SDFS Participants which traded with an insolvent Participant. Moreover, DTC can take a number of steps in managing a member default. DTC can pledge for loan purposes or sell collateral of the defaulting Participant. DTC has a line of credit from lenders committed to loan funds secured by securities collateral.[22] If those procedures prove insufficient, DTC would be authorized to assess any remaining loss against Participants with net cash credit balances, as described below, on the day of default. The proposal would allocate such a loss among Participants with net cash credit balances to the extent those Participants received cash credits from the defaulting Participant. That allocation would assess Participants that had transactions with the defaulting Participant and thereby create incentives for Participants to make credit decisions about the parties with whom they trade. Although DTC would be authorized to assess all Participants with net cash credit balances on the day of default,[23] that assessment would be repaid and charged to Participants that made deliveries to the defaulting Participant.

If a Settling Bank defaults, the proposal would provide for the same procedures outlined above and also would allocate loss to Participants that chose that Settling Bank to settle on their behalf. Participants with net cash debit balances using that bank would be obligated to pay DTC to the extent of the net-net cash debit of the defaulting Settling Bank. DTC would not be obligated to Participants with net cash credits that used the defaulting Settling Bank.[24]

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[18] DTC procedures provided for waiver of failure-to-settle fees during DTC's pilot operation of the SDFS Service.

[19] Some SDFS Participants have an arrangement with another Settling Bank to act as a backup for the Participant if the primary Settling Bank cannot handle the Participants' account for any reason (such as default by the Settling Bank).

[20] Similarly, the highest daily settlement for the month has grown dramatically, from $12.3 million in July 1987 to $4.1 billion in June 1988.

[21] *See* text accompanying note 13 *supra*.

[22] DTC will use the same-day funds line of credit to complete settlement in the defaulting Participant's account. In most cases, the Participant will repay DTC the next morning in same-day funds, which DTC will use to repay the loans from the line of credit lenders. DTC's lenders will release the collateral used to secure the loans and DTC will re-establish the collateral in the Participant's account. DTC will charge the Participant for interest and other charges incurred in obtaining the loan.

DTC's line of credit may act as a limit on a Participant's Net Debit Cap. As mentioned above, a Participant's Net Debit Cap is limited to the *lesser* of four amounts: (1) 75% of DTC' line of credit with lenders; (2) ten times the Participant's mandatory and voluntary deposits to the SDFS Fund; (3) the amount, if any, determined by the Participant's Settling Bank; or (4) the amount, if any, determined by DTC.

[23] As noted above, the proposal generally requires DTC to store SDFS Fund cash or securities belonging to non-defaulting Participants and Participants that did not make deliveries to the defaulting Participant.

[24] Those Participants would be assessed any interest charges relating to the delay in payment of the defaulting Settling Bank's net-net debit balance.

Since inception of the SDFS Service, DTC has experienced no member insolvencies or overnight settlement defaults. On approximately 30 occasions, Settling Banks wired net-net settlement funds to DTC after the prescribed cutoff time. The delays generally were under 20 minutes in length and the cause in each case was a mechanical funds transfer problem. In each instance DTC paid net-net settlement funds to Settling Banks in a net-net credit position, notwithstanding the failure to receive all funds due from Settling Banks in net-net debit positions.[25]

The Commission believes that DTC's temporary use of cash contributions to its Participants Fund is appropriate and its preferable to delaying settlement of net-net credit positions.[26] The Commission encourages DTC to monitor settlement delays and to take disciplinary action against members who routinely or without justification delay payment of net SDFS debits. Similarly, the Commission expects DTC to monitor Settling Bank compliance with DTC guidelines and to pursue, with those banks, solutions to mechanical problems that cause habitual delays.[27]

DTC's procedures provide for the payment of principal, interest, dividend and redemption proceeds on SDFS securities. Redemption proceeds are credited to the accounts of the appropriate Participants in same-day funds on the date they are received by DTC. DTC's current operational arrangements for SDFS securities call for paying agents to send the redemption payments to DTC on payable data over Fedwire. DTC allocates full payment to Participants so long as DTC receives at least 85% of the expected payment from the paying agent and the shortfall does not exceed $500,000. DTC attempts to make up any shortfall from other funding sources. If DTC is unable to make up the shortfall, DTC will charge back the unfunded shortfall from the Participants and will allocate the shortfall to Participants when collected.

DTC recently modified its policy on the payment of dividend and interest proceeds.[28] DTC's operational arrangements for SDFS securities provide collection procedures similar to DTC's procedures for redemption payments. The manner in which DTC credits dividend and interest payments, however, differs from the credit procedures for redemption proceeds, but is similar to DTC's policy for crediting interest and dividends on NDFS Services. DTC now allocates dividend and interest payments to Participants in next-day funds on payable date. The modification reflects DTC concern that it not incur substantial financing costs or the risk of loss due to issuer defaults on account of pre-funded dividend and interest payments. Under DTC's new policy, DTC invests funds received on payable date and credits investment income, *pro rata*, among Participants with positions in SDFS securities issues that generated the income. DTC withholds investment income, however, from Participants who, in their capacity as paying agents, do not pay DTC regularly in same-day funds on payable date.

The Commission believes that DTC's SDFS dividend and interest credit policy is consistent with the Act. The SDFS credit policy, like the NDFS credit policy, provides incentive for paying agents to meet their obligations on a timely basis and facilitates DTC's administration of dividend and interest payments consistent with DTC's responsibility to safeguard funds and securities.[29]

IV. Conclusion

For the foregoing reasons, the Commission believes that DTC's proposal (File No. SR–DTC–88–6) is consistent with section 17A of the Act and the rules and regulations thereunder in that is should promote the safeguarding of funds and securities in its possession, or for which it is responsible.

It is therefore ordered, pursuant to section 19(b) of the Act, that DTC's proposal (File No. SR–DTC–88–6) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: August 31, 1988.

Jonathan G. Katz,

Secretary.

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[25] DTC was able to complete settlements by using available funds from its Participants Fund.

[26] *See*, The Working Group on Financial Markets, Interim Report, Appendix D (May 1988).

[27] In this regard, the Commission directs DTC to report, on a quarterly basis, all settlement delays in excess of 15 minutes that were experienced during the previous three months. If any delay exceeds 30 minutes, the Commission expects DTC to notify Commission staff as soon as practicable and, in any case, by the next business day.

[28] *See* Securities Exchange Act Release No. 25869 (June 30, 1988) 53 FR 25357.

[29] *See* Securities Exchange Act Release No. 23686 (October 7, 1986) 51 FR 37102 (October 17, 1986), for a discussion of DTC's NDFS dividend and interest payment policy.

[Release No. 34–26044; File No. SR–MSRB–88–3]

Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board; Confirmation, Delivery and Reclamation of Municipal Securities Issuable in Bearer and Registered Form

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 11, 1988, the Municipal Securities Rulemaking Board ("Board") filed with the Securities and Exchange Commission a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) The Municipal Securities Rulemaking Board (the "Board") is filing an interpretation of rules G–12 and G–15 (hereafter referred to as the "proposed rule change") concerning the confirmation, delivery and reclamation of transactions in municipal securities that are issuable both in registered and bearer form ("interchangeable securities"). The proposed rule change reminds dealers that amendments to rules G–12 and G–15 relating to interchangeable securities will become effective for transactions executed on or after September 18, 1988. The proposed rule change also clarifies the application of the amendments to certain situations that have been posed by dealers.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) On March 18, 1988, the Commission approved certain amendments to Board rule G–12, on uniform practice, and rule G–15, on confirmation, clearance and settlement of customer transactions relating to municipal securities that are issuable in bearer or registered form ("the amendments"). The amendments revise rules G–12(e) and G–15(c) to allow inter-dealer and customer deliveries of interchangeable securities to be either in bearer or registered form, ending the

presumption in favor of bearer certificates for such deliveries. The amendments also delete the provision in rule G–12(g) that allows an inter-dealer delivery of interchangeable securities to be reclaimed within one day if the delivery is in registered form. In addition, the amendments remove the provisions in rules G–12(c) and G–15(a) that require dealers to disclose on inter-dealer and customer confirmation that securities are in registered form.

The proposed rule change reminds dealers that the amendments will become effective for transactions executed on or after September 18, 1988, and urges dealers to begin internal operational changes and customer education activities that may be needed to comply with the amendments. In addition, the proposed rule change will facilitate the implementation of the amendments by clarifying the application of the amendments to specific situations that have been posed by dealers.

The proposed rule change clarifies that certain securities, which can be converted from bearer to registered form but cannot be converted back to bearer form, are "interchangeable securities" and are subject to the amendments. It also notes that since the amendments will allow physical delivery of either bearer or registered securities, the amendments also will allow mixed deliveries of bearer and registered certificates of the same issue.

The proposed rule change reminds dealers that some interchangeable securities can be converted from registered to bearer form only at a substantial cost and that, if the customer requires bearer certificates and agrees to pay the conversion cost, the amount of conversion fee must be disclosed at or prior to the time of trade and noted on the confirmation. Since the customer's decision to pay a conversion fee is not a necessary or intrinsic cost of the transaction, the proposed rule change states that the fee should not be included in the yield calculation shown on the confirmation.

The proposed rule change notes that the Board's automated clearance rules, rules G–12(f) and G–15(d), require certain inter-dealer and customer transactions to be settled by book-entry delivery, and that, for these transactions, dealers may not agree to a physical delivery of bearer or registered certificates. For transactions in which the automated clearance rules allow a physical delivery (*e.g.*, because the securities are not depository eligible), dealers may agree on a specific form of physical delivery (either in bearer or registered form). The proposed rule change also notes that Board rules require this agreement to be noted on the confirmation.

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, which directs the Board to propose and adopt rules which are—

> Designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest * * *.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board believes that the proposed rule change will not have any impact on competition since it applies equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board has not solicited or received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All sumbissions should refer to the file number in the caption above and should be submitted by September 29, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: August 31, 1988.

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[Release No. 34–26045; File No. SR–NASD–88–37]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Filing and Immediate Effectiveness of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 25, 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 NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of section 19(b)(3)(A) under the Act, the NASD is filing a technical systems change to SOES: and interpretations to the SOES Rules to provide clarification concerning the aggregation of orders and the entry of orders by professional traders for their own account.

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 NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed

rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD 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 Small Order Execution System ("SOES") was created to facilitate the execution of retail transactions by public customers. The SOES service is available only for public customer orders of specified, small size and the SOES Rules prohibit member firms from breaking up larger orders for execution in SOES. The system was designed to further the investment objectives of public customers who typically have longer term trading goals than those of professional traders. Recently, it has come to the attention of the NASD that order entry firms and their customers have been engaging in practices which could seriously impact the viability of SOES. These practices include placing proprietary orders or the orders of professional traders through SOES. Generally, these firms are breaking up large size orders for the purpose of placing these orders through the SOES service. It appears that these firms are entering a group or series of orders into SOES which individually appear to be SOES eligible but are the result of one investment decision. The NASD believes that these trading practices may undermine the integrity of the system and contravene SOES' major purpose, that is, the execution of small public customer orders.

Because the proposed rule change would result in the elimination of abusive trading practices, the NASD believes that the proposed rule change is consistent with section 15A(b)(6) under the Securities Exchange Act which mandates, in pertinent part, that the rules of the Association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in securities and "to remove impediments to and perfect the mechanism of a free and open market and a national market system * * *."

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that the rule change does not impose any burden on competition not necessary or appropriate in frutherance of the purposes of the Securities Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD states that the proposed rule change constitutes an interpretation with respect to the meaning and enforcement of an existing NASD rule. The NASD accordingly requests that the proposed rule change take effect immediately prusuant to section 19(b)(3)(A) of the Act.

The proposed rule change is a stated policy, practice or interpretation of the NASD with respect to the meaning and enforcement of an existing rule. As such, it has become effective immediately pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 under the Act. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 29, 1980.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: August 31, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-20348 Filed 9-7-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26046; File No. SR-NASD-88-28]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Immediate Registration of NASDAQ Market Makers

The National Association of Securities Dealers, Inc. ("NASD") submitted on July 1, 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 amend Part VI, section 1(d) of Schedule D to the NASD By-Laws. The proposal provides that a NASDAQ market maker may become registered in an issue included in the NASDAQ System immediately after the registration request is entered.

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. 25937, July 22, 1988) and by publication in the Federal Register (53 FR 28485, July 28, 1988). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 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: August 31, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-20349 Filed 9-7-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26052; File No. SR-NASD-88-31]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Supervisory Procedures and Redefinition of Office of Supervisory Jurisdiction and Branch Office

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 22, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change and on August 26, 1988, an amendment thereto, as described in Items I, II, and III below, which Items have been prepared by the NASD. 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 proposed rule changes amend Article III, section 27 of the NASD Rules of Fair Practice to delete certain existing text, modify other existing text, and add new provisions regarding the supervisory procedures of NASD members and the definitions of Office of Supervisory Jurisdiction and Branch Office. In addition, the proposed amendments would delete the current definition of Branch Office in the NASD By-Laws, substituting a reference to the definition set forth in Article III, section 27 of the NASD Rules, and would delete portions of an Explanation of the Board of Governors respecting the definitions of Office of Supervisory Jurisdiction and Branch Office set forth in Schedule C to the By-Laws.

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 NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD 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

In recent years, the NASD has become increasingly concerned that some persons associated with NASD members may be engaging in the offer and sale of securities to the public without adequate ongoing supervision. In particular, the potential for significant regulatory problems exists when registered representatives conduct business at locations that are not subject to regular examination by the member and operate without direct oversight of qualified supervisory personnel.

In addition to these concerns, the NASD has considered whether certain aspects of a firm's business should be subject to on-site supervision by a registered principal so that the member can properly discharge its regulatory obligations. Further, the NASD has from time to time considered whether the definition of "branch office" in the By-Laws should be revised.

The NASD's concern about off-site employment was discussed in detail in Notice to Members 86-65 (September 12, 1986), which emphasized NASD rules that most directly apply to off-site employment. That notice stated that the NASD was continuing to study the need to revise requirements for designating offices of supervisory jurisdiction and branch offices and for on-site supervision by registered principals.

The NASD issued Notice to Members 88-11 on February 9, 1988, requesting comments on proposed amendments to Article III, secion 27 of the Rules of Fair Practice that set forth specific minimum requirements for supervisory practices and procedures for NASD members and redefinitions of "office of supervisory jurisdiction" and "branch office."

The proposed amendments to Article III, section 27 are substantially similar to the proposals set forth in Notice to Members 88-11. The proposed amendments substantially expand the specificity of Article III, section 27 of the NASD Rules of Fair Practice with respect to a member's supervisory obligations. The NASD believes that the new provisions will assist members in ensuring compliance with applicable laws, regulations, and rules by requiring that firms review their businesses and construct and document a supervisory system that is reasonably designed to achieve compliance with the securities laws and regulations and NASD rules applicable to the various areas of the securities business in which NASD members are engaged.

The proposed amendments also contain certain minimum required supervisory procedures and practices that the NASD believes to be necessary in any firm, regardless of size or type, in order to supervise adequately an investment banking and/or securities business. Finally, the proposals would also revise and clarify certain existing provisions of section 27.

Article I of the NASD By-Laws sets forth certain definitions applicable to terms used in the By-Laws and the Rules of Fair Practice. Section (c) defines branch office, and would be amended to reflect that the term is now to be defined in Article III, Section 27 of the Rules. The Explanation of the Board of Governors set forth at Schedule C to the By-Laws provides additional information regarding the distinction between an Office of Supervisory Jurisdiction and a Branch Office and standards for determining whether a business location is a branch office. These provisions would be deleted because they are inconsistent with the proposed redefinitions of Office of Supervisory Jurisdiction and Branch Office.

If the foregoing proposals are approved by the Securities and Exchange Commission, the Board of Governors has determined that it is appropriate to provide members with a period of time following SEC approval to bring their supervisory practices and procedures into compliance. The Board has concluded, therefore, that the amendments will take effect six months following SEC approval.

The proposed rule changes are consistent with the provisions of section 15A(b)(6) of the Securities Exchange Act of 1934, which provides that the rules of a national securities association be designed, *inter alia*, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed amendments to the By-Laws, Schedule C to the By-Laws, and Article III, section 27 of the Rules of Fair Practice impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The NASD solicited comments on proposed amendments to Article III, section 27 of the Rules in Notice to Members 88–11. Forty-eight comment letters were received.

Thirty-three commentators supported the proposed amendments to the supervisory rules and procedures, three opposed them, one requested a clarification, and eight did not comment on this aspect. As to the proposed redefinition of Office of Supervisory Jurisdiction, 13 commentators supported the proposal, 13 offered qualified support, three opposed the proposal, two requested clarification, and eight commentators did not address the question. The proposed redefinition of branch office was supported by 19 commentators, four of whom suggested that the language be clarified, and opposed by eight commentators; two raised questions, and 11 did not comment on this proposal.

After a review and discussion of the comments, the Board made certain adjustments and modifications to the proposals to address a number of issues raised by the commentators. The most significant of these changes are:

(1) The enumeration of certain factors relevant to the determination of the need to designate additional Offices of Supervisory Jurisdiction for general supervisory purposes (see proposed section 27(a)(3));

(2) Clarification of certain matters regarding the annual compliance meeting or interview required for all registered representatives (see proposed section 27(a)(7));

(3) The deletion of the reference to a "compliance" principal in proposed section 27(a)(8);

(4) The substitution of "titles" for "names" of persons identified in the firm's written procedures as part of its supervisory "chain of command", with the addition of a requirement to make and keep a separate record of all persons designated as supervisory personnel (see proposed section 27(b)(2));

(5) The codification of the NASD's position that the required review of all transactions and correspondence be conducted by a registered principal (see proposed section 27(d));

(6) The deletion of approval of correspondence from the enumeration of functions giving rise to the OSJ definition (see proposed section 27(f)(1)); and

(7) The addition of a requirement that telephone directory line listings, business cards, and letterhead identifying non-branch locations also set forth the address and telephone number of the firm's office responsible for supervising the identified location (see proposed section 27(f)(2)).

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD 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 submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld form 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 such 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–88–31 and should be submitted by September 29, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: September 1, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–20350 Filed 9–7–88; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

August 31, 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 traidng privileges in the following securities:

ACM Government Opportunity Fund, Inc., Common Stock, $.01 Par Value (File No. 7–3856)

Van Kampen Merritt/Municipal Income Trust, Common Stock, Without Par Value (File No. 7–3857)

Duke Realty Investments, Inc., Common Stock, $01 Par Value (File No. 7–3858)

Ashland Coal Inc., Common Stock, $.01 Par Value (File No. 7–3859)

Cigna High Income Shares, Shares of Beneficial Interest, No Par Value (File No. 7–3860)

Silicon Systems, Inc., Common Stock, $.01 Par Value (File No. 7–3861)

Sunshine Mining Company, Common Stock, $.50 Par Value (File No. 7–3862)

The British Petroleum Company, PLC, Second Installment American Depositary Shares (File No. 7–3863)

Sunshine Mining Company, Cumulative Redeemable Preferred Stock ($11.94 State Value), $1.00 Par Value (File No. 7–3864)

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 September 22, 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. 88-20351 Filed 9-7-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for hearing; Pacific Stock Exchange, Incorporated

August 31, 1988.

The above named national securities exchanges 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:

ACM Government Securities Fund, Inc.
Common Stock, $.01 par value (File No. 7-3834)

The Bear Stearns Companies, Inc.
Common Stock, $1.00 par value (File No. 7-3835)

Borden Chemicals & Plastic Limited Partnership
Preference Units (File No. 7-3836)

Comstock Partners Strategy Fund, Inc.
Common Stock, $.001 par value (File No. 7-3837)

Eastern Airlines, Inc.
11.36% Depositary Preferred Shares (File No. 7-3838)

Eastern Airlines, Inc.
$2.72 Cumulative Preferred Stock (File No. 7-3839)

Federal National Mortgage Association
Warrants expiring February 25, 1991 (File No. 7-3840)

First Union Corporation
Common Stock, $3.33-⅓ par value (File No. 7-3841)

Long Drug Stores Corporation
Common Stock, no par value (File No. 7-3842)

National Semiconductor Corporation
Warrants expiring May 13, 1992 (File No. 7-3843)

New America High Income Fund, Inc.
Common Stock, $.01 par value (File No. 7-3844)

PNC Financial Corp.
Common Stock, $5.00 par value (File No. 7-3845)

Putnam Master Intermediate Income Trust
Shares of Beneficial Interest, no par value (File No. 7-3846)

Norton Company
Common Stock, $5.00 par value (File No. 7-3847)

Oppenheimer Multi-Sector Fund Trust
Common Stock, $.01 par value (File No. 7-3848)

Winn-Dixie Stores, Incorporated
Common Stock, $1.00 par value (File No. 7-3849)

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 September 22, 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 5th 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. 88-20352 Filed 9-7-88; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

August 31, 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:

Commercial Credit Group, Inc.
Common Stock, $.01 Par Value (File No. 7-3850)

The Gap, Inc.
Common Stock, $0.05 Par Value (File No. 7-3851)

W.R. Grace & Co.
Common Stock, $1 Par Value (File No. 7-3852)

Matrix Corporation
Common Stock, $1 Par Value (File No. 7-3853)

PSI Holdings, Inc.
Common Stock, No Par Value (File No. 7-3854)

Rexene Corporation
Common Stock, $0.01 Par Value (File No. 7-3855)

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 September 22, 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 5th 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. 88-20353 Filed 9-7-88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16543; 811-4509]

FFB Equity Trust; Application

September 1, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: FB Equity Trust ("Applicant").

Relevant 1940 Act Sections: Section 8(f).

Summary of Application: Applicant seeks an order of the Commission declaring that Applicant has ceased to be an investment company as defined by the 1940 Act.

Filing Date: The application, filed on Form N-8F was filed on December 18, 1987 and amended on March 23, 1988 and August 19, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 26, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either

personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 230 Park Avenue, New York, New York 10169.

FOR FURTHER INFORMATION CONTACT: Cecilia C. Kalish, Staff Attorney (202) 272–3035, or Curtis R. Hilliard, Special Counsel (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations:

1. Applicant, a Massachusetts business trust, filed a Notification of Registration under the 1940 Act with the Commission on December 6, 1985. Applicant is registered under the 1940 Act as an open-end, diversified, management investment company. Applicant's initial registration statement was declared effective on May 5, 1986, and the initial public offering commenced immediately thereafter.

2. On March 26, 1987, the board of trustees of Applicant approved and adopted an Agreement and Plan of Reorganization (the "Plan") under which all of the assets and liabilities of Applicant would be transferred to FFB Funds Trust, a registered investment company, on June 12, 1987. Applicant's shareholders approved the Plan at a special meeting held on June 11, 1987 ("Special Meeting"). Pursuant to the Plan on June 12, 1987, the closing, each of FFB Money Trust, FFB Equity Trust and FFB Tax-Free Trust (the "Old Series") assigned, sold, conveyed, transferred and delivered to its corresponding series of FFB Funds Trust (the "New Series") all of its then existing assets including all of Applicant's Portfolio securities. In consideration, each respective New Series assumed all of the obligations and liabilities then existing in the Old Series and deliverd to its corresponding Old Series a number of full and fractional shares of beneficial interest of the New Series ("New Shares"). Each Old Series distributed in complete liquidation pro rata to its shareholders of record as of June 12, 1987, the New Shares received by the Old Series. The voting rights of the New Shares are identical to those of their respective Old Series shares. No brokerage commissions were paid in connection with the Plan.

3. Following Applicant's reorganization as a portfolio of FFB Funds Trust on June 12, 1987, Applicant's registration as a Massachusetts business trust was terminated by the Office of the Secretary of State, Boston, Massachusetts, as of the same date.

4. As of May 5, 1987, the record date for determination of shareholders of Applicant entitled to notice of, and to vote at, the Special Meeting held on June 11, 1987, Applicant had 163,958.564 shares of beneficial interest outstanding, having an aggregate net asset value of $1,929,663.00 and a per share net asset value of $11.77. Following implementation of the Plan on June 12, 1987, Applicant had no shareholders. The expenses applicable to the reorganization, consisting of accounting, printing, administrative and certain legal expenses, are estimated to be approximately $43,924.00. These expenses were allocated among the various portfolios involved in the reorganization, with Applicant's share being $865.00.

- Applicant currently has no assets and no liabilities. Applicant is not a party to any current or pending litigation or administrative proceeding. Applicant is not engaged, and does not propose to engage in any business activities other those necessary for winding-up of its affairs.

- Applicant represents that all of its required N-SAR filings have been made and that it will file its N-SAR for the periods ending February 29, 1988 and August 31, 1988.

- Applicant has ceased all operations as a management investment company. By virtue of the reorganization effected on June 12, 1987, Applicant ceased to have at least one hundred persons who are beneficial owners of its shares and as such Applicant would not be defined as an "investment company" under the 1920 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–20354 Filed 9–7–88; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC–16544; 811–4507]

FFB Tax-Free Trust; Notice of Application

September 1, 1988

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: FFB Tax-Free Trust ("Applicant").

Relevant 1940 Act Sections: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order of the Commission declaring that Applicanty has ceased to be an investment company as defined by the 1940 Act.

FILING DATE: The application, filed on Form N–8F, was filed on December 18, 1987 and amended on March 23, 1988 and August 19, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on September 26, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 230 Park Avenue, New York, New York 10169.

FOR FURTHER INFORMATION CONTACT: Cecilia C. Kalish, Staff Attorney (202) 272–3035, or Curtis R. Hilliard, Special Counsel (202) 272–3030 (Division of Investment management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations:

1. Applicant, a Massachusetts business trust, filed a Notification of Registration under the 1940 Act with the Commission on December 6, 1985. Applicant is registered under the 1940

Act as an open-end, diversified, management investment company. Applicant's initial registration statement was declared effective on May 5, 1986 and the initial public offering commenced immediately thereafter.

2. On March 26, 1987, the board of trustees of Applicant approved and adopted an Agreement and Plan of Reorganization (the "Plan") under which all of the assets and liabilities of Applicant would be transferred to FFB Funds Trust, a registered investment company, on June 12, 1987. Applicant's shareholders approved the Plan at a special meeting held on June 11, 1987 ("Special Meeting"). Pursuant to the Plan on June 12, 1987, the closing, each of FFB Money Trust, FFB Equity Trust and FFB Tax-Free Trust (the "Old Series") assigned, sold, conveyed, transferred and delivered to its corresponding series of FFB Funds Trust (the "New Series") all of its then existing assets including all of Applicant's portfolio securities. In consideration, each respective New Series assumed all of the obligations and liabilities then existing in the Old Series and delivered to its corresponding Old Series a number of full and fractional shares of beneficial interest of the New Series ("New Shares"). Each Old Series distributed in complete liquidation pro rata to its shareholders of record as of June 12, 1987, the New Shares received by the Old Series. The voting rights of the New Shares are identical to those of their respective Old Series shares. No brokerage commissions were paid in connection with the Plan.

3. Following Applicant's reorganization as a portfolio of FFB Funds Trust on June 12, 1987, Applicant's registration as a Massachusetts business trust was terminated by the Office of the Secretary of State, Boston, Massachusetts, as of the same date.

4. As of May 5, 1987, the record date for determination of shareholders of Applicant entitled to notice of, and to vote at, the Special Meeting held on June 11, 1987, Applicant had 102,920.309.24 shares of beneficial interest outstanding, having an aggregate net asset value of $102,920,309.00 and a per share net asset value of $1.00. Following implementation of the Plan on June 12, 1987, Applicant had no shareholders. The expenses applicable to the reorganization, consisting of accounting, printing, administrative and certain legal expenses, are estimated to be approximately $43,924.00. These expenses were allocated among the various portfolios involved in the reorganization, with Applicant's share being $7,475.00.

5. Applicant currently has no assets and no liabilities. Applicant is not a party to any current or pending litigation or administrative proceeding. Applicant is not engaged, and does not propose to engage in any business activities other than those necessary for winding-up of its affairs.

6. Applicant represents that all of its required N–SAR filings have been made and that it will file its N–SAR for the periods ending February 29, 1988 and August 31, 1988.

7. Applicant has ceased all operations as a management investment company. By virtue of the reorganization effected on June 12, 1987, Applicant ceased to have at least one hundred persons who are beneficial owners of its shares and as such Applicant would not be defined as an "investment company" under the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–20355 Filed 9–7–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–24708]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

September 1, 1988

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 26, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

General Public Utilities Corporation (70–7525)

General Public Utilities Corporation, 100 Interpace Parkway, Parsippany, New Jersey 07054 ("GPU"), a registered holding company, has filed an application-declaration pursuant to sections 9, 10, 12(b) and 12(c) of the Act and Rules 45 and 46 thereunder.

In order to better focus organization and management of its non-rate-regulated activities, GPU proposes to acquire all the common all the common stock of a new subsidiary, tentatively named GPU Capital Resources ("GPUCR"). GPU proposes to acquire the common stock of GPUCR for the sum of $100,000 and to make contributions to the capital of GPUCR of: (a) The common stock of Energy Initiatives, Incorporated ("EII"), a wholly owned subsidiary of Jersey Central Power & Light Company, which is itself a wholly owned subsidiary of GPU, and (b) $50 million, $25 million of which GPUCR will in turn contribute to the capital of EII through December 31, 1989 and $25 million over which the Commission has been requested to reserve jurisdiction.

GPU intends that GPUCR be the vehicle through which its investments in on-rate-regulated businesses be made, managed and controlled. (The making of such investments is the subject of the application in S.E.C. File No. 70–7433).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–20356 Filed 9–7–88; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATE: Comments should be submitted on or before October 11, 1988. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653–8538

OMB Reviewer: Robert Neal, Office of Information and Regulatory, Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395–7340

Title: Management Training Form
Form Nos.: 888
Frequency: On Occasion
Description of Respondents: This form is completed by course instructors to collect information on the types of clients attending SBA cosponsored training programs and information on the nature, content and duration of the program.
Annual Responses: 10,000
Annual Burden Hours: 1,000

Title: Nominate a Small Business Person or Advocate of the Year
Frequency: Annually
Description of Respondents: Trade organizations, chambers of commerce and small business organizations are invited to nominate small business leaders for special small business advocacy awards. The information collected on individual/state/district winners can be helpful in identifying resource people in the field.
Annual Responses: 400
Annual Burden Hours: 800

Title: Contractors Subcontracting Program/Plan Compliance Review Report
Form No: SBA 745, 745A
Frequency: On occasion
Description of Respondents: The forms are used to collect data for evaluating and determining large business concerns' compliance with subcontracting requirements contained in Federal contracts, pursuant to Section 8(d) of the Small Business Act as amended by Public Law 95–507.
Annual Responses: 5,400
Annual Burden Hours: 16,200

Title: Client Verification and Evaluation Sheet
Form No: SBA 1538
Frequency: Upon completion of services rendered
Description of Respondents: Recipients are required to prove this information. This data will provide adequate feedback on the client's progress and difficulties related to business operations.
Annual Responses: 2,000
Annual Burden Hours: 167

Title: 7(j) Monitoring: Client's Record on Assistance Rendered
Form No.: SBA 1540
Frequency: Upon completion of services rendered
Description of Respondents: The client is required to complete the form upon completion of the task. This information provides SBA with adequate feedback on the client's progress and difficulties related to business operations.
Annual Responses: 2,000
Annual Hours: 100

William A. Cline,
Chief, Administrative Information Branch.

[FR Doc. 88–20413 Filed 9–7–88; 8:45 am]
BILLING CODE 8025–01–M

Region IX Advisory Council Public Meeting; Los Angeles, CA

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Los Angeles, will hold a public meeting at 9:00 a.m. on Thursday, October 27, 1988, at the Bank of America Executive Board Room, 555 South Flower Street, Los Angeles, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call M. Hawley Smith, District Director, U.S. Small Business Administration, 350 South Figueroa Street, Suite 600, Los Angeles, California 90071—(213) 894–2977.

Jean M. Nowak,
Director, Office of Advisory Councils.
September 1, 1988.

[FR Doc. 88–20409 Filed 9–7–88; 8:45 am]
BILLING CODE 8025–01–M

Region I Advisory Council Public Meeting; Augusta, ME

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Augusta, will hold a public meeting at 10:00 a.m. on Thursday, October 6, 1988, at Hazel Green's Restaurant, 249 Water Street, Augusta, Maine, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Roy Perry, District Director, U.S. Small Business Administration, 40 Western Avenue, Augusta, Maine 04330—(207) 622–8382.

Jean M. Nowak,
Director, Office of Advisory Councils.
August 31, 1988.

[FR Doc. 88–20410 Filed 9–7–88; 8:45 am]
BILLING CODE 8025–01–M

Region IV Advisory Council Public Meeting; Nashville, TN

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Nashville, will hold a public meeting at 8:00 a.m. on Thursday, September 29, 1988, at Sovran Bank, One Commerce Place, Nashville, Tennessee, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert M. Hartman, District Director, U.S. Small Business Administration, Suite 1012 Parkway Towers, 404 James Robertston Parkway, Nashville, Tennessee 37219 — (615) 736–5850.

Jean M. Nowak,
Director, Office of Advisory Councils.
August 31, 1988.

[FR Doc. 88–20411 Filed 9–7–88; 8:45 am]
BILLING CODE 8025–01–M

Region I Advisory Council Public Meeting; Montpelier, VT

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Montpelier, will hold a public meeting at 10:00 a.m. on Wednesday, October 5, 1988, at the Hotel Coolidge, White River Junction, Montpelier, Vermont, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Ora H. Paul, District Director, U.S. Small Business Administration, Federal Building, 87 State Street, P.O. Box 605,

Montpelier, Vermont 05602—(802) 828–4422.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 1, 1988.

[FR Doc. 88–20412 Filed 9–7–88; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended August 26, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45773

Date Filed: August 26, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 28, 1988 pursuant to Order 88–8–67.

Description: Application of Midway Airlines, Inc. pursuant to section 401 of the Act requests issuance of a certificate of public convenience and necessity authorizing it to operate scheduled foreign air transportation of persons, property and mail between Tampa and Orlando, Florida, on the hand, and Cancun, Mexico, on the other hand.

Docket No. 45774

Date Filed: August 26, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 28, 1988 pursuant to Order 88–8–67.

Description: Application of The Flying Tiger Line Inc. pursuant to section 401 of the Act requests issuance of a certificate of public convenience and necessity authorizing it to operate scheduled foreign air transportation of property and mail between Miami, Florida, Houston, Texas, and Columbus Ohio on the one hand, and Mexico City and Guadalajara, Mexico, on the other.

Docket No. 45776

Date Filed: August 26, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 28, 1988 pursuant to Order 88–8–67.

Description: Application of Aerial Transit Company pursuant to non-oral hearing procedures as set forth in DOT Order 88–7–43 requests an amendment of its foreign air transport certificate authorizing it to perform scheduled all-cargo air transportation between Miami, Florida on the one hand, and Merida, Mexico on the other hand, and to combine that service with its authorized service between Miami and other Central American points beyond Mexico, namely Belize City, Guatemala City, San Salvador, and San Pedro Sula.

Docket No. 45777

Date Filed: August 26, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 28, 1988 pursuant to Order 88–8–67.

Description: Application of United Air Lines, Inc. pursuant to Non-oral hearing procedures as set forth in DOT Order 88–7–43, applies for a certificate of public convenience and necessity in order to authorize United to provide roung-trip scheduled foreign air transportation of persons, property, and mail between the United States and Mexico.

Docket No. 45778

Date Filed: August 26, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 28, 1988 pursuant to Order 88–8–67.

Description: Application of United Parcel Service Co., pursuant to Non-oral hearing procedures set forth in DOT Order 88–7–43, requests the issuance of a new or amended certificate of public convenience and necessity authorizing UPS to engage in scheduled foreign air transportation of cargo (property and mail) between the United States and Mexico.

Docket No. 45779

Date Filed: August 26, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 28, 1988 pursuant to Order 88–8–67.

Description: Application of Pan American World Airways, Inc. pursuant to Non-oral hearing procedures as set forth in DOT Order 88–7–43, applies for amendment of its certificate of public convenience and necessity for Route 136, Orlando, Florida-Mexico City, Mexico.

Docket No. 45780

Date Filed: August 26, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 28, 1988 pursuant to Order 88–8–67.

Description: Application of Alaska Airlines, Inc. pursuant to Non-oral hearing procedures as set forth in DOT Order 88–7–43, requests a certificate of public convenience and necessity to operate a scheduled service between Los Angeles, California and San Jose del Cabo (Los Cabos), Mexico.

Docket No. 45783

Date Filed: August 26, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 28, 1988 pursuant to Order 88–8–67.

Description: Application of Continental Airlines, Inc. pursuant to section 401 of the Act and Order 88–7–43, requests a certificate of public convenience and necessity which will authorize Continental to provide foreign air transportation of persons, property and mail between certain points in the United States and certain points in Mexico.

Docket No. 45784

Date Filed: August 26, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 28, 1988 pursuant to Order 88–8–67.

Description: Application of Continental Airlines, Inc. pursuant to section 401 of the Act and Order 88–7–43, requests an amendment of its certificate of public convenience and necessity for Route 29–F, reissued by Order 86–8–78.

Docket No. 45788

Date Filed: August 26, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 28, 1988 pursuant to Order 88–8–67.

Description: Application of Alaska Airlines, Inc. pursuant to DOT Order 88–7–43, requests a certificate of public convenience and necessity, pursuant to section 401 of the Act, to operate scheduled service between San Francisco, California and Puerto Vallarta and Mazatlan, Mexico.

Docket No. 45495

Date Filed: August 26, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 28, 1988 pursuant to Order 88–8–67.

Description: Amendment No. 1 to the Application of American Airlines, Inc. hereby amends its application filed in this docket on March 3, 1988, so as to provide an illustrative service proposal and other data, consistent with the Department's directive in Order 88–7–43.

Docket No. 45448

Date Filed: August 26, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 28, 1988 pursuant to Order 88–8–67.

Description: Amendment No. 1 to the Application of American Airlines, Inc. amends its application filed in this docket on February 12, 1988, as follows.

1. Under paragraph 4 of its initial application, American requests the following additional authority:

B.8 Chicago-Loreto, La Paz, San Jose del Cabo, Mazatlan, Puerto Vallarta, Guadalajara, Huatulco.

2. American hereby submits illustrative service proposals and other data pursuant to the Department's directive in Order 88–7–43.

Docket No. 45623

Date Filed: August 26, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 28, 1988 pursuant to Order 88–8–67.

Description: Amendment No. 1 to the Application of Amerijet International, Inc. pursuant to the Department's directive in Order 88–7–43, amends its application for a certificate of public convenience and necessity to requests authority to provide scheduled all-cargo service between the United States and Mexico over the following route: Oakland, Indianapolis, Columbus, Dayton, Louisville, Harlingen, McAllen, Memphis, Newburgh, Miami, Houston-Chihuahua, Guadalajara, Monterrey, Merida, Toluca, as well as such other and further authority as the Department of Transportation deems appropriate.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88–20398 Filed 9–7–88; 8:45 am]

BILLING CODE 4910–62–M

[Docket 44369]

Exemption of Persons Who Contract for the Purchase of Blocks of Seats on Scheduled Service Pursuant to Applicable Tariffs for Resale to the Public; Final Order

By Order 86–9–61 issued September 22, 1986 (51 FR 34518, September 29, 1986), we directed all interested persons to show cause why we should not make final our tentative findings and conclusions stated in it and delete ordering paragraph (d) from Order 81–7–109 so that direct air carriers and foreign air carriers need no longer file the name and address of the bulk fare contractor with the Department. Interested persons were given until October 29, 1986 to file objections to the order.

No objections to the show-cause order were received within the answer period provided.

Accordingly,

1. We make final our tentative findings and conclusions set forth in Order 86–9–61, and we hereby amend Order 81–7–109 by deleting ordering paragraph (d).

2. We will publish this order in the Federal Register.

Gregory S. Dole,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 88–20397 Filed 9–7–88; 8:45 am]

BILLING CODE 4910–62–M

Selection of 10 University Transportation Centers To Receive Research Grants; University Transportation Centers Program

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: This notice lists the universities that were selected for grant awards to participate in the Department of Transportation University Transportation Centers Program.

EFFECTIVE DATE: August 16, 1988.

FOR FURTHER INFORMATION CONTACT: William F. Brown, Director, University Transportation Centers Program, P–34, (202) 366–5442, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The Department of Transportation (DOT) has selected 10 universities to receive five million dollars in federal research grants for the purpose of establishing a DOT University Transportation Centers Program that would provide a national resource and focal point for the conduct of research and training concerning the transportation of passengers and property. The grants will be used to establish and operate one regional transportation center in each of the 10 standard Federal regions and will be matched dollar for dollar with non-Federal funds.

The aim of this Program is to attract the Nation's best talent to the study of transportation as a discipline and to develop new strategies and concepts to effectively address existing and future transportation problems. The Centers Program has great potential for making a major contribution towards a better understanding and subsequent solution of rapidly escalating concerns relating to regional and national transportation issues. Each Center institution has an unparalleled opportunity to play a vital role in advancing the conduct of transportation research and preparing graduates with the diversity and quality of education needed to assure the safe, economic, and effective operation of transportation systems, services and activities.

In order to assure that the University Transportation Centers Program fully achieves its objectives it is important that each Center have significant regional representation and focused research and training programs. Accordingly, there will be an evaluation of these factors prior to receipt of further grant awards. Should this evaluation be unsatisfactory, applications will be solicited from other eligible institutions. While the University Transportation Centers Program has been authorized for Federal funding for Fiscal Years 1988 through 1991, continuation of work by each Center subsequent to FY 1988 will depend on progress made toward objectives.

A listing of the grantees and regional location is as follows:

Region and University

I. Massachusetts Institute of Technology
II. The City University of New York
III. Pennsylvania State University
IV. University of North Carolina
V. University of Michigan, Ann Arbor
VI. Texas A&M University, College Station
VII. Iowa State University
VIII. North Dakota State
IX. University of California, Berkeley
X. University of Washington

DOT announced plans to establish this program in the August 14, 1987, Federal Register (52 FR 30478). The above institutions were selected following an extensive technical merit evaluation and peer review process. Some 90 institutions participated in the program competition through various consortia arrangements. The University Transportation Centers Program is authorized by section 314 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (49 U.S.C. 1607c) and is administered by the Office of the Secretary.

Gregory S. Dole,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 88–20399 Filed 9–7–88; 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

Environmental Impact Statement; Alameda County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project at the I–580/I–680 interchange in the Cities of Dublin and Pleasanton, Alameda County, California.

FOR FURTHER INFORMATION CONTACT: David L. Eyres, District Engineer, Federal Highway Administration, P.O. Box 1915, Sacramento, California 95812–1915. Telephone: (916) 551–1314.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation, will prepare a draft Environmental Impact Statement (EIS) on a proposal to reconstruct the I–580/I–680 Interchange, the modification of adjacent interchanges as necessary, and the widening of the I–580 median to provide for future mass transit. The

study will also consider the no project alternative. The limits of the proposed action will be the area within a 1.5 mile radius of the interchange, including Post Miles 18.6 to 21.9 on I–680, and Post miles 18.2 to 21.6 on I–580.

The existing cloverleaf interchange distributes traffic from two major transportation routes in a region east of the San Francisco Bay Area which is experiencing rapid commercial, residential, and recreational growth. Two of the interchange ramp connectors are operating at capacity most of the daytime period, and the others are approaching this level of operation. Although the freeways themselves have not reached capacity, severe traffic congestion at the interchange is a regular occurrence which interferes with traffic operations on the freeways.

The proposed project will be undertaken in stages. The first stage will provide a flyover connector from southbound I–680 to eastbound I–580, and improvements to the westbound I–580 diagonal connector to northbound I–680. Ultimately, the project will involve reconstruction of the entire I–580/I–680 interchange including three additional flyover connectors, the modification of adjacent interchanges, and possible construction of none new interchange.

The ultimate configuration of the I–580/I–680 interchange and appurtenant facilities will be compatible with transit improvements under consideration in the immediate vicinity.

The ultimate project will require additional right-of-way, and will affect residential properties, commercial properties, a public park, and traffic circulation on local arterials within the vicinity of the interchange. The proposed project would be partially funded by local Alameda County Measure B sales tax revenues.

A scoping meeting wil be held in the future for affected Federal, State and local agencies to determine the scope of the issues to be addressed, and for identifying the significant issues related to the proposed action. A public information meeting will also be held in the future to announce the beginning of studies and to advise and receive input from the public on the scope of and alternatives to the proposed project.

To ensure that all significant issues are addressed, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the draft EIS can be presented at the initial public/scoping meeting or directed to the FHWA at the address previously provided.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The Regulations implementing Executive Order 12371 regarding intergovernmental consultation on Federal Programs and activities apply to this program.)

Issued on August 29, 1988.

David L. Eyres,

District Engineer, Sacramento, California.

[FR Doc. 88–20302 Filed 9–7–88; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petitions; CFAS/Cole, SFCM/Sack

This notice sets forth the reasons for the denial of a petition submitted to NHTSA under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*).

In February 1988, Mr. Samuel H. Cole of the Center for Auto Safety (CFAS) petitioned the NHTSA to conduct a defect investigation into the alleged rollover propensity of the Suzuki Samurai and Suzuki "variants" of the Samurai, the SJ410 and LJ80 vehicles. In July 1988, Sylvan H. Sack of the Safety First Club of Maryland also petitioned the agency to open a defect investigation and recall of the Suzuki Samurai and its variants.

Both petitions for a defect investigation are denied. The rollover crash involvement of the Samurai appears to be within the range of most other light utility vehicles. Rollovers where they have occurred often appear to have been influenced by adverse driver and environmental factors such as high risk driving maneuvers, drinking, low ambient light, and lack of driver familiarity with either the vehicle or the road.

There were 192,126 Suzuki Samurai, SJ410 and LJ80 vehicles sold in the U.S. from August 1980 through March 1988, of which less than 16,000 vehicles were the SJ410 and the LJ80 models. The SJ410 and the LJ80 were sold from August 1980 through 1985 in Hawaii, Puerto Rico, and the Virgin Islands, but not in the continental U.S. The Samurai was first introduced in April 1985, with the convertible or soft top bodystyle accounting for most of the vehicle sales (80 percent). The SJ410 and LJ80 vehicles were predecessors of the Samurai and were sold without a roll bar or stabilizer bar which are standard equipment in the Samurai.

There are 113 reported rollovers, 91 involving the Samurai, 15 involving the SJ410, 5 involving the LJ80, and 2 are unknown Suzuki vehicles. Thirteen of the vehicles are reported to be hardtops, 62 are convertibles, and the remaining are not identified. These reported rollovers involve 120 injuries and 25 fatalities. The report sources include CFAS, Suzuki, NHTSA's Fatal Accident Reporting System (FARS), and the public.

The average time of ownership prior to a rollover was less than 8 months, ranging from 2 to 15 months. Rollovers involved young drivers (73 percent were 25 years old or younger) Alcohol usage was found in approximately 50 percent of the police-reported rollovers. The driver was cited by police for a traffic offense in 50 percent of the police reports. The rollover was also likely to occur at night (58 percent) on a weekend (55 percent). California was found to have twice the number of rollovers as any other state (20 percent versus 9 percent for Florida). Occupant ejection was involved in all fatal first event rollovers and most serious injury rollovers. In most instances it appears that ejection may have been prevented had the safety belts been used at the time of the rollover. Multiple-vehicle crashes accounted for 10 of the rollovers. Only one report involved a rollover which took place entirely off-road (a SJ410 vehicle).

A comparison of the Samurai rollover experience to peer light utility vehicles was made using the 1987 Fatal Accident Reporting System (FARS) file. The comparison was made based on normalized vehicle populations of 1986–1987 model light utility vehicles with at least 25 fatal crashes in the FARS file; the Ford Bronco II, the General Motors Corporation S–10 Blazer/S–15 Jimmy, and the Jeep Cherokee/Wagoneer vehicles. The Bronco II (approximately 19 per 100,000 vehicles) was found to have more than 3 times the first event rollover (the rollover was not subsequent to a collision or impact) involvement as the Samurai. the Samurai had a first event rollover involvement (approximately 6 per 100,000) corresponding to the S–10 Blazer (approximately 6 per 100,000), but exceeded the Cherokee first event rollover (approximately 2.5 per 100,000) involvement.

For the class of vehicles and in particular for the Suzuki Samurai, the vehicle operator appears to be a major factor in light utility vehicle rollovers. The lack of utility vehicle driving experience exhibited by the Suzuki drivers (and demonstrated in ODI's previous investigation of Jeep CJ–5 vehicle rollover) and other contributing factors identified in the crash analysis

indicate that the driver's familiarity with the vehicle appears to be the most important factor in the occurrence of a the rollover event. The Samurai's relatively short wheel base, narrow track width, and low mass may make it more maneuverable, which may be beneficial for accident avoidance. However, such characteristic may increase the chance that inexperienced drivers when reacting to an unexpected event, may oversteer or over correct the vehicle inducing a high lateral acceleration which can result in a rollover. The likelihood of a rollover is dependent on a variety of conditions present at the moment such as vehicle condition, road/ground surface, topography, and vehicle speed.

The Samurai was found to have a static stability factor (ratio of the half track width to center of gravity height) higher than most other light utility vehicles when empty. The Samurai ranges from 1.08 to 1.13. The class of light utility vehicles ranges from approximately 1.03 to 1.22. The stability factor has been shown to have a positive statistical relationship to the likelihood of a vehicle rolling over in an accident, although other factors such as wheel base and tire traction are also involved. Those vehicles with higher stability factors tend to have lower rollover in a crash. The Samurai's center of gravity height increases by more than 3 inches with 4 adult (150 pounds each) occupants, causing the stability factor to decrease approximately 13 percent. As the vehicle load is increased, the stability factor decreases, because the center of gravity of the low mass Samurai is readily affected by the added mass and the location of that mass in the vehicle. This effect is even more pronounced in the convertible or soft top bodystyle. However, even when loaded the Samurai stability factor remains within the range of light utiltity vehicles.

NBC News, Consumer Union, and Suzuki all conducted dynamic vehicle testing to assess the rollover propensity of the Samurai. NBC News and Consumers Union were able to demonstrate some rollover propensity. However these tests were apparently not well instrumented and were not recorded for analysis. Suzuki's testing demonstrated that the Samurai (and its variants the SJ410 and LJ80) satisfactorily completed industry accepted (such as Society of Automotive Engineers and International Standards Organization) tests which might be used to assess a vehicles rollover propensity. Suzuki also attempted to replicate the Consumers Union double lane change, obstacle avoidance maneuver. In the replication, Suzuki was able to induce tip-up into the outriggers with both an Isuzu Trooper II (one of the models used in the Consumers Union test), and a Samurai at speeds at which the vehicles also successfully traversed the course, although the course may have been less stringent than the Consumer's Union course. The Suzuki tests were instrumented so that steering anle, lateral acceleration, roll angle and yaw rate could be recorded. There appears to have been sufficient latitude to allow a driver, either knowingly or unknowingly, to influence the testing without readily being detected by the available instrumentation.

The existing test procedures for assessing the rollover propensity of vehicles are unsatisfactory because they do not provide for repeatable, reproducible results, and there are no accepted performance criteria. The testing appears to rely on the skill and influence of the driver and the presumption that the vehicle suspension, tire, and road surface characteristics will remain constant throughout the testing. At present there is no standard, accepted test or series of test procedures and performance requirements which accurately predict a vehicle's rollover propensity.

Since analysis of the reported crash data does not show that the Samurai have been involved in a greater rate of rollovers than comparable other vehicles, there does not appear to be a basis for expecting that further investigation would reveal a significant number of failures in performance or manufacturing safety defect trend. In addition, the known performance tests and measures of vehicle characteristics such as the stability factor are not sufficiently reliable or discriminating among vehicles to identify a defect in construction, components, or materials that would contribute to the propensity of Samurai vehicles to roll over. Moverover, to the extent that such tests or measures have been applied, they do not convincingly identify the Samurai as more likely to be involved in rollover incidents than other light utility vehicles. A further commitment of investigative resources does not appear likely to result in the gathering of evidence of significant numbers of failures or in development of tests or measures or other analysis that would support a defect determination. There does not appear to be a reasonable possibility that an investigation would result in an order to Suzuki to recall the vehicles.

Other issues in addition to the rollover propensity issue are the rollover integrity of the vehicle and the survival of the occupants after a rollover analysis of the crash data does not suggest that the Samurai structure fails to protect occupants who remain in the vehicle. However, the Samurai convertibles or soft tops with the roll bar assembly withstood the rollover forces better than the hardtop versions without the rollbar.

The Consumer Union and the NBC News testing results are cause for some concern, but the test procedures do not have a scientific basis and cannot be linked to real-world crash avoidance needs, or actual crash data. Using the same procedures, probably any light utility vehicle could be made to roll over under the right conditions and driver input. The agency has embarked on a research program to investigate rollover propensity and will study handling tests and performance criteria that can be used for rulemaking as well as defect investigation purposes.

Issued on September 1, 1988.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 88-20400 Filed 9-7-88; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel; Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Closed Meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATE: The meeting will be held October 19 and 20, 1988.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:AP:V, 1111 Constitution Avenue, NW., Room 2575, Washington, DC, 20224, Telephone No. (202) 566-9259, (not a toll free number).

Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), that a closed meeting of the Art Advisory Panel will be held on October 19 and 20 in Room 3411 beginning at 9:30 a.m., Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax

returns made confidential by the provisions of section 6103 of Title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c) (3), (4), (6), and (7) of Title 5 of the United States Code, and that the meeting will not be open to the public.

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Lawrence B. Gibbs,

Commissioner.

[FR Doc. 88-20396 Filed 9-7-88; 8:45 am]

BILLING CODE 4830-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Services Policy Advisory Committee, Investment Policy Advisory Committee; Meetings and Determination of Closing of Meetings

The meetings of the Services Policy Advisory Committee to be held September 15, 1988 from 2:00 p.m. to 4:30 p.m., in Washington, DC, and the Investment Policy Advisory Committee to be held September 22, 1988 from 9:00 a.m. to 11:00 a.m., in Washington, DC will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155(f)(2) of Title 19 of the United States Code, I have determined that these meetings will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

More detailed information can be obtained by contacting Barbara W. North, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, DC 20506.

Clayton Yeutter,

United States Trade Representative.

[FR Doc. 88-20392 Filed 9-7-88; 8:45 am]

BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 174
Thursday, September 8, 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 LABOR RELATIONS AUTHORITY

Evidentiary Hearing

TIME AND DATE: 9:30 a.m., Wednesday, September 14, 1988.

PLACE: 500 C Street SW., Washington, DC, Room 229.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

Authority Cases:

Service Employees' International Union, Local 556, AFL–CIO and Department of the Navy, Navy Exchange, Pearl Harbor, Hawaii, O–NG–796.

Service Employees' International Union, Local 556, AFL–CIO and Department of the Navy, Marine Corps Exchange 0911, Marine Corps Air Station, Kaneohe Bay, Hawaii, O–NG–737.

Service Employees' International Union, Local 556, AFL–CIO and Department of the Army, U.S. Army Support Command, Hawaii Fort Shafter, Hawaii, O–NG–750.

CONTACT PERSON FOR MORE INFORMATION: Alicia Columna, Director of Case Control, Federal Labor Relations Authority, (202) 382–0764.

Date: September 2, 1988.

Clyde B. Blandford, Jr.,

Acting Executive Director.

[FR Doc. 88–20454 Filed 9–6–88; 9:17 am]

BILLING CODE: 6727–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, September 12, 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. Proposed Federal Reserve Bank salary structure adjustments. (This item was originally announced for a closed meeting on September 7, 1988.)
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. 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: September 2, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–20431 Filed 9–2–88; 5:02 pm]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, September 14, 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: September 6, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–20552 Filed 9–6–88; 4:02 pm]

BILLING CODE 6210–01–M

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Wednesday, September 7, 1988 at 2:00 p.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
   Inv. 701–TA–296(P) and 731–TA–420(P) (Certain Steel Wheels from Brazil)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252–1000.

Kenneth R. Mason,

Secretary.

August 29, 1988.

[FR Doc. 88–20456 Filed 9–6–88; 11:08 am]

BILLING CODE 7020–2–M

NATIONAL TRANSPORTATION SAFETY BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 53, No. 164/Tuesday, August 24, 1988/32321.

PREVIOUSLY ANNOUNCED TIME AND DATE: 9:30 a.m., Tuesday, August 30, 1988.

CHANGE IN MEETING: A majority of the Board Members determined by recorded vote that the business of the Board required revising the agenda of this meeting and that no earlier announcement was possible. Items three and four have been deleted from the agenda.

FOR MORE INFORMATION, CONTACT: Bea Hardesty, (202) 382–6525.

Bea Hardesty,

Federal Register Liaison Officer.

August 30, 1988.

[FR Doc. 88–20429 Filed 9–2–88; 5:01 pm]

BILLING CODE 7533–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Tuesday, September 13, 1988.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue SW., Washington, DC 20594.

STATUS: The first three items are open to the public. The last two items are closed to the public under Exemption 2 and 6 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

1. Hazardous Materials Incident Report: In-Flight Fire Aboard American Airlines Flight 132, Nashville, Tennessee, February 3, 1988
2. Safety Study: General Aviation Accidents Involving Visual Flight Rules Into Instrument Meteorological Conditions
3. NTSB's Combined Reply to FAA's Response to Safety Recommendations A–87–40, –41 and –42 (Mail Controls 88–359, 87–861 and 87–1380).

4. Discussion of:
   a. Establishment of an additional "satellite field office" in Florida; and
   b. Monetary Award for Senior Executive Service Personnel.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Bea Hardesty,

Federal Register Liaison Officer.

September 2, 1988.

[FR Doc. 88–20430 Filed 9–2–88; 5:01 pm]

BILLING CODE 7533–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

MEETING OF THE BOARD OF DIRECTORS

TIME AND DATE: 1:30 p.m. (closed portion), 3:00 p.m. (open portion), Tuesday, September 20, 1988.

PLACE: Offices of the Corporation, fourth floor Board Room, 1615 M Street NW., Washington, DC.

STATUS: The first part of the meeting from 1:30 p.m. to 3:00 p.m. will be closed to the public. The open portion of the meeting will commence at 3:00 p.m. (approximately).

MATTERS TO BE CONSIDERED (Closed to the public 1:30 p.m. to 3:00 p.m.):

1. Finance Project in Oceanian Country
2. Finance Project in West African Country
3. Finance Project in South American Country
4. Finance and Insurance Project in South American Country
5. Insurance Project in South American Country
6. Claims Report
7. Legislative Update
8. Finance Report
9. Finance and Insurance Reports

FURTHER MATTERS TO BE CONSIDERED (Open to the Public 3:00 p.m.):

1. Approval of the Minutes of the Previous Board Meeting
2. Approval of Proposed Regular Meetings of the Board
3. Treasurer's Report
4. Information Reports

CONTACT PERSON FOR INFORMATION: Information with regard to the meeting may be obtained from the Secretary of the Corporation, on (202) 457–7079.

Margaret A. Kole,

OPIC Corporate Secretary.

September 6, 1988.

[FR Doc. 88–20478 Filed 9–6–88; 11:08 am]

BILLING CODE 3210–01–M

TENNESSEE VALLEY AUTHORITY

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published September 6, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m. (c.d.t.) Wednesday, September 7, 1988.

PREVIOUSLY ANNOUNCED PLACE AND DATE OF MEETING: Itawamba Community College, Technical Building, Lecture Demonstration Room, 653 Eason Boulevard, Tupelo, Mississippi.

CHANGES IN THE MEETING:

Each member of the TVA Board of Directors has approved the addition of the following item to the previously announced agenda:

B—Purchase awards
   2. Requisition 67—Long Term Spot Coal for Paradise Steam Plant.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Manager, Public Affairs, or a member of his staff can respond to requests for information about this meeting. Call 615–632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202–245–0101.

Edward S. Christenbury,

General Counsel and Secretary to the Board.

[FR Doc. 88–20455 Filed 9–6–88; 11:08 am]

BILLING CODE 8120–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, September 8, 1988.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Western Fuels-Utah,* Docket Nos. WEST 86–113–R, etc. (Issues include whether the Administrative Law Judge erred in concluding that Western Fuels violated section 115(a) of the Mine Act and 30 C.F.R. § 48.7 by failing to "task train" a section foreman on a roof bolting machine before his operation on that machine.)
2. *Kaiser Coal Corporation,* Docket No. WEST 88–131–R. (Issues include whether the Commission has jurisdiction to entertain a request for declaratory relief independent of an enforcement action and whether the Administrative Law Judge erred in denying Kaiser's application for declaratory relief.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/ (202) 566–2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 88–20518 Filed 9–6–88; 4:58 pm]

BILLING CODE 6735–01–M

Corrections

Federal Register
Vol. 53, No. 174
Thursday, September 8, 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-180785; FRL-3427-4]

Emergency Exemptions

Correction

In notice document 88-18031 beginning on page 30092 in the issue of Wednesday, August 10, 1988, make the following corrections:

1. On page 30093, in the first column, in paragraph 29, in the eighth line, the date should read "April 6, 1988".

2. On the same page, in the second column, in the ninth line, "lettuce" was misspelled.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-50675A; FRL-3434-7]

Issuance of an Experimental Use Permit; Genetically Engineered Microbial Pesticide

Correction

In notice document 88-19301 beginning on page 32440 in the issue of Thursday, August 25, 1988, make the following correction:

On page 32440, in the third column, in the eighth line from the bottom, "5x1016" should read "$5x10^{16}$".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51710; FRL-3433-4]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

Correction

In notice document 88-18955 beginning on page 31915 in the issue of Monday, August 22, 1988, make the following corrections:

1. On page 31916, in the second column, under **P 88-1619**, in the fourth line from the bottom, "toxicity" was misspelled.

2. On page 31917, in the second column, under **P 88-1641**, in the first line, "Hitachie" should read "Hitachi".

3. On page 31919, in the first column, under **P 88-1678**, in the third line, "bicyucloalkene" should read "bicycloalkene".

4. On page 31920, in the first column, under **P 88-1701**, in the second line, "4-(4-Methyl-e-" should read "4-(4-methyl-3-".

5. On the same page, in the third column, under **P 88-1714**, in the third line, "2,2,2-trifluor-4'-chloro-" should read "2,2,2-trifluoro-4'-chloro".

BILLING CODE 1505-01-D

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 548 and 552

[GSAR Notice 5-257]

General Services Administration Acquisition Regulation; Value Engineering

Correction

In proposed rule document 88-19596 beginning on page 33155 in the issue of Tuesday, August 30, 1988, make the following correction:

On page 33156, in the first column, under **ADDRESS**, in the ninth line the phone number should read "(202) 523-3822".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 12

[Docket No. 87N-0364]

Formal Evidentiary Public Hearing; Time Periods for Filing Exceptions to Initial Decisions and Replies to Exceptions

Correction

In rule document 88-17708 appearing on page 29453 in the issue of Friday, August 5, 1988, make the following correction:

In the second column, in the seventh line from the bottom, "sec. 44(b)" should read "sec. 24(b)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86P-0510]

Canned Green Beans Deviating From Identity Standard; Extension and Amendment of Temporary Permit for Market Testing

Correction

In notice document 88-18328 appearing on page 30716 in the issue of Monday, August 15, 1988, make the following correction:

In the second column, on the first line, "(HHF-414)," should read "(HFF-414),.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86P-0369]

Canned Pacific Salmon Deviating From Identity Standard; Extension of Temporary Marketing Permit

Correction

In notice document 88-18330 beginning on page 30716 in the issue of Monday, August 15, 1988, make the following correction:

On page 30716, in the third column, the Docket Number in the heading should appear as set forth above.

BILLING CODE 1505-01-D

SMALL BUSINESS ADMINISTRATION

13 CFR Part 115

[Revision 2]

Surety Bond Guarantee

Correction

In rule document 88-19168 beginning on page 32195 in the issue of Wednesday, August 24, 1988, make the following correction:

PART 115—CORRECTED]

Appendix B—[Corrected]

On page 32209, in the second column, in paragraph f. in the 4th and 5th lines, remove "Likewise, the file is to show subject contractor ,".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 31 and 91

[CGD 84-024]

RIN 2115-AB58

Intervals for Drydocking and Tailshaft Examination on Inspected Vessels

Correction

In rule document 88-18981 beginning on page 32225 in the issue of Wednesday, August 24, 1988, make the following corrections:

§ 31.10-21 [Corrected]

1. On page 32230, in § 31.10-21(a)(1), in Note 2 under table 31.10-21(a), in the first line, "internal" should read "external".

2. On the same page, in § 31.10-21(a)(2), in Note 2 under table 31.10-21(b), in the first line, "internal" should read "external".

§ 91.40-1 [Corrected]

3. On page 32231, in the third column, in amendatory instruction 16, in the fifth line, "(a)(20)" should read "(a)(2)".

BILLING CODE 1505-01-D

federal register

Thursday
September 8, 1988

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 129

Operations: Foreign Air Carriers and Foreign Operators of U.S. Registered Aircraft Engaged in Common Carriage; Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 129

[Docket No. 25693; Notice No. 88-14]
RIN 2120-AC42

Operations; Foreign Air Carriers and Foreign Operators of U.S.-Registered Aircraft Engaged in Common Carriage

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the foreign air carrier security regulations to require foreign air carriers, that land or take off in the United States, to submit to the FAA a written security program accetpable to the Administrator that describes the procedures, facilities, and equipment used by the foreign air carrier to provide for the safety of persons and property traveling in air transportation against acts of criminal violence and air piracy. This proposal is intended to ensure adequate security measures are being implemented by foreign air carriers who take off and land in the United States.

DATES: Comments must be received on or before November 7, 1988.

ADDRESSES: Comments on this notice are to be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 25693, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No. 25693. Comments may be inspected in the Rules Docket, Room 916, between 8:30 a.m. and 5:00 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. David A. Smith, Domestic Civil Aviation Security Division (ACS-100), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-3947.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic effects that might result from the adoption of the proposal contained in this notice are invited. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25693." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the closing date for comments 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 comments received. All comments submitted will be available for examination in the Rules Docket 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, Office of Public Affairs, Attention: Public Inquiry Center (APA-230), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

Section 129.25(b) of the Federal Aviation Regulations (FAR) currently requires each foreign air carrier, that lands or takes off in the United States, to adopt and use a security program for each scheduled and public charter passenger operation as defined in § 129.25(a)(5) and (a)(6). Section 129.25(e) requires that each foreign carrier shall, upon the request of the Administrator and in accordance with applicable law, provide information regarding the implementation and operation of its security program.

These regulations were issued by the FAA in July 1975, consistent with its statutory responsibilities, at a time when aviation security had only recently become the focus of international attention. Indeed, at the time that the regulations were proposed, international standards on the subject of aviation security had yet to be adopted by the International Civil Aviation Organization (ICAO). The International Civil Aviation Organization adopted such standards and recommended practices in 1974, but their scope was rather limited.

Today, security is a major concern of the international aviation community. Terrorist activity against international civil aviation has increased and grown more sophisticated over the past decade. The United States has supported the many actions taken by ICAO in this area, including significant enhancements of the security standards and recommended practices contained in Annex 17 to the Convention on International Civil Aviation ("Chicago Convention").

On the bilateral front, the United States has negotiated comprehensive security articles in U.S. air transport agreements with many of our aviation partners. We are also continuously working with other countries to improve the level of international aviation security including technical assistance and consultations.

The United States also has taken its own steps to protect against the world-wide terrorist threat. In 1985, Congress enacted the International Security Development and Cooperation Act (Pub. L. 99-83) which, among other things, requires the Department of Transportation periodically to assess the effectiveness of security measures maintained at foreign airports being served by U.S. air carriers and those from which foreign air carriers serve the United States. This Act requires that the standard for evaluating these airports be based upon, at a minimum, the standards and appropriate recommended practices contained in Annex 17.

In light of our experience since the initial issuance of these regulations, and in light of developments in U.S. domestic legislation and the international standards and recommended practices, the FAA believes that it would be appropriate to amend Part 129. The regulations contained in Part 129 implement not only U.S. statutory requirements, but also the provisions of Annex 17 with respect to foreign air carriers operating to or from the United States. As such, Part 129 provides an important means by which to ensure that those operations comply with international and domestic requirements. As already discussed, the security requirements contained in Part 129 were issued when Annex 17, and domestic aviation security regulations, were in their infancy. There is now a need to make Part 129 more detailed and comprehensive to better reflect the enhancements made in international security requirements.

These changes are also necessary to make Part 129 more consistent with the provisions of the International Security and Development Cooperation Act. That Act, as noted, amended section 1115 of the Federal Aviation Act to require security assessments of foreign airports served by U.S. carriers and from which foreign carriers serve the United States. Evaluations of the effectiveness of the security measures used by those foreign carriers at those airports is integral to an airport assessment. The proposed amendments will provide a better means of assuring that the purpose of this provision of the Act is fulfilled.

This proposal, if adopted, would ensure that adequate security measures are being implemented by foreign air carriers with respect to operations to and from the United States by requiring that their security programs be acceptable to the Administrator. The proposed rule would be consistent with U.S. international obligations. Under the Chicago Convention and U.S. bilateral air transport agreements, foreign carriers are required to comply with the laws and regulations governing admission to or departure from the United States and the operation and navigation of those aircraft while within U.S. territory. The current provisions of Part 129 and the proposed changes are in the category of those laws and regulations. In addition, many of the U.S. bilateral air transport agreements contain specific provisions requiring compliance with ICAO and domestic provisions governing aviation security. The implementation of these proposals, if adopted, would be done in accordance with these international obligations.

If the FAA adopts this proposal, a model Standard Security Program, which meets the requirements of the final rule and is based on the international security provisions established by ICAO, will be prepared. It will be available to foreign carriers for implementation at foreign air carrier stations within the United States and at stations that are a last point of departure to landing in the United States. Future changes to these security programs, consistent with U.S. international obligations, may be necessary to continue to ensure that adequate security measures are being taken by foreign air carriers.

This proposal is not unique to the United States. Other countries, including Canada and the Federal Republic of Germany, require air carriers operating to or from their countries to provide security programs for review and approval.

Under this proposal, no foreign air carrier may land or take off in the United States from 90 days after the effective date unless the foreign air carrier has a security program acceptable to the Administrator. A foreign air carrier, currently conducting operations subject to this part, would be required to submit a proposed security program that meets the requirements of Part 129 to the Administrator no later than the effective date. It is anticipated that the effective date of the proposed rule would be 60 days after publication of the final rule in the **Federal Register**. The FAA does not anticipate that that this will impose a significant burden since foreign air carriers that land or take off in the United States and that meet the requirements of § 129.25(b) are required presently to adopt and use a security program; moreover, since a foreign air carrier is not required to have an acceptable security program until 90 days after the effective date, there should be adequate time in which to develop, modify, and submit a proposed security program. Unless otherwise authorized by the Administrator, foreign air carriers that want to begin operations after the effective date would be required to submit a proposed security program 90 days before passenger operations are scheduled to begin. Thereafter, the time schedules and procedures contained in this proposal would be followed for subsequent modifications of the foreign air carrier's security program. The proposed rule provides slightly extended timeframes from those contained in Part 108 of the Federal Aviation Regulations (FAR). The FAA invites comments on the proposed timeframes and appropriate alternatives.

Regulatory Evaluation

The proposal to amend Part 129 of the FAR would require each foreign air carrier, that lands or takes off in the United States, to submit a written security program to the FAA. These programs would be for implementation at foreign air carrier stations within the United States and stations that are the last point of departure prior to landing in the United States. The program would have to describe the procedures, facilities, and equipment used by the foreign air carrier to ensure the safety of passengers and property traveling on board its aircraft against acts of criminal violence and air piracy and be acceptable to the Administrator.

The FAA has determined that this proposal would affect the 111 foreign air carriers currently operating scheduled flights into the United States under Part 129. The regulatory evaluation prepared for this proposal estimates that the total cost of compliance to the affected 111 foreign air carriers with the security program requirements of this notice is $669,120 in 1986 dollars. An additional 200 entities, whose operations are not included in § 129.25(b), are involved in small aircraft charter and air taxi operations to the United States on a nonscheduled basis. They are not now required to have security programs, and this proposal would not require them to have security programs.

The primary benefits of this proposal would be the prevention of potential fatalities, injuries, and property losses resulting from criminal acts and acts of terrorism perpetrated against domestic and foreign aviation interests. The FAA has not been able to quantitatively estimate the extent to which these proposals will be effective in deterring acts of criminal violence and air piracy. The FAA believes, however, that the estimated $669,120 cost of compliance can be fully recovered if only one life, valued at $1,000,000, is saved as a result of the prevention of an act of criminal violence or air piracy. Hence, if one fatality is prevented as a result of this proposal during the 10-year period following implementation of the rule, the benefits of this proposal will be 1.5 times greater than the cost.

Regulatory Flexibility Determination

The FAA has determined that pursuant to the Regulatory Flexibility Act of 1980, the proposed amendment does not affect U.S. enterprises and therefore will not have a significant economic impact, positive or negative, on a substantial number of small domestic entities.

International Trade Impact Analysis

This proposal affects foreign air carriers operating under Part 129. The average onetime cost impact of $6,028 for each of the affected 111 foreign air carriers is considered negligible in comparison to the annual operating budgets of these carriers. Accordingly, this proposal, if adopted, would have little or no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States. Also, U.S. air carriers operating to foreign destinations already have detailed security programs fully implemented; therefore, should any foreign government apply a similar requirement as a result of this rule, costs to U.S. air carriers would be small.

Paperwork Reduction Act Approval

Section 129.25(e)(1) would require each foreign air carrier landing or taking off in the United States to submit a security program acceptable to the

Administrator to the FAA. In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the recordkeeping and reporting provisions contained in this NPRM have been submitted for approval to the Office of Management and Budget (OMB). Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs (OMB), New Executive Office Building, Room 3001, Washington, DC 20503; Attention: FAA Desk Officer, telephone (202) 395-7340. A copy should be submitted to the FAA docket.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. Additionally, this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 129

Aircraft, Air carrier, Airports, Aviation safety, Weapons.

The Proposed Amendments

In consideration of the foregoing, the FAA proposes to amend Part 129 of the Federal Aviation Regulations (14 CFR Part 129) as follows:

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

1. The authority citation for Part 129 continues to read as follows:

Authority: 49 U.S.C. 1346, 1354(a), 1356, 1357, 1421, 1502, and 1511; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. Section 129.25 is amended by revising paragraph (b) introductory text, paragraph (b)(2), the introductory text of paragraph (c), paragraphs (d) and (e) to read as follows:

§ 129.25 Airplane security.

* * * * *

(b) After December 7, 1988, each foreign air carrier landing or taking off in the United States shall adopt and use a security program, acceptable to the Administrator, for each scheduled and public charter passenger operation, that meets the requirements of—

* * * * *

(2) Paragraph (c) of this section for each operation that will provide deplaned passengers access to a sterile area, if that access is not controlled by a certificate holder using an approved security program or a foreign air carrier using a security program acceptable to the Administrator required by this section;

* * * * *

(c) After December 7, 1988, in order to be acceptable to the Administrator, each security program required by paragraph (b) (1), (2), or (3) of this section must be designed to—

* * * * *

(d) After December 7, 1988, in order to be acceptable to the Administrator, each security program required by paragraph (b)(4) of this section must include the procedures used to comply with the applicable requirements of paragraph (h)(2) and (i) of this section regarding law enforcement officers.

(e) The following procedures apply for acceptance of a security program by the Administrator:

(1) Unless otherwise authorized by the Administrator, each foreign air carrier required to have a security program by paragraph (b) of this section shall submit its proposed security program to the Administrator by [effective date] or at least 90 days before the intended date of passenger operations, whichever is later. The proposed security program must be in English unless the Administrator requests that the proposed program be submitted in the official language of the foreign air carrier's country. The Administrator will notify the foreign air carrier of the security program's acceptability, or the need to modify the proposed security program for it to be acceptable under this part, within 30 days after receiving the proposed security program. The foreign air carrier may petition the Administrator to reconsider the notice to modify the security program within 30 days after receiving the notice to modify.

(2) In the case of a security program previously found to be acceptable, the Administrator may subsequently find that the program will become unacceptable unless appropriate revisions are made in the interest of safety in air transportation or in air commerce and in the public interest within a specified period of time. In making such a finding the following procedures apply:

(i) The Administrator notifies the foreign air carrier, in writing, of a proposed finding of unacceptability, fixing a period of not less than 45 days within which the foreign air carrier may submit written information, views, and arguments on the proposed finding.

(ii) At the end of the comment period, after considering all relevant material, either the Administrator issues a finding of unacceptability, specifying appropriate revisions to make the program acceptable, or rescinds the proposed finding. If the Administrator issues a finding of unacceptability, the program becomes unacceptable 45 days thereafter, unless the foreign air carrier either—

(A) Revises the program so that it becomes acceptable to the Administrator and submits the revised program to the Administrator; or

(B) Petitions the Administrator to reconsider the finding of unacceptability, in which case the program remains unaccepable until the Administrator reconsiders the matter.

(3) If the Administrator finds that there is an emergency requiring immediate action with respect to safety in air transportation or in air commerce, the Administrator may issue an emergency notice of unacceptability. In such a case, the Administrator incorporates in the notice the finding of unacceptability, a brief statement of the reasons for the proposed revision, and appropriate revisions that would make the security program acceptable to the Administrator. The security program is considered to be unacceptable when the foreign air carrier receives the emergency notice of unacceptability unless immediate revisions are made to the security program. To ensure acceptability of the revision, the foreign

air carrier must submit a copy of it to the Administrator.

(4) A foreign air carrier must submit any amendments to its security program to the Administrator for a finding of acceptability. The proposed amendment must be filed with the Administrator at least 45 days before the date the foreign air carrier proposes for the amendment to become effective, unless a shorter period is allowed by the Administrator. Within 30 days after receiving a proposed amendment, the Administrator will notify the foreign air carrier whether the amendment is acceptable. The foreign air carrier may petition the Administrator to reconsider a notice of unacceptability of the proposed amendment within 45 days after receiving notice of unacceptability.

* * * * *

Issued in Washington, DC on August 31, 1988.

Raymond A. Salazar,

Director of Civil Aviation Security.

[FR Doc. 88-20319 Filed 9-7-88; 8:45 am]

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federal register

Thursday
September 8, 1988

Part III

Department of Education

Office of Special Education And Rehabilitative Services

National Institute on Disability and Rehabilitative Research; Consolidated Application Package; Fiscal Year 1989; Notice Inviting Applications

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

National Institute on Disability and Rehabilitation Research; Consolidated Application Package; Fiscal Year 1989

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards under certain programs.

SUMMARY: The Secretary invites applications for new awards under the Rehabilitation Research and Training Center (RRTC) program, the Career Development and Research Training program, the Field-Initiated Research Projects program, the Innovation Grants program, and the Research Fellowship program of the National Institute on Disability and Rehabilitation Research (NIDRR).

This notice consists of four sections. Section I provides background information. Section II contains four lists of program application notices and application information that pertains to the programs in each list. Section III provides further guidance on the application process. Section IV contains the basic application forms and instructions for completing the forms. No separate application package is necessary to apply for awards under the programs announced in this notice.

DATES: The closing dates for transmitting applications under this notice are listed in Section II of this notice.

ADDRESS: Applications are to be mailed to the following address: U.S. Department of Education, 400 Maryland Avenue, SW., Application Control Center, Washington, DC 20202–4725. See Section III for detailed information related to hand-delivered applications.

FOR FURTHER INFORMATION CONTACT: The National Institute on Disability and Rehabilitation Research, 400 Maryland Avenue, SW., Washington DC 20202. Telephone: (202) 732–1207; deaf and hearing impaired-persons may call (202) 732–1198 for TDD service.

SUPPLEMENTARY INFORMATION: The publication of these closing dates or these estimated founding levels does not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

Paperwork Reduction Act of 1980

This combined application package contains no new information collection requirements. The information collection requirements contained herein have been approved by the Office of Management and Budget (OMB) under Control Number 1820–0027.

Section I—General

Application closing dates are listed in Section II of this notice. Closing dates and procedures may vary from program to program. The chart in Section II informs potential applicants of: Program titles; Catalog of Federal Domestic Assistance (CFDA) number; deadline for transmittal of applications (closing date); estimated available funds; estimated number of awards; estimated range of awards; estimated size of awards; and expected project period.

This notice also contains a detailed description of the RRTC on Rehabilitation in the Pacific Basin, in accordance with the provisions of the Rehabilitation Act Amendments of 1986. Prospective applicants for that award under the RRTC program should prepare their applications based on that description. Interested parties should be aware that the Secretary intends to publish proposed and final priorities for other RRTC awards in a separate issue of the **Federal Register.**

Applicants may apply for awards under more than one program, and may apply for more than one award within a given program. However, applicants must submit a complete and separate application for each individual award for which they are applying. To ensure expeditious processing of their respective applications, applicants are particularly requested to make certain that the correct CFDA number for the program appears on each application. Following the chart is the specific program information on: the purpose of each program, applicable regulations, information contact persons, and any other program information and specific application requirements not covered in the application form in Section IV.

Section II—Program Application Notices

This section contains (1) a listing of application notices for new awards for fiscal year 1989, and (2) specific application information and requirements for individual programs.

NATIONAL INSTITUTE ON DISABILITY AND REHABILITATION RESEARCH INFORMATION FOR TRANSMITTAL OF APPLICATIONS UNDER CERTAIN PROGRAMS FOR FISCAL YEAR 1989

CFDA No.	Program title	Deadline for transmittal of applications	Estimated available funds	Estimated number of awards	Estimated range of awards	Estimated average award	Project period (in months)
84.133B	Rehabilitation Research and Training Center.	11–02–88	$700,00	1	$750,000	$750,000	Up to 60.
84.133C	Innovation Grants Program	6–01–89	750,000	20	$50,000	$50,000	Up to 12.
84.133F	Research Fellowships	12–02–88	300,000	10	$25,000 plus $30,000 plus $1,500 expenses.	$27,500 plus $1,500 expenses.	Up to 12.
84.133G	Field-Initiated	11–30–88	2,000,000	20	$75,000 to $125,000	$100,000	Up to 36.
84.133P	Career Development Research Training.	11–02–88	375,000	3	$100,000 to $125,000	$125,000	Up to 36.

Title of Program: Rehabilitation Research and Training Centers

CFDA No.: 84.133B

Purpose: Rehabilitation Research and Training Centers (RRTCs) conduct coordinated and advanced programs of rehabilitation research, provide training—including undergraduate, graduate, and in-service training—to research and other rehabilitation personnel, and assist individuals to more effectively provide rehabilitation services.

Applicable Regulations: (a) The regulations governing the RRTC program at 34 CFR Parts 350 and 352, and (b) the Education Department General Administrative Regulations at 34 CFR Parts 74, 75, 77, 78 and 80.

Contact Person: L. Deno Reed, National Institute on Disability and Rehabilitation Research, 400 Maryland Avenue, SW., Washington, DC. 20202. Telephone (202) 732–1193; deaf and hearing-impaired persons may call (202) 732–1198 for TDD services.

Program Authority: 20 U.S.C. 762(b)(1)

Supplementary Information and Requirements

Eligible Applicans: Under this program, awards are made to institutions of higher education, or to public or private agencies or organizations, including Indian tribes and tribal organizations, in affiliation with institutions of higher education. Applicant institutions need not be located currently in the Pacific Basin. However, clinical research, training, and other Center activities must be carried out in the Pacific Basin.

Special Requirements: The RRTC to be funded under this notice is for *Research on Rehabilitation Problems in the Pacific Basin.* In the Rehabilitation Act Amendments of 1984 (Pub. L.90–221), the Congress mandated that NIDRR establish a Research and Training Center in the Pacific Basin.

In the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506), the Congress further specified a scope of work for the Pacific Basin Center. The RRTC, in addition to meeting the statutory and regulatory requirements for all RRTCs must address effectively the following activities specified in the Rehabilitation Act Amendments of 1986:

- Develop a sound demographic database on the distribution of disabilities and related factors among various groups and localities in the region;
- Analyze, develop, and promote the utlization of appropriate technology to aid disabled persons;
- Develop a culturally relevant program to train personnel in the provision of rehabilitation services;
- Facilitate interagency communication and cooperation among rehabilitation-related agencies in the Pacific Basin and between the RRTC and other rehabilitation information resources, using advanced information technology; and
- Develop appropriate rehabilitation interventions and cost-effective service delivery models to improve rehabilitation in the Pacific Basin.

Selection Criteria: The Secretary uses the following criteria in 34 CFR 352.31 to evaluate an application under this program.

(a) *Relevance and importance of the research program.* (20 points)

The Secretary reviews each application to determine to what degree—

(1) The proposed activities are responsive to a priority established by the Secretary and address a significant need of a disabled target population and rehabilitation service providers;

(2) The overall research program of the Center includes appropriate interdisciplinary and collaborative research activities, is likely to lead to new and useful knowledge in the priority area, and is likely to become a nationally recognized source of scientific knowledge; and

(3) The applicant demonstrates that all component activities of the Center are related to the overall objective of the Center, and will build upon and complement each other to enhance the likelihood of solving significant rehabilitation problems.

(b) *Quality of the Research design.* (35 points) The Secretary reviews each application to determine to what degree—

(1) The applicant proposes a comprehensive research program for the entire project period, including at least three interrelated research projects;

(2) The research design and methodology of each proposed activity are meritorious in that—

(i) The literature review is appropriate and indicates familiarity with current research in the field;

(ii) The research hypotheses are important and scientifically relevant;

(iii) The sample populations are appropriate and significant;

(iv) The data collection and measurement techniques are appropriate and likely to be effective;

(v) The data analysis methods are appropriate; and

(vi) The applicant assures that human subjects, animals, and the environment are adequately protected; and

(3) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses and could be used for planning future research, including generation of new hypotheses where applicable.

(c) *Quality of the training and dissemination program.* (25 points): The Secretary reviews each application to determine the degree to which—

(1) The proposed plan for training and dissemination provides evidence that research results will be effectively disseminated and utilized based on the identification of appropriate and accessible target groups; the proposed training materials and methods are appropriate; the proposed activities are relevant to the regional and national needs of the rehabilitation field; and the training materials and dissemination packages will be developed in alternate media that are usable by people with various types of disabilities.

(2) The proposed plan for training and dissemination provides for—

(i) Advanced training in rehabilitation research;

(ii) Training rehabilitation service personnel and other appropriate individuals to improve practitioner skills based on new knowledge derived from research;

(iii) Training packages that make research results available to service providers, researchers, educators, disabled individuals, parents, and others;

(iv) Technical assistance or consultation that is responsive to the concerns of service providers and consumers; and

(v) Dissemination of research findings through publication in professional journals, textbooks, and consumer and other publications, and through other appropriate media such as audiovisual materials and telecommunications.

(d) *Quality of the organization and management. (20 points):* The Secretary reviews each application to determine the degree to which—

(1) The staffing plan for the Center provides evidence that the project director, research director, training director, principal investigators, and other personnel have appropriate training and experience in disciplines required to conduct the proposed activities; the commitment of staff time is adequate to conduct all proposed activities; and the Center, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) The budgets for the Center and for each component project are reasonable, adequate, and cost-effective for the proposed activities;

(3) The facilities, equipment, and other resources are adequate and are appropriately accessible to persons with disabilities;

(4) The plan of operators is adequate to accomplish the Center's objectives and to ensure proper and efficient manangement of the Center;

(5) The proposed relationships with Federal, State, and local rehabilitation service providers and consumer organizations are likely to ensure that the Center program is relevant and

applicable to the needs of consumers and service providers;

(6) The past performance and accomplishments of the applicant indicate an ability to complete successfully the proposed scope of work;

(7) The application demonstrates appropriate commitment and support by the host institution and opportunities for interdisciplinary activities and collaboration with other institutions and organizations; and

(8) The plan for evaluation of the Center provides for an annual assessment of the outcomes of the research, the impact of the training and dissemination activities on the target populations, and the extent to which the overall objectives have been accomplished.

Title of Program: Innovation Grants Program

CFDA No.: 84.133C

Purpose: This program is designed to provide financial support to projects that: (a) Test new concepts and innovative ideas; (b) demonstrate research results of high potential benefits; (c) purchase and evaluate prototype aids and devices; (d) develop unique rehabilitation training curricula; (e) conduct feasibility, planning, and evaluation studies and conferences, and other activities to disseminate specific research findings.

Applicable Regulations: (a) Program regulations at 34 CFR Parts 350 and 358, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 80.

Contact Person: National Institute on Disability and Rehabilitation Research, 400 Maryland Avenue, SW., Washington, DC 20002. Telephone: (202) 732–1207; deaf and hearing-impaired individuals may call (202) 732–1198 for TDD services.

Program Authority: 29 U.S.C. 762(b)(13)

Supplementary Information and Requirements

Eligible Applicants: Public and private nonprofit and for-profit agencies and organizations, institutions of higher education, and Indian tribes and tribal organizations are eligible to apply for awards under this program.

Selection Criteria: The Secretary evaluates applications under this program according to the following selection criteria in 34 CFR 358.31.

(a) *Importance of the project (50 points):* The Secretary reviews each application to determine to what degree the proposed activity will address a significant need of the target population and will meet the purpose of this part.

(b) *Project design or methodology (25 points).* The Secretary reviews each application to determine to what degree the underlying hypothesis or conceptual model is sound; the project design is likely to achieve the desired objectives; and the evaluation plan is appropriate.

(c) *Plan of operation (25 points).* The Secretary reviews each application to determine the extent to which the qualifications and background of the key personnel, the management and financial plan, and the capability and resources of the applicant organization demonstrate that the applicant will be able to carry out the proposed project.

Title of Program: Research Fellowships

CFDA No.: 84.133F

Purpose: The purpose of this program is to build research capacity by providing support to highly qualified individuals to perform research on the rehabilitation of disabled persons.

Applicable Regulations: The regulations in 34 CFR Parts 350 and 356 are applicable to this program.

Contact Person: Joseph Fenton, National Institute on Disability and Rehabilitation Research, 400 Maryland Avenue SW., Washington, DC 20202. Telephone: (202) 732–1143; deaf and hearing-impaired individuals may call (202) 732–1198 for TDD services.

Program Authority: 29 U.S.C. 761a(d)

Supplementary Information and Requirements

Eligible Applicants: Only individuals are eligible to apply for research fellowships under this program.

Selection Criteria: The Secretary evaluates applications for fellowships according to the following criteria in 34 CFR 356.30.

(a) Quality and level of formal education, previous work experience, and recommendations of present or former supervisors or colleagues that include an indication of the applicant's ability to work creatively in scientific research; and

(b) The quality of a research proposal of no more than 12 pages containing the following information:

(1) The importance of the problem to be investigated to the purpose of the Act and the mission of NIDRR.

(2) The research hypotheses or related objectives and the methodology and design to be followed.

(3) Assurance of the availability of any necessary data resources, equipment, or institutional support, including technical consultation and support where appropriate, required to carry out the proposed activity.

Title of Program: Field-Initiated Research Projects

CFDA No.: 84.133G

Purpose: This program is designed—(a) To encourage eligible parties to originate valuable ideas for research and demonstration, development, or knowledge dissemination projects to improve the lives of individuals with disabilities, and (b) to support research and demonstration, development, or knowledge dissemination projects as described in program regulations that address important activities not supported by Institute-funded research or that complement that research in a promising way.

Applicable Regulations: (a) The regulations governing this program in 34 CFR Parts 350 and 357; (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 80.

Contact: National Institute on Disability and Rehabilitation Research, 400 Maryland Avenue SW., Washington, DC 20002. Telephone: (202) 732–1207; deaf and hearing impaired individuals may call (202) 732–1198 for TDD services.

Program Authority: 29 U.S.C. 762.

Supplementary Information and Requirements

Eligible Applicants: Parties eligible to apply for grants under this program are public and private for-profit or nonprofit agencies and organizations, including institutions of higher education and Indian tribes or tribal organizations.

Selection Criteria: The Secretary uses the following criteria in 34 CFR 357.32 to evaluate an application under this program.

(a) *Importance of the problem.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The proposed project addresses a problem that is significant to persons with disabilities or to those who provide services to them; and

(2) The proposed project is likely to produce new and useful knowledge, techniques, or devices that will develop or disseminate solutions to problems confronting persons with disabilities.

(b) *Design of the project.* (45 points)

(1) The Secretary reviews each application for a research and demonstration project to determine the extent to which—

(i) The review of the literature is appropriate and indicates familiarity with the relevant current research;

(ii) The research hypotheses are theoretically sound and based on current knowledge;

(iii) The sample populations are adequate and appropriately selected;

(iv) The data collection instruments and methods are appropriate and likely to be successful;

(v) The data analysis measures are appropriate; and

(vi) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses.

(2) The Secretary reviews each application for a knowledge dissemination project to determine the extent to which—

(i) The need for the information has been demonstrated;

(ii) The target populations are appropriately specified;

(iii) The dissemination methods are appropriate to the target populations;

(iv) The materials for dissemination are prepared in media accessible to the target population;

(v) There are adequate means of documenting and evaluating the effectiveness of the dissemination activity.

(3) The Secretary reviews each application for a development project to determine the extent to which—

(i) The proposed project will use the most effective and appropriate technology available in developing the new device or technique;

(ii) The proposed development is based on a sound conceptual model that demonstrates an awareness of the state-of-the-art in technology;

(iii) Devices or techniques will be developed and tested in an appropriate environment;

(iv) The applicant considers the cost-effectiveness and usefulness of the device or technique to be developed for persons with disabilities; and

(v) The applicant discusses the potential for commercial or private manufacture, marketing, and distribution of the product.

(c) *Personnel.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The key personnel have adequate training and experience in the required discipline to conduct the proposed activities;

(2) The allotment of staff time is adequate to accomplish the proposed activities; and

(3) The applicant ensures that personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping conditions.

(d) *Management and Evaluation.* (15 points) The Secretary reviews each application to determine the extent to which—

(1) The resources of the applicant are adequate, appropriate, and accessible to individuals with disabilities;

(2) The proposed budget is adequate and appropriate for the activities to be carried out;

(3) There is a plan, appropriate to the type of field-initiated project, to evaluate the effectiveness of the project in accomplishing its goals and objectives;

(4) The applicant provides a plan of operations, appropriate to the type of field-initiated project, indicating that it will achieve the project objectives in a timely and effective manner; and

(5) Appropriate collaboration with other agencies is assured.

Title of Program: Career Development and Research Training Grants Program

CFDA No.: 84.133P

Purpose: The purpose of this program is to expand capability in the field of rehabilitation research by supporting projects that provide advanced training in rehabilitation research. These projects provide research training and experience at an advanced level to individuals with doctorates or similar advanced degrees who have clinical or other relevant experience, including experience in management or basic science research, in fields pertinent to rehabilitation in order to qualify those individuals to conduct independent research on problems related to disability and rehabilitation.

Applicable Regulations: (a) Regulations governing this program in 34 CFR Parts 350 and 360, and (b) the Education Department General Administrative Regulations in 34 CFR Parts 74, 75, 77, and 78.

Contact Person: Inez Storck, National Institute on Disability and Rehabilitation Research, 400 Maryland Avenue SW., Washington, DC 20202–2646. Telephone: (202) 732–1202; deaf and hearing-impaired individuals may call (202) 732–1198 for TDD services.

Program Authority: 29 U.S.C. 761(a)(k).

Supplementary Information and Requirements

Eligible Applicants: Institutions of higher education are eligible to receive assistance under this program.

Selection Criteria: The Secretary uses the following criteria in 34 CFR 360.31 to evaluate applications under this program.

(a) *Importance and potential contribution.* (20 points) The Secretary reviews each application to determine to what degree—

(1) The applicant is responsive to any priority established under §360.32;

(2) The applicant proposes to provide training in a rehabilitation discipline or area of study in which there is a shortage of qualified researchers, or to provide training to a trainee population in which there is a need for more qualified researchers, such as clinicians in rural areas, or clinicians who are directly experienced with underserved populations; and

(3) The applicant is likely to make a significant increase in the number of trained rehabilitation researchers.

(b) *Quality of proposed training program.* (40 points) The Secretary reviews each application to determine to what degree—

(1) The applicant's proposed recruitment program is likely to be effective in recruiting highly qualified trainees;

(2) The proposed didactic and classroom training programs emphasize scientific methodology, are multidisciplinary, comprehensive, and appropriate to the level of the trainees, and are likely to produce qualified independent researchers;

(3) The quality and extent of the academic mentorship, guidance, and supervision to be provided to each individual trainee are of a high level and are likely to produce highly qualified researchers;

(4) The type, extent, and quality of the proposed clinical and laboratory research experience, including the opportunity to participate in research on meaningful topics at an advanced level, are likely to develop individuals with the capacity to perform independent research; and

(5) The opportunities for collegial and collaborative activities, exposure to outstanding scientists in the field, and opportunities to participate in the preparation of scholarly or scientific publications and presentations are extensive and appropriate.

(c) *Personnel and resources committed to the project.* (30 points) The Secretary evaluates each application to determine to what degree—

(1) The activities of the project will be implemented by sufficient and qualified staff who are outstanding scientists in the field;

(2) The project director and other key staff are experienced in the delivery of advanced research training as well as knowledgeable about the methodology and literature of pertinent subject areas;

(3) All required disciplines are effectively included; and

(4) The applicant possesses the appropriate facilities, laboratories, and

access to clinical populations and organizations representing persons with disabilities to support the conduct of advanced clinical rehabilitation research.

(d) *Management and operating plans.* (10 points) The Secretary evaluates each application to determine to what degree—

(1) There is an effective plan of operation that ensures proper and efficient administration of the project;

(2) There is an effective plan for collaboration with other institutions of higher education and organizations whose participation is necessary to ensure effective classroom and clinical research training;

(3) The applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected without regard to race, color, national origin, gender, age, or handicapping condition;

(4) The applicant has provided an adequate plan for the use of facilities, resources, supplies, and equipment;

(5) The budget for the project is reasonable and adequate to support the proposed activities; and

(6) The applicant provides an appropriate plan for the evaluation of all phases of the project.

Section III—Instructions for Transmittal of Applications

Applicants are advised to reproduce and complete the application forms in Section IV. Applicants are required to submit an original and two copies of each application as provided in this Section.

Application Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Education, 400 Maryland Avenue SW., Application Control Center, Attention: (Appropriate CFDA No.), Washington, DC 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of Education. If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private meter postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand

An application that is hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building #3, 7th and D Streets SW., Washington, DC.

The Application Control Center will accept hand-delivered applications between the hours of 8:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Nos. 84.133B, 84.133C, 84.133F, 84.133G, and 84.133P, National Institute on Disability and Rehabilitation Research)

Dated: August 30, 1988.

Patricia McGill Smith,

Deputy Assistant Secretary, Office of Special Education and Rehabilitative Services.

Frequent Questions

NIDRR staff are frequently asked to clarify or expand on information that is included in the application materials and the notices published in the **Federal Register.** In order to simplify this process for potential applicants and staff alike, the Institute discusses on the following pages some of the issues that these application materials frequently engender.

These questions are representative of those that are frequently raised, even though in many cases they are answered in the notices or application instructions. However, it appears that some of these issues are not explained sufficiently in the published notices, and that the requirements applying to the number of new and different NIDRR programs are confusing.

These questions and answers are meant to be informative, and are not regulatory requirements in and of themselves.

1. Can I Get An Extension of the Due Date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register.** However, there are no extensions or exceptions to the due date made for individual applicants.

Further information about mailing is included in Section IV of this Consolidated Application Package.

2. What Should Be Included in the Application?

The applicant should include the materials specified in Section IV of this Consolidated Application Package. Specifically, the application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation.

It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should Be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I Submit Applications to More Than One Program Competition in NIDRR or More Than One Application to a Program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more

than one application in any given competition.

5. What is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application.

Applications for Rehabilitation Research and Training Centers should limit indirect cost rates to fifteen percent of the grant award, as noted in the program regulations and statute.

Applications in other programs that are for training activities should limit indirect charges to the lesser of the actual indirect costs or eight percent of the total direct costs of the program, as noted in the Education Department General Administrative Regulations (EDGAR).

All other applicants should limit indirect charges to the organization's approved rate. If the organization does not have an approved rate, the application should include an estimated actual rate.

6. Can Profitmaking Businesses Apply for Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can Individuals Apply for Grants?

No. Only organizations are eligible to apply for grants under NIDRR programs.

8. Can Universities Apply Under the Fellowship Program?

No. Only individuals are eligible to apply for fellowships under the regulations governing that program.

9. Is there a Cost-Sharing or Matching Requirement?

Cost-sharing is required in the Research and Demonstration Projects program, with certain exceptions noted in the law, the Knowledge Dissemination and Utilization program, the Field-Initiated Research program, and the Career Development and Research Training program.

There are no cost-sharing requirements for the Innovation Grants or the Research Fellowship programs.

For the Rehabilitation Research and Training Centers and the Rehabilitation Engineering Centers, the Secretary has the option to require matching. It is generally the practice of the agency to require cost-sharing under these programs.

There is no set rate for cost-sharing. The cost-sharing is negotiated at the time an award is made and is not part of the evaluation of the application.

10. What Are the Priorities in the Field-Initiated or Innovation Grants Programs?

There are no priorities in either the Field-Initiated Research or Innovation Grants programs. Applicants are free to submit applications in areas of interest to the investigator as long as they are related to the purposes of the program as described in the regulations.

11. Can NIDRR Staff Advise Me Whether My Project Is of Interest to NIDRR or Likely To Be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area is likely to receive approval in the investigator-initiated competitions.

12. How Do I Assure That My Application Will Be Referred to the Most Appropriate Panel for Review?

Applicants should be sure that their applications are referred to the correct competitions by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424.

Applicants should assist NIDRR in ensuring that their Field-Initiated and Innovation Grant applications are referred to the most appropriate panels by emphasizing the focus of the proposed activity in the abstract of the project on the Standard Form 424. It would be helpful if the applicant would not use acronyms in the title and abstract, unless those acronyms are in common usage nationally.

13. How Soon After Submitting My Application Can I Find Out if it Will Be Funded?

The time from closing date to grant award date varies from program to program and for other reasons. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

14. Can I Call NIDRR To Find Out if My Application Is Being Funded?

No! When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

15. If My Application Is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?

No. Those budget projections are necessary and helpful for planning purposes. However, a complete budget and budget justification must be submitted for each year of the project and there will be negotiations on the budget each year.

16. Will All Approved Applications Be Funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

Section IV Application Instructions and Forms

This application is divided into three parts. These parts are organized in the same manner that the submitted application should be organized. The parts are as follows:

Part I: Federal Assistance Face Sheet (Form SF 424) and instructions
Part II: Budget Information
Part III: Application Narrative

No grants may be awarded unless a completed application form has been received. (20 U.S.C. 1021, 1041; 34 CFR Part 778)

Submit the original and two copies to:

Mailing Address: U.S. Department of Education, Application Control Center, Attention: (CFDA #), 400 Maryland Avenue, SW., Washington, DC 20202

Hand Delivery: U.S. Department of Education, Application Control Center, Attention: (CFDA #), Room 3633, Regional Office Building #3, 7th & D Streets, SW., Washington, DC 20202

Instructions for Application for Federal Assistance (Nonconstruction Programs)

Introduction

The instructions which follow should be followed by all applicants in completing applications for all NIDRR research and demonstration grants.

SF 424 and Parts II, III, IVa, and V are to be used for new applications.

SF 424 and Parts II, III, IVb, and V are to be used for the usual noncompeting continuation requests.

Submit the original and two copies of the form. If an item cannot be answered or does not appear to be related or relevant to the assistance required, write "NA" for not applicable.

Submission of Applications

(1) Continuation Grants—Applicants for continuation grants must submit these forms not later than 90 days prior to the budget period end date.

(2) New Projects—Applicants for grants to support new projects should refer to program announcements for information regarding deadline dates for submission of forms.

Supplemental Instructions for Completion of Part I (SF 424)

Part I of this application consists of the standard face page for Federal applications, the standard instructions for the face page, and these supplemental instructions.

Applicant shall complete all items. If an item is not applicable, write "NA." If additional space is needed, insert an asterisk (*) and use the remarks section.

Item

1. Preprinted.

3a–b. Not applicable.

4a–4h. If the payee will be other than the applicant, enter in the remarks section "payee," the payee's name, department or division, complete address and employer identification number or ED entity number.

If an individual's name and/or title is desired on the payment instrument, the name and/or title of the designated individual must be specified.

6a. Preprinted.

6b. Enter specific program identifier; for example, Research and Training Center, Rehabilitation Engineering Center, Research and Demonstration, or Utilization and Dissemination.

11. Preprinted.

19. Preprinted.

Supplemental Instructions for Completion of Part II

Item 1—On the same page show the Catalog of Federal Domestic Assistance number, the program number, the type of assistance, the status, the amount of each project where there is related previous, pending, or anticipated assistance from another source.

Supplemental Instructions for Completion of Part III

This form is designed so that application can be made for funds to support one or more functions or activities. Generally, NIDRR funded programs do not require a breakdown by function or activity. Therefore, only Line 1 need be completed.

Since NIDRR programs award funds to support activities for budget periods which are generally 12 months in duration, Section A, B, C, and D must provide budget information for the requested budget period. Section E should present the need for Federal assistance in subsequent budget periods.

Applicants for research grants are not required to complete information items related to non-Federal share. Rather, research cost sharing shall be negotiated separately with the funding office.

Section A–Budget Summary

Lines 1–4

Col. (a): Applicants may, at their discretion, present budget information for Section A (and Section B) in terms of major functions or activities. For example, common categories might be research and demonstration, dissemination, evaluation, or training.

Applicants who choose not to present budget information in terms of major functions and/or activities should enter Rehab. R&D on Line 1, Column (a) and note N/A on Lines 2–4.

Col. (b): Preprinted.

Col. (c)–(g): For *new applications,* leave Columns (c) and (d) blank. For each line entry, enter in Columns (e), (f), and (g) the appropriate amounts needed to support the project for the first budget period. Applicants for research grants should make *no* entries in Column (f).

For *continuation applications,* enter in Columns (c) and (d) the estimated amounts for funds which will remain unobligated at the end of the current budget period. Enter in Columns (e), (f), and (g) the appropriate amounts needed to support the project for the new budget period. (Applicants for research grants should make no entries in Column (d) or (f). Column (g) should equal the total of Column (e) and Column (f).)

For *changes to existing grants,* leave Columns (c) and (d) blank and enter in Columns (e) and (f) the amount of increase or decrease of Federal and non-Federal funds, as appropriate. Enter in Column g the new total budgeted amount (Federal and non-Federal) which includes the previously authorized total budgeted amounts for the current budget period plus or minus, as appropriate, the amounts shown in Columns (e) and (f). *The amount(s) in Column (g) should not equal the sum of the amounts in Column (e) and (f).* Applicants for research grants should make *no* entries in Column (d) or (f).

Line 5

Enter the totals for all columns completed.

Section B—Budget Categories

Columns 1–5

In the Column headings (1) through (4), enter the same title of the grant programs shown on Lines 1 through 4, Column (a), Section A. For each grant program or activity entered in Columns (1) through (4), enter the total requirements for *Federal funds* by object class categories and enter total in Column 5.

Allowability of costs are governed by applicable cost principles set forth in Subpart Q of 34 CFR Part 74.

Line 6a: Enter the total costs of salaries and wages of applicant/grantee staff. Do not include costs of consultants. (See Section F, Line 21, for additional requirements.)

Line 6b: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate.

Line 6c: Enter total costs of *out-of-town* travel for employees of the project. Do not enter costs for consultant's travel or local transportation. (See Line 6h and Section F, Line 21, for additional instructions.)

Line 6d: Enter the total costs of all non-expendable personal property to be acquired by the project. "Non-expendable personal property" means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit. An applicant may use its own definition of non-expendable personal property, provided that such a definition would be at least include all tangible personal property as defined in the preceding sentence. (See Section F, Line 21, for additional requirements.)

Line 6e: Enter the total costs of all tangible personal property (supplies) other than that included on Line 6d.

Line 6f: Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines, such as equipment, supplies, etc.), and (2) contracts with secondary recipient organizations. Also include any contracts with *organizations* for the provisions of technical assistance. Do *not* include payments to individuals on this line. Attach a list of contractors, indicating the name of the organization, the purpose of the contract and the estimated dollar amount of award. (*Note*: Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must submit Sections A and B of Part III, Budget Section,

completed for each delegate agency by agency title, along with the required supporting information referenced in the applicable instructions. The total costs of all such agencies will be part of the amount shown on Line 6(f).)

Line 6g: Enter the costs of renovation or repair. *New construction is unallowable.*

Line 6h: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use, training costs, including tuition and stipends, training service costs, including wage payments to individuals and supportive service payments, and staff development costs.

Line 6i: Show the totals of Lines 6(a) through 6(h).

Line 6j: Enter the total amount of indicated costs. If no indirect costs are requested, enter "none." This line should be used only when the applicant (except local governments) has an indirect cost rate approved by the Department of Education. Local governments shall enter the amount of indirect costs determined in accordance with ED requirements.

Line 6k: Enter the total amounts of Lines 6(i) and 6(j). For all new and continuation applications and total amount shown in Column (5), Line 6(k), should be the same as the amount shown in Section A, Column (e), Line 5.

For all changes, the total of the amount shown in Columns (1) through (4) should equal the amount shown in Section A, Line 5(e). The amount shown in Column (5) should include the cumulative total of the previously approved Federal share for the current budget period plus or minus, as appropriate, the increase or decrease of Federal funds.

Line 7: Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show, in the program narrative statement, the nature and source of income.

Section C—Non-Federal Resources

Line 8: Enter amounts of non-Federal resources that will be used to support the project. (Applicants for research grants should not complete this Section but will negotiate appropriate cost sharing arrangements with the funding office.) Provide a brief explanation, on a separate sheet, showing the type of contribution, and whether it is in cash or in kind. If in kind is allowable and included, show the basis for computation including:

(1) Numbers and types of volunteers and rates at which their services are valued;

(2) Valuation of donated space (use only) including number of square feet and value assigned per square foot; and

(3) Determination of depreciation and use allowance for grantee-owned space;

(4) Type and value of other in kind contributions expected.

Column (a): Enter the program title or activities as in Column (a), Section A.

Column (b): Enter the amount of cash and in kind contributions to be made by the applicant.

Column (c): Enter the State contribution. If the applicant is a State agency, enter the non-Federal funds to be contributed by the State other than the applicant State Agency.

Column (d): Enter the amount of cash and in kind contributions to be made from all other sources.

Column (e): Enter the totals of Columns, (b), (c), and (d).

Section E—Budget Estimates of Federal Funds Needed for Balance of Project

Line 9: Enter in Column (a) the same program title or activities as in Column (a), Section A. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding budget periods (usually in years). This Section need not be completed for revisions or supplements for the current budget period which do not increase the general level of support.

Section F—Other Budget Information

Line 10: Use this space to fully explain and justify the major items included in the budget categories shown in section B. Include sufficient detail to facilitate determination of allowability, relevance to the project, and cost benefits. Particular attention must be given to the explanation of any requested direct cost budget item which requires explicit approval by the program office. Budget items which require identification and justification shall include, but not be limited to, the following:

1. Salary amounts and percentage of time worked for project staff;

2. Out-of-town and foreign travel;

3. A list of all equipment to be purchased wholly or in part with grant funds which meets the definition of nonexpendable personal property provided on Line 6d, Section B;

4. Consultants: Fees, per diem, and travel;

5. Contractual; Major items or groups of smaller items; and

6. Other: Group and major categories; e.g., local transportation, space rental, training allowances, staff training, etc.

Line 11: Enter the type of indirect rate (provisional, pre-determined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date ED approved the rate, where applicable.

Line 12: Provide any other explanations required or deemed necessary.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0006

FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION (Mark appropriate box)
- ☐ NOTICE OF INTENT (OPTIONAL)
- ☐ PREAPPLICATION
- ☒ APPLICATION

2. APPLICANT'S APPLICATION IDENTIFIER
- a. NUMBER
- b. DATE (Year month day) 19

3. STATE APPLICATION IDENTIFIER (NOTE: TO BE ASSIGNED BY STATE)
- a. NUMBER N/A
- b. DATE ASSIGNED (Year month day) N/A 19

Leave Blank

SECTION I—APPLICANT/RECIPIENT DATA

4. LEGAL APPLICANT/RECIPIENT
- a. Applicant Name
- b. Organization Unit
- c. Street/P.O. Box
- d. City
- e. County
- f. State
- g. ZIP Code.
- h. Contact Person (Name & Telephone No.)

5. EMPLOYER IDENTIFICATION NUMBER (EIN)

6. PROGRAM (From CFDA)
- a. NUMBER 84.133
- MULTIPLE ☐
- b. TITLE Rehabilitation Research

7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)

8. TYPE OF APPLICANT/RECIPIENT
A—State; B—Interstate; C—Substate Organization; D—County; E—City; F—School District; G—Special Purpose District; H—Community Action Agency; I—Higher Educational Institution; J—Indian Tribe; K—Other (Specify):
Enter appropriate letter ☐

9. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.)

10. ESTIMATED NUMBER OF PERSONS BENEFITING

11. TYPE OF ASSISTANCE
A—Basic Grant; B—Supplemental Grant; C—Loan; D—Insurance; E—Other
Enter appropriate letter(s) A

12. PROPOSED FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. Total	$	.00

13. CONGRESSIONAL DISTRICTS OF:
- a. APPLICANT
- b. PROJECT

15. PROJECT START DATE (Year month day) 19

16. PROJECT DURATION Months

18. DATE DUE TO FEDERAL AGENCY ► (Year month day) 19

14. TYPE OF APPLICATION
A—New; B—Renewal; C—Revision; D—Continuation; E—Augmentation
Enter appropriate letter A

17. TYPE OF CHANGE (For 14c or 14e)
A—Increase Dollars; B—Decrease Dollars; C—Increase Duration; D—Decrease Duration; E—Cancellation; F—Other (Specify):
Enter appropriate letter(s)

19. FEDERAL AGENCY TO RECEIVE REQUEST ► U.S. Department of Education, Application Control Center, Washington, DC
- a. ORGANIZATIONAL UNIT (IF APPROPRIATE)
- b. ADMINISTRATIVE CONTACT (IF KNOWN)
- c. ADDRESS

20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER

21. REMARKS ADDED ☐ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT ► To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.
- a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
- b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW ☐

23. CERTIFYING REPRESENTATIVE
- a. TYPED NAME AND TITLE
- b. SIGNATURE

SECTION III—FEDERAL AGENCY ACTION

24. APPLICATION RECEIVED (Year month day) 19

25. FEDERAL APPLICATION IDENTIFICATION NUMBER

26. FEDERAL GRANT IDENTIFICATION

27. ACTION TAKEN
- ☐ a. AWARDED
- ☐ b. REJECTED
- ☐ c. RETURNED FOR AMENDMENT
- ☐ d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE
- ☐ e. DEFERRED
- ☐ f. WITHDRAWN

28. FUNDING

a. FEDERAL	$	.00
b. APPLICANT		.00
c. STATE		.00
d. LOCAL		.00
e. OTHER		.00
f. TOTAL	$	.00

29. ACTION DATE ► (Year month day) 19

30. STARTING DATE (Year month date) 19

31. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)

32. ENDING DATE (Year month date) 19

33. REMARKS ADDED ☐ Yes ☐ No

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424-103

STANDARD FORM 424 PAGE 1 (Rev. 4-84)
Prescribed by OMB Circular A-102

BILLING CODE 4000-01-C

Part II Project, Approval Information

Item 1

Is there related assistance on this project previous, pending or anticipated? ☐ Yes

See instructions for additional information to be provided. ☐ No

BILLING CODE 4000-01-M

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. **TOTALS** (sum of lines 8 and 11)	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. **TOTALS** (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

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Instructions for Completion of Part IV—Project Narrative for New and Continuation Applications

NIDRR recommends that the narrative section include the basic information described below and that applicants limit their applications according to the following guidelines:

- 100 pages for applications for Rehabilitation Research and Training Centers, Rehabilitation Engineering Centers, and Special Projects and Demonstrations for Spinal Cord Injury.
- 40 pages for applications under the Research and Demonstration Projects, Knowledge Dissemination and Utilization Projets, Field-Initiated Research Projects, and Research Training and Career Development Projects.
- 20 pages for applications under the Innovation Grants program.
- 12 pages, which is the regulatory limit, for applications under the Fellowship Program.

Should the proposed project be funded, the information provided in the "project narrative" will form the basis for evaluating progress for continuation funding.

The narrative for new applications may be organized under the major headings of the selection criteria included in the regulations governing the specific programs. These selection criteria are included in this Consolidated Application Package.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

IMPORTANT NOTICE TO PROSPECTIVE PARTICIPANTS IN USDE CONTRACT AND GRANT PROGRAMS

GRANTS

Applicants for grants from the U.S. Department of Education (USDE) have to compete for limited funds.

Deadlines assure all applicants that they will be treated fairly and equally, without last minute haste.

For these reasons, USDE must set strict deadlines for grant applications. Prospective applicants can avoid disappointment if they understand that –

Failure to meet a deadline will mean that an application will be rejected without any consideration whatever.

The rules, including the deadline, for applying for each grant are published, individually, in the Federal Register. A one-year subscription to the Register may be obtained by sending $300.00 to: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402-9371. (Send check or money order only, no cash or stamps.)

The instructions in the Federal Register must be followed exactly. Do not accept any other advice you may receive. No USDE employee is authorized to extend any deadline published in the Register.

Questions regarding submission of applications may be addressed to:

U.S. Department of Education
Application Control Center
Washington, D.C. 20202

CONTRACTS

Competitive procurement actions undertaken by the USDE are governed by the Federal Procurement Regulations and implementing ED Procurement Regulations.

Generally, prospective competitive procurement actions are synopsized in the Commerce Business Daily (CBD). Prospective offerors are therein advised of the nature of the procurement and where to apply for copies of the Request for Proposals.

Offerors are advised to be guided solely by the contents of the CBD synopsis and the instructions contained in the Request for Proposals (RFP). Questions regarding the submission of offers should be addressed to the Contracting Officer identified on the face page of the RFP.

Offers are judged in competition with others, and failure to conform with any substantive requirements of the RFP will result in rejection of the offer without any consideration whatever.

Do not accept any advice you receive that is contrary to instructions contained in either the CBD synopsis or the RFP. No USDE employee is authorized to consider a proposal which is non-responsive to the RFP.

A subscription to the CBD is available for $173.00 per year via non-priority mail or $243.00 per year via priority mail. Information included in the Federal Acquisition Regulations is contained in Title 48, Code of Federal Regulations, Chapter 1 ($90.00). The foregoing publication may be obtained by sending your check or money order only, no cash or stamps, to:

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In an effort to be certain this important information is widely disseminated, this notice is being included in all USDE mail to the public. You may, therefore, receive more than one notice. If you do, we apologize for any annoyance it may cause you.

ED FORM 5348, 6/88 REPLACES ED FORM 5348, 5/84, WHICH IS OBSOLETE

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federal register

Thursday,
September 8, 1988

Part IV

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Withdrawal of Coverage of Single Photon Absorptiometry and Radiographic Absorptiometry and Radiographic Absorptiometry (Photodensitometry) and Continued Noncoverage of Dual Photon Absorptiometry; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BERC-446-PN]

Medicare Program, Withdrawal of Coverage of Single Photon Absorptiometry and Radiographic Absorptiometry (Photodensitometry) and Continued Noncoverage of Dual Photon Absorptiometry

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This notice announces the Medicare program's intent to withdraw Medicare coverage (including coverage under the End Stage Renal Disease (ESRD) program) for single photon absorptiometry, and radiographic absorptiometry (photodensitometry) for measuring bone mineral density for either diagnostic purposes or as a guide to treatment, and to continue noncoverage of dual photon absorptiometry.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on November 7, 1988.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-446-PN, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-446-PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Barton McCann, M.D., (301) 594-9370.

SUPPLEMENTARY INFORMATION:

I. Background

Administration of the Medicare program is governed by the Medicare statute, title XVIII of the Social Security Act (the Act). The Medicare law provides coverage for broad categories of benefits, including inpatient and outpatient hospital care, skilled nursing facility (SNF) care, home health care, and physicians' services. It places general and categorical limitations on the coverage of the services furnished by certain health care practitioners, such as dentists, chiropractors and podiatrists, and it specifically excludes some categories of services from coverage, such as cosmetic surgery, personal comfort items, custodial care, routine physical checkups, and procedures that are not reasonable and necessary for diagnosis or treatment. The statute also provides direction as to the manner in which payment is made for Medicare services, the rules governing eligibility for services, and the health, safety and quality standards to be met by institutions providing services to Medicare beneficiaries.

The Medicare law does not, however, provide an all-inclusive list of specific items, services, treatments, procedures, or technologies covered by Medicare. Thus, except for the examples of durable medical equipment in section 1861(n) of the Act, and some of the medical and other health services listed in sections 1861(s) and 1862(a) of the Act, the statute does not specify medical devices, surgical procedures, or diagnostic or therapeutic services that should be covered or excluded from coverage.

The intention of Congress, at the time the Medicare Act was enacted in 1965, was that Medicare would provide health insurance to protect the elderly or disabled from the substantial costs of acute health care services, principally hospital care. The provision was designed generally to cover services ordinarily furnished by hospitals, SNFs, and physicians licensed to practice medicine. Congress understood that questions as to coverage of specific services would invariably arise and would require a specific decision of coverage by those administering the program. Thus, it vested in the Secretary the authority to make those decisions. Specifically, section 1862(a)(1)(A) of the Act prohibits payment for any expenses incurred for items or services "which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member."

We have interpreted this statutory provision to exclude from Medicare coverage those medical and health care services that are not demonstrated to be safe and effective by acceptable clinical evidence. Effectiveness in this context is defined as the probability of benefit to individuals from a medical technology for a given medical problem under actual conditions of use. In day-to-day medical practice, physicians diagnose and treat clinical conditions following their performance of history and physical examinations and their interpretations of a variety of diagnostic tests and procedures. To be of value to the physician in confirming the presence or absence of a given disease, the information obtained from any diagnostic test or procedure must be of sufficient accuracy to establish or rule out the presence of that disease. Likewise, for established diagnoses, the test or procedure must be of sufficient precision to allow the physician to accurately monitor the patient's response to treatment. Payment may not be made under Medicare for any diagnostic test or procedure that is not accurate or precise, since such a test cannot be considered "reasonable and necessary for the diagnosis or treatment of illness or injury". While medical procedures may prove to be efficacious in a research setting, under ideal circumstances (that is, controlled environment, scientifically trained users, optimally functioning equipment, etc.) their efficacy may not extend to less controlled settings. On April 29, 1987, we published a notice in the Federal Register (52 FR 15560) that describes the process we use in reaching coverage decisions. That notice includes a discussion of our reliance on the Office of Health Technology Assessment (OHTA) in the Public Health Service (PHS) for medical advice.

The Medicare program currently covers single photon absorptiometry, radiographic absorptiometry (photodensitometry), and bone biopsy for measuring bone mineral density. Dual photon absorptiometry currently is not covered.

Bone mineral density studies are used to diagnose diseases of the bone and to evaluate the responses of bone diseases to treatment. The studies assess bone mass or density associated with such diseases as osteoporosis, osteomalacia, and renal osteodystrophy. Various methods of measurement may be used to diagnose bone disease and monitor the response to treatment, including, bone biopsy, radiographic absorptiometry (photodensitometry), and single and dual photon absorptiometry.

A bone biopsy is an invasive surgical procedure. A small sample of bone (usually from the hip) is removed, generally by a biopsy needle. The biopsy sample is then examined histologically, and provides a qualitative measurement of the bone mineral

content of the trabecular bone. This procedure is used primarily to differentiate osteomalacia from osteoporosis. Bone biopsy is covered under Medicare when used for the qualitative evaluation of bone no more than four times per patient, unless special justification is given. When used more than four times on a patient, bone biopsy may leave a defect in the pelvis and produce some patient discomfort.

Radiographic absorptiometry (photodensitometry) is a noninvasive radiological procedure that attempts to assess bone mass by measuring the optical density of extremity radiographs with a photodensitometer, usually with a reference to a standard density wedge placed on the film at the time of exposure. This procedure provides a quantitative measurement of the bone mineral of cortical bone, and is used for monitoring gross bone change.

Radiographic absorptiometry (photodensitometry) was covered in 1975 at the recommendation of the Bureau of Health Insurance's (predecessor to HCFA) in-house medical consultants based on the limited medical information available at that time. This decision was made prior to the inception of the HCFA Physicians Panel and OHTA review and assessment process. Since that time additional studies have been conducted, with the result that the available evidence as set forth in current medical literature no longer supports Medicare's coverage position.

Single photon absorptiometry is a non-invasive radiological technique that measures absorption of a monochromatic photon beam by bone material. The device is placed directly on the patient, uses a low dose of radionuclide, and measures the mass absorption efficiency of the energy used. It provides a quantitative measurement of the bone mineral of cortical and trabecular bone, and is used in assessing an individual's treatment response at appropriate intervals. Single photon absorptiometry has been covered under Medicare when used in assessing changes in bone density of patients with osteodystrophy or osteoporosis when performed on the same individual at intervals of six to 12 months.

Single photon absorptiometry was covered under Medicare based on the advice and recommendation of the Office of Health Research, Statistics, and Technology (OHRST), PHS on September 10, 1982. OHRST stated that while no single currently available technique was entirely satisfactory for assessing either the degree or type of bone disease in individual patients, they recommended that single photon absorptiometry be covered under Medicare because "There does *appear* to be evidence to support the clinical effectiveness of photon absorptiometry * * *" Since that time additional studies have been conducted, with the result that the available evidence as set forth in current medical literature no longer supports Medicare's coverage position.

Dual photon absorptiometry is a noninvasive radiological technique that measures absorption of a dichromatic beam by bone material. This procedure is not covered under Medicare because it is still considered to be in the investigational stage.

The issue of the safety and effectiveness of dual photon absorptiometry was considered by the HCFA Physicians Panel on January 11, 1984. The HCFA Physicians Panel is an internal organization composed of physicians and other health professionals in HCFA's Central Office and their counterparts from PHS, which meets approximately once every six to eight weeks. At that time, the Panel recommended that HCFA refer the issue to PHS for its review with specific direction to OHTA to report back to HCFA after it had reviewed the data presented at a Consensus Conference on Osteoporosis at the National Institutes of Health (NIH) in April of 1984.

OHTA reported on the NIH conference at the Panel meeting held May 15, 1984. The NIH conference was unable to reach a consensus on the effectiveness in the clinical setting of any of the currently available tests for studying bone mineral density. The discussion generated by this information led HCFA to question whether these techniques were medically necessary, given the current state of therapy for osteoporosis. A major conclusion of the NIH conference was that while there are a number of promising treatments available for osteoporosis, there was no single treatment available to either prevent or cure the condition. The Panel then recommended that OHTA be requested to do a full assessment of the effectiveness of all types of bone mineral density studies.

On June 1, 1984, we requested that OHTA assess the issue of the safety and effectiveness of all currently used bone mineral density studies—radiographic absorptiometry (photodensitometry), single photon absorptiometry, dual photon absorptiometry, and computerized tomography (CT) scans. In a **Federal Register** notice published October 26, 1984, OHTA announced that it was coordinating an assessment of what is known of the safety, clinical effectiveness, and use of bone mineral density studies. During its assessment, OHTA solicited information and advice from other PHS components (such as the Food and Drug Administration and NIH), consulted directly with concerned medical specialty groups and professional organizations to determine whether a consensus exists within the medical community concerning the safety and effectiveness of bone mineral density studies, and researched and analyzed published medical and scientific literature and findings of all relevant studies and reports. On December 31, 1986, OHTA recommended that we not cover single photon absorptiometry under Medicare (including the ESRD program), and continue to deny Medicare coverage of dual photon absorptiometry. On September 22, 1987, OHTA recommended that we not cover radiographic absorptiometry (photodensitometry) under Medicare.

According to the OHTA assessment, the use of radiographic absorptiometry (photodensitometry), single photon absorptiometry, and dual photon absorptiometry for diagnosing bone loss or monitoring effectiveness of treatment is unproven. Currently, there is a lack of medical evidence supporting their effectiveness as either diagnostic tools or methods of monitoring treatments for bone disease when used outside the research setting. Because of significant variation among observers in obtaining measurements, and because measurements by the same observer at different times vary to a considerable degree, the accuracy of these measurements must be considered open to question. Moreover, it has not been determined which site or sites are best suited for measurement. When used as a guide to monitoring treatment response the degree of change in bone density expected is smaller than the precision error of the devices themselves, thereby making such measurements unsuitable for this purpose. OHTA has advised that radiographic absorptiometry (photodensitometry), single photon absorptiometry, and dual photon absorptiometry need to undergo further clinical investigation before being recommended for general clinical use. OHTA has, therefore, concluded that the available clinical and scientific evidence does not support the effectiveness in a day-to-day clinical setting, of radiographic absorptiometry (photodensitometry), single photon absorptiometry, and dual photon absorptiometry in measuring bone mineral density for either diagnostic or treatment monitoring purposes.

HCFA has received recently comments form clinicians and others challenging the OHTA assessments of the effectiveness of radiographic absorptiometry (photodensitometry), single photon absorptiometry, and dual photon absorptiometry in measuring bone mineral density for either diagnostic or treatment monitoring purposes that may have a substantial, credible basis. These comments will be available for public inspection during the comment period for this notice and will be addressed in the final notice if we proceed with publishing one.

OHTA is currently assessing the safety and effectiveness of computerized tomography (CT) scans when used to measure bone mineral density.

II. Provisions of the Proposed Notice

We propose to exclude radiographic absorptiometry (photodensitometry) and single photon absorptiometry for measuring bone mineral density from Medicare coverage (including coverage under the ESRD program) for either diagnostic purposes or as a guide to treatment, and to continue noncoverage of dual photon absorptiometry.

The provisions of this notice would not affect any existing Medicare regulations. However, they would affect the following manual instructions:

- Coverage Issues Manual—Section 50–17, paragraph A, Laboratory Tests—CRD Patients; and Section 50–44, Bone Mineral Density Studies;
- Renal Dialysis Facility Manual—Section 240.3, paragraph D, Laboratory Tests;
- Hospital Manual—Section 238.2, paragraph D.3., Institutional Dialysis Services Furnished to CAPD Patients—Laboratory Tests;
- Intermediary Manual—Section 3172.3, Laboratory Tests for Hemodialysis, Intermittent Pertioneal Dialysis (IPD) and Continuous Cycling Pertioneal Dialysis (CCPD) Included in the Composite Rate—Guidelines for Separately Billable Tests for Hemodialysis, IPD, and CCPD; and
- Carriers Manual—Section 2231.3, Support Services and Supplies Furnished to Home CAPD Patients, paragraph D.3., Laboratory Tests; and Section 4270, paragraph C.3., Guidelines for Separately Billable Tests for Hemodialysis, IPD, and CCPD.

III. Appendices

We have included as appendices to this notice the following OHTA assessments of single and dual photon absorptiometry.

APPENDIX I—Public Health Service Reassessment of Single Photon Absorptiometry for Measuring Bone Mineral Density—1986

APPENDIX II—Public Health Service Assessment of Dual Photon Absorptiometry for Measuring Bone Mineral Density—1986

APPENDIX III—Public Health Service Assessment of Radiographic Absorptiometry for Measuring Bone Mineral Density—1987

IV. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed notice that meets one of the E.O. criteria for a "major rule"; that is, that would be 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. In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed notice such as this would not have a significant economic impact on a substantial number of small entities.

Although radiographic absorptiometry has been covered since 1975, the first year for which Medicare coverage was available for single photon absorptiometry was 1985. The limited data available to us show the total 1985 Medicare charges for both procedures were significantly less than $1 million. This proposal would affect those clinics and other facilities that are offering this testing in two ways: first, they would lose Medicare revenue, and second, our coverage decision may affect other payers (such as, third parties) and their beneficiaries. Nonetheless, we believe the economic impact of this notice would not be significant.

For these reasons, we have determined that a regulatory impact analysis is not required. Further, we have determined and the Secretary certifies that this proposed notice would not have a significant economic impact on a substantial number of small entities, and we have therefore not prepared a regulatory flexibility analysis.

V. Response To Comments

Because of the large number of comments we receive on proposed notices, we cannot acknowledge or respond to them individually. However, in preparing the final notice, we will consider all comments received timely and respond to the major issues in that notice.

VI. Collection Of Information Requirements

This notice contains no information collection requirements. Consequently, this notice need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

(Sec. 1862(a) of the Social Security Act (42 U.S.C. 1395y(a)))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare Hospital Insurance and No. 13.774, Supplementary Medical Insurance)

Dated: February 26, 1988.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: April 9, 1988.

Otis R. Bowen,

Secretary.

BILLING CODE 4120-01-M

APPENDIX I - Public Health Service Reassessment of Single Photon Absorptiometry for Measuring Bone Mineral Density - 1986

Health Technology Assessment Reports, 1986

Single Photon Absorptiometry for Measuring Bone Mineral Density

Number 7



NATIONAL CENTER FOR HEALTH SERVICES RESEARCH AND HEALTH CARE TECHNOLOGY ASSESSMENT

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service

FOREWORD

The Office of Health Technology Assessment (OHTA) evaluates the safety and effectiveness of new or unestablished medical technologies that are being considered for coverage under Medicare. These assessments are performed at the request of the Health Care Financing Administration (HCFA). They are the basis for recommendations to HCFA regarding coverage policy decisions under Medicare.

Questions about Medicare coverage for certain health care technologies are directed to HCFA by such interested parties as insurers, manufacturers, Medicare contractors and practitioners. Those questions of a medical, scientific, or technical nature are formally referred to OHTA for assessment.

OHTA's assessment process includes a comprehensive review of the medical literature and emphasizes broad and open participation from within and outside the Federal Government. A range of expert advice is obtained by widely publicizing the plans for conducting the assessment through publication of an announcement in the Federal Register and solicitation of input from Federal agencies, medical specialty societies, insurers, and manufacturers. The involvement of these experts helps assure inclusion of the experienced and varying viewpoints needed to round out the data derived from individual scientific studies in the medical literature. After OHTA receives information from experts and the scientific literature, the results are analyzed and synthesized into an assessment report. Each report represents a detailed analysis of the safety, clinical effectiveness, and uses of new or unestablished medical technologies considered for Medicare coverage. These Health Technology Assessment Reports form the basis for the Public Health Service recommendations to HCFA and are disseminated widely.

Individual reports are available to the public once HCFA has made a coverage decision regarding the subject technology. OHTA also publishes compilations which contain all assessment reports submitted to HCFA in a given calendar year.

OHTA is part of the National Center for Health Services Research and Health Care Technology Assessment, Public Health Service, Department of Health and Human Services.

Enrique D. Carter, M.D.
Director, Office of Health
Technology Assessment

Samuel Lin, M.D., Ph.D.
Acting Director, National Center for
Health Services Research and
Health Care Technology Assessment

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PUBLIC HEALTH SERVICE REASSESSMENT SINGLE PHOTON ABSORPTIOMETRY FOR MEASURING BONE MINERAL DENSITY 1986

INTRODUCTION

Single photon absorptiometry (SPA) is a noninvasive radiologic technique used to assess bone mineral content in the appendicular skeleton (1). A photon beam from a sealed, single, low-energy radioisotope source is directed at a bone of the patient's limb, usually the shaft of the radius. As the beam passes through the bone and soft tissue, some photons are absorbed, and a nuclear counting instrument measures the intensity of the beam that emerges. The difference in photon absorption between bone and soft tissue allows for the calculation of the total bone mineral found in the scan path. The amount of skeletal mineral present is proportional to the change in beam intensity over the bone (2). The measurements by SPA are calibrated with known bone mineral content (BMC) from ashed bone sections or from standards calibrated against ashed bone sections. The SPA technique provides no information about the volume of bone scanned. In SPA, bone mineral is expressed in mass per unit length of bone (g/cm). Measurements of bone mineral by SPA have been used to provide an index of skeletal status in the assessment of a wide range of metabolic bone disorders such as renal osteodystrophy and osteoporosis.

First described in 1963, SPA is considered a simple, widely available, and relatively inexpensive bone mineral measurement technique (3). Initially, bones of the hands, humerus, femur, tibia, mandible, and calcaneus (os calcis or heel) were measured. Because of easy access to the forearm (radius) and better reproducibility, the

greatest experience has been collected with the forearm bones as scanning sites (1). Frequently used sites on the radius are the distal portion (10 percent of the total length from the styloid process of the ulna), distal third, and midradius. In current practice most radial bone measurements are limited to the midradius. For photon absorptiometry the midradius is a site two-thirds the length of the ulna from its proximal end. Some investigators also use measurements on ulna and radius together at the distal end of the radius (1). In the last 10 years, measurements of bone mineral in the forearms by SPA have become one of the most widely used methods for evaluating the cortical bone mass (4).

Recently, interest has centered on measurements of axial trabecular bone mass. Most nontraumatic fractures occur in the axial skeleton (spine) and proximal femur (hip), sites containing significant amounts of trabecular bone. Also, according to some investigators, bone mineral density (BMD) measurements made at the fracture sites (spine and hip) discriminate better between nontraumatic fragility fractures and nonfracture cases than measurements made on other parts of the skeleton (5,6). This has fueled a controversy regarding the value of radial appendicular (cortical) skeletal measurements for predicting the risk of developing a fracture at the spine or hip and monitoring the effects of therapy of osteoporosis. This recent interest in measurements of trabecular bone mass has also resulted in attempts to measure appendicular trabecular bone at the distal radius and os calcis. A major difficulty in measurements at these sites is the tapering bone and repositioning problem. Since the bone's cross section tapers sharply at the distal radius and is irregular at the os calcis, a small positioning change may produce a substantial change in bone diameter and measured BMD (5). According to Mazess, however, microcomputer-controlled instruments coupled to rectilinear scanners will greatly improve the precision of these instruments in sites where there is great variation in the bone cross section from one centimeter to another along the shaft of a

given bone (i.e., distal radius) (7). Rectilinear scanning of 1 cm segments of bone in 1 to 2 mm step-wise increments allows the averaging of multiple scans and improves precision.

SPA was first described by Cameron and Sorensen in 1963 (8). It was developed in an attempt to circumvent some of the problems inherent in the use of photodensitometry and radiogrammetry to measure BMD (8). The technique of SPA utilizes a well collimated beam of mono-energetic radiation, usually from I^{125} (200m Ci), to scan a peripheral bone (8). The absorption of photons is measured by a sodium iodide-thallium detector fixed on a C-frame opposite the photon source. This assembly synchronously scans across the bone being measured. Like radiogrammetry, SPA is limited to measurements of appendicular bone because tissue composition surrounding the bone has to be uniform and minimal. Corrections cannot be made by this instrument for bulk soft tissue or its uneven distribution around the bone. Because the technique requires a uniform soft tissue thickness surrounding the bone, the limb is immersed in water or wrapped with a water bag or tissue-equivalent material to simulate constant thickness in soft tissue (9).

Using SPA, the bone mineral measured reflects the total integrated mineral (cortical and trabecular) in the path of the beam. Calculations of bone mass in gm/cm are made with the use of standard curves. Standard curves are obtained by dividing an excised radius in pieces of 1-cm length and then scanning in the middle of these pieces. Scanning is performed under 4 cm of water. The 1-cm pieces are then ashed to constant weight. The calibration curve (standard curve) is obtained by plotting the ash weight of the dried, defatted human radius against the bone mineral as estimated with the SPA device (10). The units most frequently used with SPA are ash weight (in grams) per axial bone length (in centimeters).

SPA scans of the forearm take about 10 to 15 minutes and can be performed without specific preparation on most patients. According to Wahner, measurements of bone mineral with SPA are contraindicated in patients with skeletal abnormalities or history of fracture of the radius, recent immobilization of the arm, arthritic changes, or arteriovenous fistulas as used in renal dialysis (10). Costs for these devices range from about $19,000 to $25,000 (costs do not include radioactive source). The 200m Ci I^{125} radiation source that is required has a half life of 60 days. This source will have to be replaced every 4 to 5 months at a cost of about $750. Charges for the procedure range from about $50 to $150 (2). A comparison of SPA costs with those of other techniques for measuring bone mineral can be found in the costs section of the OHTA assessment for dual photon absorptiometry (DPA) (11).

Radiation exposure is always a concern with any procedure utilizing radiation sources. While SPA is a noninvasive technique, it does involve patient exposure to radiation. Wahner and colleagues have performed dosimetry measurements at the Mayo Clinic. They measured patient radiation dose from SPA of the radius utilizing I^{125} and four passes 1 mm apart. They found that the peak skin dose, with background measured at both eye and gonad sites, was 13 mrad (1).

According to the position paper on radiologic methods to evaluate BMC from the Health and Public Policy Committee of the American College of Physicians, SPA involves minimal radiation exposure, with negligible bone marrow or gonadal radiation (2). The position paper reports SPA involves a 2 to 5 mrad dose to the limb. The body dose is negligible as a result of little radiation scatter. Physicians are required to obtain the Nuclear Regulatory Commission Level VI license to handle the necessary 400 millicuries of I^{125} used in SPA (3).

The physiologic information provided by measurements of BMC have been under extensive investigation during the past 20 years. Bone mass measurements have been a valuable research tool for clinical investigations attempting to elucidate the

pathogenesis of metabolic bone diseases. Investigators have sought to determine the clinical significance of bone loss with aging and bone disease and its relationship to an increasing risk of fractures among the elderly. This growing interest in better understanding the nature and degree of changes in BMC with age, with osteoporosis, and with metabolic bone disease, in general, has prompted the development of noninvasive measurement techniques for assessing bone mineral content (12). A variety of such techniques in addition to SPA are presently available. They include: radiogrammetry, photodensitometry, radiographic absorptiometry, computed tomography, and DPA.

Although bone mineral measurements with SPA have been utilized mostly in studies of primary osteoporosis, a number of clinical investigations have been reported regarding its use in renal osteodystrophy (13,14,15,16,17). These studies which include work by Stewart and associates, Atkinson and colleagues and Griffiths and Zimmerman indicate that photon absorptiometry is suitable for epidemiological studies and clinical research in metabolic bone diseases associated with renal failure (13,14,17). However, the role of SPA measurements for individual case diagnosis and for patient management decisions is uncertain (6,14,16).

Many of the methods of bone mass quantitation in general, and SPA in particular, have been used in attempts to diagnose osteoporosis or to follow its response to therapy. This report will reassess the effectiveness of SPA bone mineral measurements on the clinical outcome of patients being evaluated and treated for osteopenic bone diseases. This reassessment seeks to ascertain where bone mineral evaluation by SPA fits into the overall scheme of osteoporosis prevention, diagnosis and treatment. A similar report has been published on DPA. The other noninvasive measurement techniques for bone mineral will be assessed subsequently, in separate reports.

BACKGROUND

Osteoporosis is a major public health problem. The National Institutes of Health Consensus Development Conference on Osteoporosis held on April 2-4, 1984, reported that osteoporosis may affect between 15 and 20 million Americans (18). More than 1 million fractures attributable to osteoporosis occur annually in individuals over the age of 45. Twenty-five percent of women over 60 years of age have documented vertebral fractures in association with osteoporosis. As many as 50 percent of women will develop vertebral fractures by age 75. These fractures may develop during routine activities, such as bending, lifting, or raising from a chair or bed (18). While compression fractures (collapsed fractures) of the vertebrae can produce severe pain, the amount of back pain and disability attributable to most vertebral fractures is unknown. According to the American College of Obstetricians and Gynecologists, after age 45 there is a marked increase in the incidence of distal forearm fractures (19). By age 60, there are 10 times more forearm fractures in women than in men of comparable age. These fractures limit the use of the extremity for 4 to 8 weeks, with long-term disability uncommon. While osteoporosis predisposes to fractures of various bones, hip fractures are the most serious in terms of disability, mortality and aggregate cost. In the United States, it is estimated that more than 200,000 hip fractures occur in elderly women each year with 80 percent found to be related to pre-existing osteoporosis (19). The affected population tends to be advanced in age and the sex distribution less skewed toward females than is the case with vertebral fractures. Acute complications such as depression and mechanical failure of the surgical procedure are common (18). Most patients fail to recover normal activity. Hip fractures lead to fatalities in 12 to 20 percent of cases and precipitate long-term nursing home care for half of those who survive (20,21). Hip fractures pose a significant economic as well as a medical burden.

The economic burden of all age-related fractures is great because of the large number of people involved and the expensive and protracted care that is often required. About a fourth of all patients with limb fractures require hospitalization and the mean hospital stay increases from 13.6 days among those age 25 to 44, to 32.6 days among those older than age 65. Fractures of the proximal femur account for more than half of all days of hospitalization for limb fractures. The cost of the acute care alone for fractures of the proximal femur has been estimated to exceed $1 billion annually in the United States (22). The direct and indirect costs of osteoporosis, including hip fractures, are estimated to be between $3.5 billion and $6.1 billion annually in the United States (18,21). As a result of the considerable morbidity, mortality and expenditures associated with this disease, there is growing interest in research regarding its prevention, diagnosis, and treatment. The pathogenesis of osteoporosis, its prevention and management has had extensive review. A summary of that information can be found in the osteoporosis section of the OHTA assessment on DPA (11). Additional information can also be obtained from the numerous references cited in that report.

For the past 5 years investigators have used SPA to assess the BMC of the appendicular skeleton in "normal" individuals and in patients with osteoporosis. Studies have been conducted to investigate whether appendicular (radial) bone mineral measurements could separate "normal" women from women with vertebral compression fractures or femoral neck fractures. Recently, some investigators have used SPA distal radial and os calcis measurements ostensibly to identify women at risk of future fractures. This report examines these and other studies as well as other evidence that pertains to the safety and clinical effectiveness of this technique.

RATIONALE

The rationale for bone mineral measurements in osteoporosis is based on the demonstration that the strength or resistance of a bone to fracture is closely related to the amount of bony tissue or the mass of the mineral present in the bone. Proponents argue that since the (breaking) tensile strength of bone mass is related to its mineral content, measurements of bone mineral should be a more accurate method of determining fracture risk. Proponents of SPA believe that the ability to assess the direction and degree of changes in bone mineral content in the os calcis, distal radial and midradial sites facilitates the diagnosis and management of metabolic bone diseases, such as osteoporosis. They argue that information on bone mineral loss is clinically important for the monitoring of age-related bone loss, for the diagnosis and monitoring of bone loss resulting from metabolic bone disease, for the assessment of drug effects on bone mineralization, and for the accurate assessment of fracture risk at the spine and femoral neck. Proponents also argue that these measurements could prove useful as clinical guides to therapy in assessing the therapeutic responses of patients with osteopenia.

REVIEW OF AVAILABLE INFORMATION

Accuracy and Precision

Accuracy defines the degree to which a measurement, or an estimate based on measurements, represents the true value of the attribute that is being measured. In this case it refers to how well the measurement reflects actual mineral content. It is expressed as a coefficient of variation (or error of estimate) of the difference between actual and measured. In the determination of osteopenia, accuracy in the measurement of bone mass by SPA is of great importance.

A number of complex technical factors affect absorptiometry accuracy determinations in vivo. These include beam hardening, photon beam size, scattered radiation and spatial variation of soft tissue composition (23). SPA minimizes the effects of scattered radiation and beam hardening that contribute to that inaccuracy. The narrow beam (less than 5mm diameter) eliminates problems of scattered radiation while use of nonenergetic radiation minimizes the effects of selective filtration of the beam as it passes through a limb (beam hardening) (23). According to Judy, the error introduced by hardening, scatter, and finite beam size can be reduced to less than 2 percent by calibrating the measurement system with an ash study (23).

Sorenson and Cameron, and Christiansen and coworkers have demonstrated that the mineral content of a bone as determined by SPA is independent of the position of the bone relative to top and bottom of the soft tissue and independent of the orientation of the bone in the soft tissue (24,25). It is also independent of a constant thickness of overlying tissue. However, the distribution of fat in the arm is such that its thickness, as seen by the scanning beam, is not uniform. Therefore, the accuracy of SPA is limited by the uncertainty and variation of soft tissue composition over and in the bone. The magnitude of this error has been estimated to be from 2 percent to as large as 30 percent (23). To minimize artifacts introduced by variation in soft tissue, the limb being studied is immersed in water or wrapped in a tissue-equivalent substance to simulate constant thickness.

The instrumental accuracy of SPA using I^{125} as the photon source was determined by Cameron and coworkers in 1968 (26). Excised bones were measured under water to simulate the soft tissue surrounding the limb and the mass of ashed sections was compared with the absorptiometric measurement. The authors reported accuracies of 4 to 7 percent for the SPA technique. With technical modifications (a rapid scanning automated system) made during the study, the authors demonstrated improved accuracies of 2 to 4 percent. More recently, Rustgi and colleagues found a 6.5 percent difference

when they compared measured BMC values obtained by SPA with absolute values obtained by the ashing method (27). In a 1983 review of noninvasive methods for quantitating appendicular bone mass, Johnston concluded that SPA provided an accurate assessment of the amount of mineral with an error of estimate of about 5 to 6 percent (9). Preliminary results from a study of bone mass in 50 postmenopausal osteoporotic women at the University of Washington was recently reported by Chestnut at the National Institutes of Health Consensus Development Conference on Osteoporosis (28). With SPA measurements of the radius/ulna, he reported obtaining an accuracy of 3 to 4 percent. Similar findings of accuracy (1-4 percent) have been reported in the position paper on radiologic methods to evaluate bone mineral content from the Health and Public Policy Committee of the American College of Physicians (2).

For monitoring changes in bone mass, SPA bone mineral measurements have to be sufficiently precise (reproducible) to provide a correct estimate of these changes. Precision is important if the goal is to detect small changes, such as the 1 to 2 percent per year loss of bone mass found in many postmenopausal women. The coefficient of variation (CV) expressed in percent describes the precision or reproducibility of a given measurement. A number of published studies have reported the precision of repeated SPA measurements to be between 2 and 4 percent (8,28,29).

Because accurate repositioning of the bone site for repeated measurements is the principal determinant of precision, a number of modifications to improve the repositioning error, including rectilinear scanning, have been introduced in different instruments. Using microcomputers, scans of multiple paths about 1 mm apart are feasible, giving an integrated bone mass over some distance (1). According to Mazess, rectilinear scanning can reduce the usual 2 to 4 percent error of linear scans to 1 to 2 percent (7). Similar results, under strictly controlled conditions, have been reported by

Wahner and coworkers (1). Johnston has found the precision of repeated SPA measurements quite good: 1 to 2 percent in the research laboratory, and 2 to 5 percent in the clinical setting (9).

Clinical Applications

One of the earliest studies of bone demineralization, using SPA measurements, was performed by Smith and associates on 169 white women older than 50 years of age at Indiana University School of Medicine in 1972 (29). They measured bone mineral at two radial sites in 56 women with and 113 women without fractured vertebrae. Although measurements of bone mineral in the radius were significantly less in the group with collapsed vertebrae, the authors reported considerable overlap in measurement values for the fracture and nonfracture groups (29). Because there appeared to be a greater loss of bone mineral from the radial site (one-tenth of the forearm length from the distal radius) containing higher percentages of trabecular bone, Smith suggested that scans of the distal radius may better reflect loss of mass in the vertebrae (29).

In a 1975 study, Smith with other associates reported results similar to the results of his earlier study (30). Using SPA measurements of the radius in a larger group of fractured (108 women with vertebral body decreased at least one-third in height) and nonfractured (161 women) caucasian women age 50 or older, he demonstrated that the nonfractured group had significantly higher bone mineral values. Again there were significant overlaps between bone mineral values for osteoporotic and for normal subjects. A short followup of 278 women for 470 subject-years showed that women with low SPA measurements may have a greater risk of diverse types of fractures. He found that the incidence of vertebral fractures was inversely proportional to the initial bone mineral measurements taken at the radius (30). Smith concluded, however, that factors other than low bone mineral, such as degree of trauma, quality of bone and activity, may be determinants of fracture as well (30).

In a related study of SPA measurements of rates of mineral loss with aging, Smith and colleagues determined that estimates of rates of loss over periods less than 2 years were too low in precision to be useful (31). According to Smith, if an individual loses bone mineral at an average rate of about 1 percent per year, the precision of the technique which would allow the detection of such a rate must approach 1 percent if the loss is to be determined in 1 year. If the precision is greater than this, several years' time will be needed before the loss can be detected (31).

Similar studies involving bone mineral measurements in osteoporosis were conducted at Brookhaven National Laboratory (32). Cohen and associates attempted to diagnose osteoporosis, based on SPA bone mineral measurements of the radius. Cohen found a large inherent variability in the bone mineral measurements of the radius similar to those reported by Smith (29). He also was unable to normalize the bone mineral measurements for the size, age, and sex of the individual (32). According to Cohen, these factors often make SPA bone mineral measurements of the radius unsatisfactory for evaluation of the extent of osteoporosis in an individual. However, he does believe that bone mineral measurements on the radius can be used to distinguish an osteoporotic population from an age- and sex-matched normal population.

In a continuation of the work by Cohen (32), Aloia and coworkers determined whether changes in bone mineral measured by SPA in the midradius (8-cm site), following therapy for osteoporosis, reflected changes in skeletal mass (total-body calcium) as measured by total-body neutron activation analysis (TBNAA) (33). Thirty-six osteoporotic patients who underwent several therapeutic regimens were studied on two occasions approximately 9 months apart by SPA and TBNAA. Aloia found no apparent relationship between the changes in bone mineral measured by SPA in the midradius with the changes in total-body calcium. Aloia concluded that changes in bone mineral at the midradius (8-cm site) could not be extrapolated to indicate changes in skeletal mass. However, he noted that it was possible that differential rates of remodeling occurred

with therapy in various skeletal sites and that an increment in BMC of the radius could be accompanied by a decrement in total skeletal mass (33). Although Aloia suggested that a better correlation between SPA measured changes in bone mineral with changes in total-body calcium might have been obtained at a radial site with more trabecular bone (3-cm site), this site was not utilized because of its increased error in measurement (33).

Studies by Khairi and coworkers and Wahner and associates, published in 1976 and 1977 respectively, used SPA and Singh's Trabecular Pattern Index (Singh index) to assess skeletal status and to compare the ability of the two methods to single out osteoporosis-prone subjects (34,35). Both groups reported that neither of the methods clearly separated the subjects with fracture from those without fracture. The study by Khairi prospectively followed 106 women, 70 to 95 years old, for 2 to 3 years after obtaining initial SPA bone mineral measurements and a Singh index (34). Noting that the total numbers of subjects and fractures (n=29) were few, Khairi reported that the incidence of subsequent fractures showed a significant inverse correlation with the initial SPA bone mineral measurements at the distal radial site (34).

The data published by Wahner again confirmed that SPA bone mineral measurements of osteoporotic patients fall within the lower ranges of average bone mineral of the relevant cohorts (35). In his study, and in contrast to the findings of Khairi, Wahner found that the Singh index gave a better separation of osteoporotic patients and age-matched normals than SPA measurements. According to Wahner, the Singh index, which is based entirely on changes in trabecular bone, probably discriminates better because osteoporotic patients have a greater proportion of loss of trabecular bone of the axial skeleton than of cortical bone of the appendicular skeleton (35).

In 1981 Riggs and coworkers at the Mayo Clinic demonstrated differences in trabecular and cortical bone diminution in elderly normal subjects and in patients with spinal osteoporosis (36). In a cross-sectional study, Riggs compared trabecular and cortical bone diminution with aging by measuring bone mineral concurrently at sites in

the axial and appendicular skeleton. Bone mineral of the radius (mid and distal) was measured by SPA while bone mineral of the vertebrae was determined by DPA. According to Riggs, although there was still considerable overlap, spinal bone mineral measurements with DPA were able to discriminate patients with osteoporosis from age- and sex-matched normal subjects better than SPA bone mineral measurements on the radius (36). Riggs suggested that cortical bone and trabecular bone function as separate compartments, which differ in respect to onset and rate of bone loss. He concluded that direct spinal measurements of bone mineral are greatly superior to appendicular measurements for evaluating the severity of spinal osteoporosis (36).

According to the work of Manicourt and associates, however, the amount of bone estimated by SPA measurements at the distal radius (3-cm site) closely correlates with the amount of bone estimated by physical determination of porosity index in the iliac crest trabecular bone (37). Bone biopsy and SPA measurements were performed concomitantly on 40 subjects: 31 normal and 9 patients with one or more compression fractures of the vertebrae. Because the physiochemical data (i.e., porosity index) correlated with the bone mineral values, Manicourt suggested that SPA measurements of a single peripheral bone (radius) are representative of changes in the axial skeleton in normal and osteoporotic subjects. He also indicated that distal scans of the radius better reflected the axial skeleton mass than proximal scans (37).

In 1983 Jensen and colleagues reported finding a relationship between SPA bone mineral measurements in the distal part of the forearm of 70-year-old women and the frequency of postmenopausal fractures (38). In the 258 women studied they identified 131 osteoporotic fractures, i.e., vertebral, hip, proximal humerus, and distal forearm in 77 of the women. The main observation of the author was that the frequency of osteoporotic fractures was more than three times higher in the 40 percent of women with

the lowest bone mineral values than in the 20 percent of women with the highest values. Jensen concluded that there is an increased frequency of osteoporotic fractures associated with decreased SPA bone mineral measurements in the forearm (38).

Recently, Gupta and coworkers reported using SPA measurements to establish the presence of and/or determine the severity of osteoporosis (39). In 13 of 17 patients with a history of vertebral compression fractures they found reduced bone mineral values at the radial shaft. However, 4 patients (24 percent) with compression fractures had normal bone mineral values and 24 patients without fractures had reduced bone mineral values at the radial shaft. Gupta concluded that SPA measurements of the raidal shaft may not accurately reflect the state of the axial skeleton. He suggested, despite repositioning error, considering SPA measurements of the distal end of the radius or direct measurements of the axial skeleton by DPA (39).

Similar findings and conclusions regarding the relationship between radius and spinal bone mineral measurements were also reported by Mazess and associates (6). In that study, reported in 1984, SPA bone mineral measurements of the distal third of the radius (site one-third of the forearm length proximal to the styloid process of the ulna) were compared with DPA total-body bone mineral measurements (TBBM) and spinal measurements in normal and osteoporotic subjects. Mazess found in normal males and females, a relatively small error (6-10 percent) in estimating the status of the total skeleton or the spine from SPA bone mineral measurements on the radius (6). However, in osteoporotics there was little relation between measurements at these sites. According to Mazess, in metabolic bone disease such as osteoporosis, a preferential alteration of trabecular bone makes measurements at appendicular sites (radius) inappropriate. He concluded that preferential spinal osteopenia probably explains the poor diagnosis of osteoporosis based on forearm measurements and confirms the need for a direct measurement of trabecular bone at the spine (6).

The regions of the radius examined in most of the previously discussed studies have been composed mainly of cortical bone. Reference to these regions as 10 percent, one-third, and 50 percent sites technically refer to the length along the ulna. According to Schlenker and von Seggen's distribution of BMC and percentage of trabecular bone along the radius, the percentage of trabecular bone at the 10 percent site is less than 25 percent and the percentage of trabecular bone at the one-third and 50 percent sites is less than 10 percent (40). These sites are mainly cortical bone whereas the site of interest, the vertebrae, is predominantly trabecular bone.

Therefore, more recently, groups have reported their experience using SPA to study the radius at a site where the percentage of trabecular bone is similar to that found in the lumbar spine. This region on the radius has been referred to as the "distal or ultradistal site," and is determined by a specific radius-ulna gap. Distal radial bone mineral studies with SPA at a 5mm site (radius-ulna gap) have been performed by various groups, under the direction of Talmage, at the University of North Carolina School of Medicine. In one of those studies, Aubrey and associates determined the reliability of SPA measurements at the 5 mm distal radius site. In a cross-sectional study of more than 700 normal white women they obtained measurements at the 5 mm site relative to age (41). According to Aubrey use of the 5mm distance between the ulna and radius for SPA positioning allows for reproducible measurements at a distal site. Nonetheless, he showed that mispositioning at the 5mm site could result in measurement errors of 1 to 3 percent (41). However, he demonstrated a trabecular bone composition of greater than 50 percent at the 5mm site.

From the large cross-sectional study of 700 normal women ranging in age from 18 to 98 years, Aubrey found that there was minimal bone loss in the radius before the age of 50 (41). This was followed by an accelerated phase of bone loss that persisted for the remainder of life. The bone mineral values at the midradius and distal radius were very similar. To determine if the distal radius measurements were indicative of conditions

existing in the spine, Aubrey compared the SPA distal radius measurements to DPA lumbar bone measurements in 140 normal subjects (41). Based on the small population tested, Aubrey concluded that in "normal" women the bone loss with age at the distal radius 5 mm site correlated closely with generalized bone mineral loss of the axial skeleton.

In a subsequent study, by the same group, Grubb measured radius and lumbar spine bone density in a small population of postmenopausal white female patients with nontraumatic fractures and their age-matched controls (42). An osteopenic group without fractures was also examined. He found that bone density values at all sites (midradius, and distal radius and spine) in the patient populations were statistically reduced from the bone density values in the control population. While the density of the midradius in two patient groups (mean age 62 years) showed a 12 percent decrease in density from the control values, the density of both the lumbar vertebrae and the distal radius had decreased 25 percent. From an analysis of his measurements in patients, Grubb found a statistically significant correlation coefficient of 0.51 between bone density of the distal radius (5 mm site) and that of the lumbar spine. He concluded that in patients as well as controls, the density of the distal radius correlates well with that of the lumbar vertebrae (42).

According to Grubb, 95 percent of all the patients with nontraumatic fractures of the spine and hip had a distal radius density value of 325 mg/cm^2 or less (42). Based on this finding, he suggested that patients without fractures but with distal radius density values below this "at risk" value (325 mg/cm^2) be considered for further evaluation. However, almost 30 percent of the women with "at risk" distal radius measurements had normal lumbar bone measurements.

In an accompanying cross-sectional study, Jacobson and coworkers used SPA bone density measurements at the distal radius site of 5 mm to determine the effects of exercise on normal postmenopausal bone loss (43). Bone density also was measured at the

midradius and first metatarsal with SPA and at the spine with DPA. By comparing the bone density of women college athletes with non-athletes and adult athletic women with non-athletic women, Jacobson found that women who exercise regularly and intensely have elevated bone mass both in compact and trabecular areas. According to Jacobson, bone measurement values in the radius and lumbar spine in the oldest athletic group (55-75 years of age) were in the same range as for younger athletic women. Jacobson concluded that while the data suggest that a regular and sustained exercise program is beneficial in building and maintaining bone mass in women, longitudinal studies have to be carried out before the beneficial effects of exercise on adult bone mass could be thoroughly established (43).

In a similar cross-sectional study using SPA to examine appendicular trabecular bone in normal women, Nilas and colleagues reported that on a group basis, the bone loss at the distal forearm scan site corresponds to the spinal bone loss (4). However, because the relationships between forearm and spinal bone masses are modest, Nilas concluded that in individuals, spinal bone mineral cannot be predicted from bone measurements taken at the forearm. To measure appendicular trabecular bone, Nilas located the 8 mm site (radius-ulna gap) and scanned distally with 4 additional scans 2 mm apart. By comparing bone measurements in this site in 19 postmenopausal and 53 premenopausal women with bone measurements scanned proximal of the 8 mm site (cortical bone), Nilas found that postmenopausal trabecular bone loss was approximately seven times greater than cortical loss within the first 5 to 6 postmenopausal years (4).

According to Nilas, the normal calibration procedure usually recommended by the manufacturers of a single measurement of the standard before each patient is examined is insufficient and results in a precision of 2 to 3 percent (4). To eliminate machine drift and achieve a long-term reproducibility of 1 to 1.5 percent, Nilas also calibrated the system once a week by measuring an aluminum standard nine times for 54 scans.

In their review of the Nilas study and other studies using SPA to measure bone mineral at distal and ultradistal sites on the radius (and ulna), Wahner and colleagues suggested that measurements made at these sites be interpreted with caution until further data are available (5). According to Wahner, although investigators determine and use the correlation coefficient between bone density of the ultradistal radius and that of the lumbar spine to show a relationship between the two, it is not the appropriate parameter for predicting lumbar spine density from ultradistal radius density in an individual. He believes that the appropriate parameter is the 95 percent confidence interval (5). Wahner showed that studies in which the correlation coefficient was statistically significant (0.56) between bone density of the ultradistal radius and that of the lumbar spine could also have 95 percent confidence intervals of $\pm$ 22 percent. Wahner found similar 95 percent confidence intervals are obtained when predicting lumbar spine density from age alone (5).

Mazess has also reviewed the studies using SPA for measurements of the distal radius (44). He is in agreement with Wahner that correlation coefficients between bone density of the ultradistal radius and that of the lumbar spine are not the appropriate parameters for predicting lumbar spine density from ultradistal radius density in an individual. According to Mazess it would be impossible to accurately predict spinal density from the distal radius when the correlation was only 0.52 (44). He also argues that the 5 mm site, measured by some investigators, while containing more than 35 percent trabecular bone is not 50 percent as indicated. According to Mazess, studies thus far have not shown that the distal radius site is a better discriminator of osteoporosis than the radius shaft or is equal to the spine (44).

Recently, at the Garvan Institute of Medical Research in Australia, Pocock and coworkers examined the correlation between distal (8 mm) forearm BMC determined by SPA, and lumbar vertebral and femoral neck BMD determined by DPA (45). Significant correlations (p less than 0.001) were found between the measurements on the forearm

and at the two axial sites in their study of 80 women, 50 postmenopausal, aged 20 to 76 years. However, despite the significant correlation between BMD in the spine and hip and BMC of the forearm, there was a large scatter of individual values about the regression line (large standard error of the regression). According to the authors the standard error of the regression (13 percent spine and 12 percent hip) was too large to allow reliable prediction of either site from the other in a particular individual (45).

Pocock took different forearm BMC's as detection points and determined the sensitivity and specificity of SPA for lumbar spine mineral density below 0.97g/cm^2 (a value associated with increased fracture risk) (45). For prediction of lumbar spine osteopenia with a sensitivity of 88 percent, Pocock determined that the false positive rate was 91 percent. In order to achieve a specificity of 82 percent, Pocock found the false negative rate was 65 percent. Similar predictions were obtained at the femoral neck. Pocock concluded that despite the relatively small study population, the data show that forearm densitometry (8 mm site) cannot be used to detect (screen) reduced BMD in the lumbar vertebrae or femoral neck in postmenopausal females (45).

In a longitudinal study of 1,098 randomly selected women ranging in age from 43 to 80 years, Wasnich and associates determined the risk of fracture associated with varying photon absorptiometry BMC measurements at four skeletal sites (46). BMC of the os calcis, distal radius, and proximal radius was measured by SPA in all 1,098 women. These women have now been followed for 4.5 years. Of these women, 456 have had (subsequent to fracture occurrence) both lumbar spine scans (DPA) and x-rays. Among the 1,098 women followed for 4.5 years there were a total of 26 incident fractures. These included eight rib fractures, six fractures at the wrist and only one at the hip (46).

Wasnich compared the nonspine fracture incidence rates by quintile of bone mineral content at the proximal radius, distal radius, os calcis, and lumbar spine (46). Using estimated odds ratios for varying levels of BMC, he investigated the dose-response

relationship of BMC to the risk of fracture. Wasnich determined that the risk of fracture was significantly increased with diminishing quintiles of BMC at most skeletal sites. Moreover, when subjects in the lowest BMC quintile were compared to those in the highest quintile, the greatest risk difference was found for the os calcis.

Because subjects in the lowest quintile of os calcis BMC had a nonspine fracture risk 10 times greater than subjects in the highest BMC quintile, Wasnich concluded that the os calcis BMC measurement was the best predictor of nonspine fracture risk (46). This would include hip fractures, although only one fracture at that site was included in the study. He also suggested, based on prevalence data, that the os calcis BMC measurement was the best overall indicator of spine fracture risk. The most significant relationship of BMC to spine fracture prevalence was observed for the os calcis ($p=0.026$) and the lumbar spine ($p=0.041$). Although the study did not relate BMC at the os calcis to subsequent spinal fracture incidence, Wasnich concluded that measurement of os calcis BMC may be useful for routine risk evaluation of perimenopausal women (46).

In a related study, Wasnich included prospective spinal fracture incidence data in order to evaluate the predictive power of photon absorptiometric bone mineral measurements at various sites for fracture risk at "all" skeletal sites combined (47). He hoped to determine which single skeletal measurement was the best predictor of fracture risk, irrespective of fracture site. Also, the small number of spinal incident fractures recorded may have necessitated combining the spine and appendicular incident fractures.

The 294 women of this study, ranging in age from about 44 to 79 years, were a random subsample of the population described in the previous report (46). A total of 17 incident fractures were observed which included 8 at the spine and 1 at the hip. Wasnich observed the most significant relationships of BMC to fracture risk for the os calcis ($p=0.009$) and the spine ($p=0.011$). When subjects in the lowest BMC quintile were

compared with those in the highest, the greatest risk difference was found for the os calcis. Subjects in the lowest quintile of os calcis BMC had a combined (global) fracture risk six times greater than subjects in the highest BMC quintile.

Wasnich concluded, however, that because of the small number of incident fractures, these results must be viewed as preliminary. He suggested that measurements at the os calcis and lumbar spine may prove to be useful for assessment of global (total) fracture risk (47).

In a followup to the previous work at North Carolina, Talmage and coworkers used SPA and DPA to study age-related bone loss at several skeletal sites (48). Bone mineral density was measured at the midradius, distal radius and lumbar spine in 1,105 asymptomatic non-athletic and 124 athletic Caucasian women aged 18-98 years.

In the non-athletes, Talmage observed that the BMD of the two radial sites and the lumbar spine correlated positively (48). He also found that an age-related increase in rate of loss of BMD occurred at each of the three sites. The approximate age at which the increase in the rate of BMD loss occurred corresponded roughly to the time of menopause. In order to explain the increase in rate of loss of BMD at the spine, not seen in other reports (36), Talmage indicated that this may be due to differences in sample size and the age distribution of the populations studied (48).

In the smaller population of athletes, defined as those women who exercised regularly three times per week for 9 months of the year for at least 5 years, no increase in the rate of bone density loss could be demonstrated at the two radial sites (48). The number of lumbar spine measurements (DPA) in this group was too small for analysis. According to Talmage, while the absence of a significant change in rate of bone loss in athletes could have been due to the relatively small number of subjects, it also suggested that regular sustained exercise programs may delay or minimize the increased rate of loss of BMD which occurs in non-athletic women in the perimenopausal period (48).

In contrast to the findings of Talmage (48), Riggs again reported finding striking differences in the patterns of appendicular and axial bone loss, over life, in women (49). Based on a longitudinal study of only 139 normal women aged 20-88 years, he concluded that vertebral bone loss began well before menopause and continued into old age, with only a trend toward midlife acceleration. According to Riggs, substantial amounts of bone lost from the axial skeleton prior to menopause suggest prophylactic intervention well before the menopause (49).

Recently, Ott and coworkers found that in women with osteoporosis there were no correlations between SPA, DPA, and CT measurements of 1-year changes in bone mass (50). In addition to the possibility of different rates of bone changes at different sites of the skeleton, Ott suggested that the lack of correlation between the measurements may be related to the precision of the techniques and magnitude of the changes in bone in osteoporosis. She concluded that the techniques used were not sufficiently precise to measure the small amount of change in bone after only 1 year (50). Riggs and Melton believe that measurements every 6 months over 2 to 3 years may be required to estimate individual rates of bone loss (21).

According to Ruff and Hayes, changes in bone geometry and in material properties, such as ultimate compressive and tensile strength and energy absorbed prior to failure, may be the most critical features of the skeletal aging process (51). Failure to measure these characteristics may account for the relatively low efficiency of photon absorptiometry in identifying individuals who are at high risk for fracture. Moreover, they believe that standardizing BMC by bone width can produce misleading results in locational, sex, and age comparisons. In order to compare BMC in different individuals, some kind of standardization of skeletal size (bone volume) must be carried out (51). The most common size-standardization procedure has been to divide BMC by total bone width across the path of the scan (1). However, based on a 1984 study, Ruff and Hayes do not

believe that bone width is a good index of true bone volume and suggest that variations reported in bone mineral mass are almost entirely due to variation in bone volume, not variation in bone density or mineralization (51).

DISCUSSION

The measurement of bone mass is an important tool in the study of metabolic bone diseases, particularly osteoporosis. Current interest is centered on the recent advances in the SPA technique. This interest is a result of the recent applicability of the SPA technique to measure appendicular bone sites (distal radius, os calcis) with quantities of trabecular bone similar to that of the spine and hip. While SPA is capable of measuring bone mineral and has advanced our knowledge of bone disease in general, its role in the management of the individual patient is uncertain.

It would be advantageous to be able to prospectively identify those women who are at risk of developing osteoporotic fractures, in order to direct treatment to those at greatest risk. As a screening test for osteoporosis in perimenopausal women, this application of SPA bone mineral measurements is suggested to have potential utility. Once established as a screening tool it could be used in the strategy for treating afflicted individuals or preventing osteoporosis. Although the technology to noninvasively measure bone mineral with SPA is currently available, the ability of such measurements to identify those individuals who will subsequently fracture has not yet been shown. In a prospective study of 1,098 women with diverse types of nonvertebral fractures, Wasnich and coworkers found that subjects in the lowest quintile of bone density, as measured by SPA, had a tenfold greater risk of some type of fracture than women in the highest quintile (46). Measurements of the bone density of the os calcis appeared to be a stronger predictor of fractures than measurements at other sites. According to other investigators, this study included too few fractures of the hip (one) or wrist (six) to assess

the value of SPA for predicting these fractures (52). In a subsequent study by Wasnich, which included prospective vertebral fracture incidence data, the author recommended that the results of that study be viewed as preliminary because of the small number of incident fractures included in the study (47).

Presently, there has been no prospective study demonstrating that the noninvasive measurement of bone mass by SPA can identify patients who will suffer fractures. In their 1984 review of the various noninvasive methods for bone mineral measurements, Wahner and colleagues concluded that there was no optimal technique available for mass screening for early osteoporosis (1). The American College of Physicians' Health and Public Policy Committee recently reviewed various radiologic methods for measuring BMD, including SPA, but made no recommendation about the use of these tests in routine screening for osteoporosis (2). In order to predict individuals' fracture risk, it would be necessary to study large population cohorts of women from various age groups and relate their specific bone measurements to prospective fracture incidence data collected over a sufficient period of time. From fracture incidence data, the risk ratio would provide an estimate of risk. This type of study would enable investigators to determine whether it would be possible to predict the risk of fracture from the initial bone density measurements. A patient's bone mass measured before or at menopause may indicate whether she has low or high bone mass for her age. It will not necessarily indicate whether she will fall into the high-risk group 10 to 15 years later, when fractures begin. The contribution of bone mass at maturity versus subsequent rates of loss is still largely unknown. Moreover, there exists a controversy regarding the selection of a screening site. While many investigators consider BMD measurements of the actual fracture site (spine and hip) paramount, others argue that fracture risk prediction and screening can be accomplished by appendicular (trabecular) BMD measurements.

According to some reports it would be a useful screening tool (42,46). However, according to other reports it would be of little value because it could not reliably predict the risk of fracture in the spine or hip (21,45).

Initially, investigators used SPA bone mineral measurements in attempts to find a specific level of bone density that clearly distinguished patients with vertebral osteoporosis. Those studies, including the work of Smith and associates (30), Cohen and associates (32), Khairi and coworkers (34), and Wahner and associates (35), have been largely unsuccessful. According to Smith, factors other than low bone mineral, such as degree of trauma, quality of bone, and activity, may be determinants of fracture as well. An individual subject with low bone mineral has only one of the factors which increases the risk of fracture (30). Although Cohen found SPA bone mineral measurements of the radius unsatisfactory for evaluation of the extent of osteoporosis in an individual, he believes that bone mineral measurements on the radius can be used to distinguish an osteoporotic population from an age- and sex-matched normal population (32).

Other published reports also suggest that forearm SPA would not reliably assess the state of the spine or hip. Mazess and colleagues found in normal males and females, a relatively small error (about 10 percent) in estimating the status of the spine from SPA bone mineral measurements on the radius (6). However, in osteoporotics there was little relation between measurements at these sites. According to Mazess, 30 to 40 percent of patients at risk will be missed by SPA measurements, even if those measurements are taken on the distal radius or the os calcis (53). Mazess concluded that preferential spinal osteopenia probably explains the poor diagnosis of osteoporosis based on forearm measurements and confirms the need for a direct measurement of trabecular bone at the spine (6).

Recently, studies of SPA have attempted to determine the clinical usefulness of SPA measurements at appendicular sites (distal and ultradistal radius) containing amounts of trabecular bone similar to that found in the lumbar spine. Jacobson (43) and Talmage (48) at the University of North Carolina School of Medicine used SPA measurements at the distal radius (5 mm site) to show differences in bone mass and bone loss in groups of atheltic and non-athletic women. In an accompanying study, Grubb found a statistically significant correlation between bone density of the distal radius and that of the lumbar spine. He concluded that in patients as well as controls, the density of the distal radius correlates well with that of the lumbar vertebrae (42).

However, studies by Nilas (4), Wahner (5), Mazess (44), and Pocock (45), indicate that a significant correlation between measurements at two sites (distal radius and lumbar spine) does not necessarily mean that one measurement may accurately predict the other. Although Nilas found that bone loss at the distal forearm scan site corresponded to spinal bone loss, he concluded that in individuals, spinal bone mineral could not be predicted from bone measurements taken at the forearm (4). Wahner showed that in the Nilas study, in which the correlation coefficient between bone density of the ultradistal radius and that of the lumbar spine was statistically significant, scatter of the data could result in an error in measurement prediction of $\pm$ 22 percent (5). According to Wahner the appropriate parameter for predicting lumbar spine density from ultradistal radius density in an individual is the 95 percent confidence interval.

Pocock and coworkers also found a significant correlation between BMD in the spine and hip and BMC of the forearm (8 mm site). However, he also reported that there was a large scatter of individual values about the regression line (large standard error of the regression). According to Pocock, significantly correlated measurements with a large standard error of the regression (scatter) will preclude a reliable prediction of one site from the other in a particular individual (45).

Moreover, as a screening technique for reduced BMD in the lumbar spine, Pocock showed that a sensitivity of 90 percent with SPA could only be achieved by accepting a specificity of 9 percent (45). This meant a false positive rate of about 90 percent. Similarly, for prediction of femoral neck osteopenia at a SPA sensitivity of 92 percent, Pocock found that the false positive rate was 87 percent.

Another clinical application proposed for the SPA technique has been the use of SPA measurements to monitor the rates of bone loss and the effectiveness of treatment. This could apply to the treatment of individuals with established osteoporosis and also to those receiving preventive regimens. Because rates of bone loss are relatively small compared with the reproducibility of the measurement, current methods for measuring bone mass, including SPA, may not be sufficiently precise for clinical decisions in an individual (52,54). SPA is reported to have a precision of 1 to 5 percent and the average rate of appendicular bone loss in women is 1 percent per year in the decade after, and less before natural menopause (9,52). According to Cummings and Black, measurement of women's rate of bone loss based on two measurements of bone mass over a period of time leaves considerable uncertainty about her rate of loss. Even a bone loss of 3 percent measured by a technique with a 2 percent reproducibility (SPA) leaves considerable uncertainty about the actual rate of loss (the 90 percent confidence interval for that change in bone mass varies from a 1.7 percent gain to a 7.7 percent loss) (52). Unless multiple measurements are made, a woman must lose a substantial amount of bone during the time between measurements before a physician can conclude that she is losing bone more rapidly than normal (52). However, even these additional measurements have uncertain value for predicting future rates of bone loss or assessing risk for fractures and would substantially increase the expense. According to Ott, until such time as more sophisticated methods of improving the reproducibility are developed, techniques for measuring bone mineral, such as SPA, will be valuable in studying large groups of patients but will not be helpful in individuals (54).

With adequate precision, the high accuracy of SPA, together with its low radiation dose (2-5 mrad), would suggest that it would be particularly suitable for determining rates of bone loss by sequential measurements. However, for single measurements, there would be uncertainty as to whether the results would reliably reflect bone loss in the spine and hip.

Advice and comments concerning the safety and clinical effectiveness of SPA have been sought from groups and organizations within and outside of the Federal Government. An announcement of this assessment appeared in the Federal Register notice of October 26, 1984 (55). On June 20, 1985, in testimony before the Subcommittee on Aging of the Committee on Labor and Human Resources, United States Senate, the National Institutes of Health (NIH) through the National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases (NIADDK) stated that it was a research imperative to develop methods for measuring bone density (56). In addition to diagnosis, these methods should enable early identification of bones most vulnerable to fracture and provide a measure by which to evaluate the effectiveness of new therapies. According to NIADDK, while several noninvasive methods for measuring bone density have been developed, at present no existing techniques can adequately discriminate early in the disease process between normal and osteoporotic individuals (56). The NIADDK recommended long-term clinical trials of various specific patient populations in numbers large enough to provide valid and reliable estimates of risk, and to determine the optimal regimens to prevent bone loss and fracture.

At that same hearing on osteoporosis, the National Institute on Aging (NIA) stated that there is a need for better ways of identifying persons at high risk of fracture, since those individuals could be expected to benefit most from treatment (20). Because it is still unclear which persons would benefit from which treatments and at what dosages and schedules, additional research and clinical trials are needed to develop the current state of knowledge regarding prevention and treatment of osteoporosis for specific individuals

or groups. The American College of Obstetricians and Gynecologists (ACOG), in their statement before the Subcommittee on Aging, indicated that presently, there are no tests to identify which women are at risk for developing osteoporosis (19). The College recommended, however, that the physician determine bone loss by absorptiometry in their diagnosis of osteoporosis.

Prior to the June 20, 1985, Senate Hearing on Osteoporosis, the National Institutes of Health (NIH) Consensus Development Conference on Osteoporosis was held on April 2-4, 1984 (18). At that conference, data were presented which showed that none of the noninvasive techniques for measuring bone mass were able to discriminate significantly between normal and osteoporotic individuals. None of the techniques for currently quantitating bone mass can definitely predict the individual at significant risk for osteoporosis prior to the occurrence of fracture. The Consensus Panel concluded that osteoporosis was a major public health problem requiring additional research on the biology of human bone, defining individuals at risk, and developing safe, effective, low-cost strategies for fracture prevention (18). The panel recommended studies to develop accurate, safe, inexpensive methods for determining the level of risk for osteoporosis in an individual, to establish early diagnosis, and to assess the clinical causes of the disease (18).

According to the Food and Drug Administration (FDA), SPA devices are pre-amendment products marketed prior to enactment of the Medical Device Amendments of May 28, 1976, to the Food, Drug, and Cosmetic Act. SPA devices are being marketed under Section 510(k) of the Medical Device Amendments to the Food, Drug, and Cosmetic Act. These devices have been proposed for classification as Class II devices.

Through its Clinical Efficacy Assessment Project, the American College of Physicians published a policy statement on radiologic methods to evaluate bone mineral content in June 1984 (2). The College concluded that all methods of BMC measurement result in significant overlap between diseased and normal populations. They stated that

the ultimate benefit of early diagnosis of metabolic bone disease will depend on the clear establishment of safe and effective treatments. The College believes that measurements of BMC have greater utility in following the course of a disease process or assessing the effect of therapy than in establishing a diagnosis. According to the College, none of the available techniques, including SPA, accurately predict tendency to fracture (2).

The Orthopedic Research Society strongly supports continued research in the development of noninvasive techniques for understanding metabolic bone disease. The Society suggested that the research examine the precision, accuracy, sensitivity, cost, availability, and relevance to underlying metabolic bone disease of each of the techniques currently under study. The Society also suggested holding a workshop directed at the understanding of the surveillance of bone disease.

It is the opinion of the Society of Nuclear Medicine that bone mineral density studies should become part of the work-up of patients with osteoporosis and that DPA is the technique of choice at this time. According to the Society, other methods performed on appendicular bone, such as SPA, are of little value in osteoporosis. However, they may have some application in renal bone disease.

A response from the American College of Nuclear Physicians stated that osteoporosis can be detected in its earliest stages by DPA measurements of the vertebral spine. According to the College, in order to postpone or prevent the problems of insidious progressive osteoporosis, early detection and screening by bone mineral analysis of the lumbar spine by DPA is critical. The College finds DPA of the spine far superior to SPA of the radius in detecting most cases of early osteoporosis. They suggest, however, that in older patients with significant degenerative spine disease, SPA measurements may be helpful in the management of an individual patient.

SUMMARY

SPA is a noninvasive radiologic technique used to assess BMC in the appendicular skeleton. A photon beam from a sealed, single, low-energy radioisotope source is directed at a bone of the patient's limb, usually the radius. The difference in photon absorption between bone and soft tissue allows for the calculation of the total bone mineral found in the scan path. With current equipment incorporating a rectilinear scanner and averaging multiple scans, the technique can achieve a precision of 1 to 2 percent with a radiation dose of 2 to 5 mrad.

The measurement of bone mass is an important tool in the study of metabolic bone diseases, particularly osteoporosis. While SPA is capable of measuring BMD and has advanced our knowledge of bone disease in general, its impact on the management of the individual patient is equivocal. Although the technology to measure bone mass noninvasively with SPA is currently available, the ability of such measurements at the os calcis and distal radius to predict individuals at risk of subsequently developing fractures of the spine and hip (screening) has not yet been shown.

Early studies with SPA that attempted to find a specific level of bone density that distinguished patients with vertebral osteoporosis from those without have been largely unsuccessful. Recently, studies with SPA measurements at the distal and ultra-distal radius have reported statistically significant correlations between bone density of the distal radius and that of the lumbar spine. However, a large scatter in the data precludes a reliable prediction of bone mineral from one site to another in a particular individual.

Other clinical applications proposed for the SPA technique have been the use of SPA measurements to monitor rates of bone loss and the effectiveness of treatment. A high degree of precision in the bone mass measurement is necessary for repeated

measurements of small degrees of change and such precision is difficult to attain. Presently, the suitability of the SPA technique for monitoring changes in bone loss is questionable.

Investigators have not distinguished between the use of SPA in clinical research and its role in day-to-day practice. SPA needs to undergo further clinical investigation before it can be recommended for general clinical use.

According to the FDA, SPA devices are pre-amendment products that were being marketed prior to enactment of the Medical Device Amendments of May 28, 1976, to the Food, Drug, and Cosmetic Act. SPA devices are allowed to be marketed pursuant to Section 510(k) of the Medical Device Amendments. Bone densitometers (SPA) have been proposed for classification as Class II devices.

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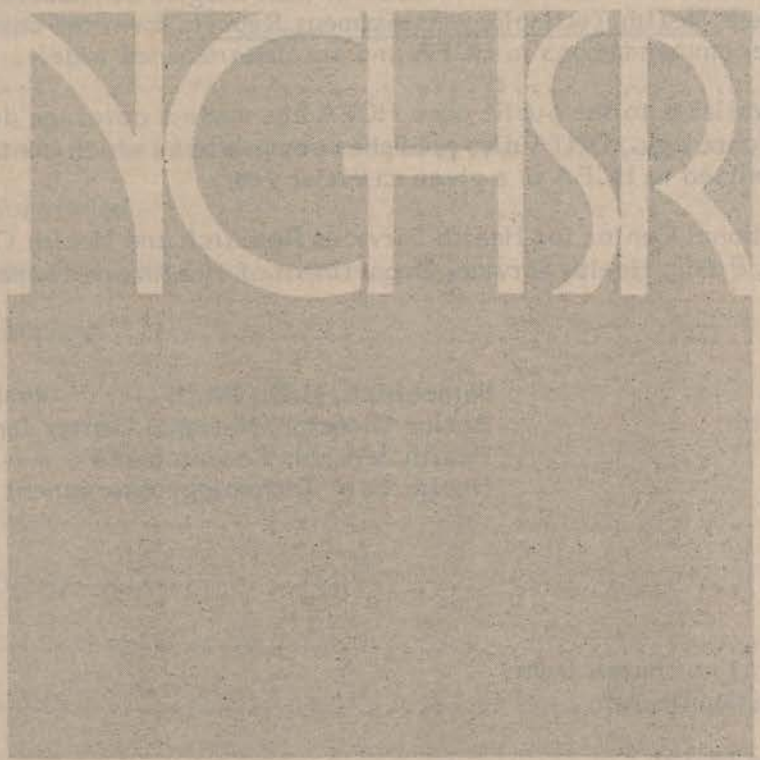
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APPENDIX II - Public Health Service Assessment of Dual Photon Absorptiometry for Measuring Bone Mineral Density - 1986

Health Technology Assessment Reports, 1986

Dual Photon Absorptiometry for Measuring Bone Mineral Density

Number 6



NATIONAL CENTER FOR HEALTH SERVICES RESEARCH AND HEALTH CARE TECHNOLOGY ASSESSMENT

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service

FOREWORD

The Office of Health Technology Assessment (OHTA) evaluates the safety and effectiveness of new or unestablished medical technologies that are being considered for coverage under Medicare. These assessments are performed at the request of the Health Care Financing Administration (HCFA). They are the basis for recommendations to HCFA regarding coverage policy decisions under Medicare.

Questions about Medicare coverage for certain health care technologies are directed to HCFA by such interested parties as insurers, manufacturers, Medicare contractors and practitioners. Those questions of a medical, scientific, or technical nature are formally referred to OHTA for assessment.

OHTA's assessment process includes a comprehensive review of the medical literature and emphasizes broad and open participation from within and outside the Federal Government. A range of expert advice is obtained by widely publicizing the plans for conducting the assessment through publication of an announcement in the Federal Register and solicitation of input from Federal agencies, medical specialty societies, insurers, and manufacturers. The involvement of these experts helps assure inclusion of the experienced and varying viewpoints needed to round out the data derived from individual scientific studies in the medical literature. After OHTA receives information from experts and the scientific literature, the results are analyzed and synthesized into an assessment report. Each report represents a detailed analysis of the safety, clinical effectiveness, and uses of new or unestablished medical technologies considered for Medicare coverage. These Health Technology Assessment Reports form the basis for the Public Health Service recommendations to HCFA and are disseminated widely.

Individual reports are available to the public once HCFA has made a coverage decision regarding the subject technology. OHTA also publishes compilations which contain all assessment reports submitted to HCFA in a given calendar year.

OHTA is part of the National Center for Health Services Research and Health Care Technology Assessment, Public Health Service, Department of Health and Human Services.

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PUBLIC HEALTH SERVICE ASSESSMENT
DUAL PHOTON ABSORPTIOMETRY
FOR MEASURING BONE MINERAL DENSITY
1986

INTRODUCTION

Dual photon absorptiometry (DPA) is a noninvasive radiologic technique used to measure bone mineral density (BMD) in the lumbar spine (vertebrae) and proximal femur (hips). It can also be used to measure total skeletal calcium (1). The technique measures the transmission of a collimated beam of photons after they have been attenuated by bone and soft tissue. As the beam passes through the bone and soft tissue, some photons are absorbed, and a nuclear counting instrument measures the intensity of the beam that emerges. The difference in photon absorption between bone and soft tissue allows for the calculation of the total bone mineral found in the scan path (2). The amount of skeletal mineral present is proportional to change in beam intensity over the bone. The value of bone mineral given by DPA is determined by a calibration with known ash weights of lumbar vertebrae (in grams) L2-L4 or portions of the femoral neck or trochanter per area of bone scanned (in square centimeters). The DPA technique provides no information about the volume of bone scanned. Therefore, the term area result is expressed as mass of bone mineral per unit area scanned (g/cm^2) (3).

The physiologic information provided by measurements of bone mineral content (BMC) has been under extensive investigation during the past 20 years. Bone mass measurements have been a valuable research tool for clinical investigations attempting to elucidate the pathogenesis of metabolic bone diseases. Investigators have sought to determine the clinical significance of bone loss with aging and bone disease and its relationship to an increasing risk of fractures among the elderly. This growing interest in

better understanding the nature and degree of changes in BMC with age, with osteoporosis, and with metabolic bone disease in general has prompted the development of noninvasive measurement techniques for bone mineral density as a function of bone mineral content (4). A variety of such techniques are presently available. They include: radiogrammetry, photodensitometry, radiographic absorptiometry, single photon absorptiometry, computed tomography, and dual photon absorptiometry. These techniques for measuring bone mineral density are designed to assess bone mass. Their main application has been in diseases characterized by bone loss, which results from a number of defined disease processes, such as idiopathic osteoporosis, endocrine diseases, renal diseases, immobilization, and use of certain drugs such as corticosteroids and anticonvulsive drugs (5). Metabolic bone diseases, such as severe renal disease and hyperparathyroidism produce rapid bone loss. Changes of 20 to 30 percent in bone mineral content are possible in a short time. According to Wahner et al., these diseases rarely need quantification of bone loss by sophisticated techniques. For clinical patient management the evaluation of radiographs is generally sufficient (5).

Bone loss also occurs as a pathophysiologic process with aging. Although techniques of measuring bone mineral may assess the presence and degree of osteopenia, they give no information regarding the cause or mechanism of the loss. Many of these methods of bone mass quantitation in general and DPA in particular have been used in attempts to diagnose osteoporosis or to follow its response to therapy. The purpose of this report is to assess the safety and the effect of DPA bone mineral density measurements on the clinical outcome of these patients. This assessment seeks to ascertain where BMD evaluation by DPA fits into the overall scheme of bone disease prevention, diagnosis, and treatment. Other noninvasive measurement techniques for bone mineral will be assessed in separate reports.

BACKGROUND

Historical

In the 1960's standard radiographs were used in the early research attempts to measure BMD. One method, photodensitometry, was used to estimate bone mass by measuring the optical density of bone on x-ray films obtained under standardized conditions (6). The optical density of a radiographic image of bone is roughly proportional to the mineral mass of the exposed bone. The measurements on the film are made with a densitometer. Calibration of each film is accomplished by simultaneous exposure of a reference wedge. Photodensitometry, however, has technical problems relating to the radiographic technique (beam hardening, scattered radiation) and methods of film processing that limit its use (2). The photodensitometric method does not compensate adequately for factors such as soft-tissue thickness (7). Sensitivity to soft-tissue thickness restricts the application of photodensitometry to appendicular bones, particularly the phalanges.

Radiogrammetry (radiographic morphometry) is another method which uses standard radiographs to evaluate BMD. First introduced in 1960, this simple radiographic method measures the thickness of the cortex of metacarpal bones or other peripheral tubular bones (8). The most commonly used site is the second metacarpal of the nondominant hand, or several metacarpals from one or both hands (4). Based on the assumption that cortical thickness is a measure of mass, radiogrammetry uses the ratio of cortical to total width as a measure of bone density. Some investigators determine both cortical area and total area because they believe that cortical area correlates better with the amount of bone present than does cortical width. This method has been used extensively and a vast literature on its use is available on normal populations and on patient populations with various diseases. Radiogrammetry is well suited for detecting endosteal and periosteal cortical resorption with relatively good precision. However, no

evaluation of trabecular bone is possible using this method. Increased cortical porosity, which occurs in some diseases and with aging, is not detected. Radiogrammetry is not a good technique for estimating the quantity of trabecular bone in the spine.

An important breakthrough in the in vivo assessment of bone occurred in 1963, when Cameron and Sorenson introduced a low-energy radioisotope (I-125) photon absorptiometric method (9). Single-energy photon absorptiometry measures bone density in the appendicular skeleton. Measurements are usually obtained from the distal or midradius. This technique known as absorptiometry uses monoenergetic radiation passed across the bone, with the changes in beam intensity being recorded by a nuclear counting instrument (10). Like radiogrammetry, single photon absorptiometry (SPA) is applicable only to appendicular bones because tissue composition surrounding the bone has to be uniform and minimal. As in radiometric techniques (and in contrast to radiogrammetry), cortical and trabecular bone components are not separated, and the entire bone is measured at a cross-section (1). SPA has received extensive use in biomedical research on bone. In the late 1960's, investigators attempting to provide a means of measuring the peripheral skeleton without the necessity of embedding the limb in a layer of tissue-equivalent material, developed the method of DPA. With this new method, investigators also hoped to confront the significant clinical problem of fractures of the spine and proximal femur associated with osteoporosis. Believing that a direct measurement of bone mineral mass of the spine or hip would be clinically useful in addressing this problem, they sought to utilize the DPA method to measure the amount of bone mineral at these sites. With further development of DPA in the 1970's it became possible to measure bone mineral in the axial skeleton, particularly the lumbar spine and hips (11, 12). In the spine, the L2 to L4 region is usually measured because of the homogeneity of bone densities in these vertebrae and the absence of fractures (13). For the hip, bone mineral content is usually calculated from the femoral neck (cervical) and trochanteric regions.

Basic Principles of DPA

DPA is a modification of the single-energy technique using a radioisotope (Gd-153) that emits photons at two different energy levels. Dual photon absorptiometers reduce the effect of soft tissue on the absorption measurements in a two-component system consisting of soft-tissue and bone (13). Because of the different energy dependence of the gamma ray absorption coefficients in bone and soft tissue, dual-photon absorptiometers are capable of correcting for layers of fat and soft tissue overlying the bone. This permits the determination of the density of bone present, independent of the amount of soft tissue (11,14). This point will be addressed in greater detail in a subsequent section on precision and accuracy.

A typical dual photon bone mineral analyzer consists of a rectilinear scanner frame, a 1.0Curie (Ci) Gd-153 source, and a NaI (T1) scintillation detector (1). The system is interfaced with a computer that controls scanning pattern, speed, bone edge detection, data acquisition and other factors. To measure local areas of the axial skeleton, the radionuclide source is coupled to the collimated scintillation detector on a rigid yoke which moves in a rectilinear scanning mode across the spine or hips (1). The instruments are standardized with ashed bones or bone equivalent solutions in specially designed phantoms. Quality control phantoms are supplied and need to be used daily. In the measurement of bone mineral density the anatomic region of interest is scanned and a point-by-point determination of bone mineral is made. The transmission scan is obtained by counting the 42-keV and 100-keV gamma rays of Gd-153 after they have been attenuated by bone and soft tissue (12). The total bone mass is determined by summing the individual point values. The difference in photon absorption between bone and soft tissue allows for the calculation of the total BMC found in the scan path. BMC is inversely related to the measured transmission count rate (2). Using DPA, the bone

minera density measured reflects the total integrated mineral (cortical and trabecular) in the path of the beam. The BMD data, acquired during scanning, can be displayed either as a numerical print-out with a character plot or as an intensity modulated image (12).

Costs

DPA scans of the spine or femur take about 30 to 40 minutes and can be performed without specific preparation on any patient able to remain supine for that time. Several DPA instruments are available commercially. The capabilities of these instruments range from calculation of total skeletal calcium using BMD by DPA, to instruments for spine and hip, or spine alone. Costs for these devices range from about $30,000 to 40,000 for a spine scanner to about $65,000 for models capable of total body scanning (costs do not include radioactive source). The 1.0Ci Gd-153 radiation source that is required has a half-life of 242 days. This source will have to be replaced every 12-18 months at a cost of about $7,000 (15). As of June 1986, there were more than 300 facilities in the United States offering DPA. Charges for the procedure range from about $125 to $185 for a lumbar spine scan. If the femur scan is also performed an additional $60-90 is added to the cost (M. Duerst, written communication).

Among the alternative modalities SPA instruments cost $20,000 to $30,000. A typical SPA examination exposes the patient to 2 to 5 mrad of radiation and costs between $50 and $125 (2,16). The analysis software and calibration device (phantom) that are needed to do absorptiometry with a quantitative computed tomography scanner (QCT) can be purchased for $8,000 to $10,000 (17). A QCT examination typically takes less than one-half hour and costs average between $150 and $250, but can cost up to $400 in some settings (2,17). Low-dose QCT has been noted to expose the patient to a peak skin dose of as low as 300 mrad, but the dose can be as much as 500 to 1,000 mren (16).

OSTEOPOROSIS

Definition

Measurements of bone mineral density by DPA are being used extensively in epidemiologic, pathogenic, and therapeutic studies of osteoporosis. As a result of the considerable morbidity, mortality, and expenditures associated with this disease there is growing interest in research regarding its prevention, diagnosis and treatment. Osteoporosis is considered a major underlying cause of bone fractures in postmenopausal women and older persons in general. It (primary osteoporosis) is an age-related disorder characterized by decreased bone mass and by increased susceptibility to fractures in the absence of other recognizable causes of bone loss (18). Nordin believes that a bone is osteoporotic when the volume of tissue per unit volume of anatomic bone (volume/volume ratio) falls below the normal limit in young adults (19). According to Nordin if the value is within the normal range for the age and sex of the subject, "simple osteoporosis" is present. If the value is below the range for the age and sex of the subject, "accelerated osteoporosis" is present. Other investigators such as Riggs and colleagues use "postmenopausal" and "senile" classifications of osteoporosis (20). According to Riggs and colleagues, women with postmenopausal osteoporosis have lost excessive and disproportionate amounts of trabecular bone compared with peers. In contrast, bone loss in "senile osteoporosis" is proportionate for both cortical and trabecular bone and is only slightly more for patients with, than for those without, fracture (20).

Although osteoporosis affects all bones, fractures of the spine, wrist, and hip are most common. The risk of developing osteoporosis increases with age and is higher in women than in men, and in whites than in blacks (21). Two broad hypotheses have been proposed for the pathogenesis of primary osteoporosis. The first is that skeletal mass achieved at maturity is the critical determinant for development of clinical osteoporosis later in life (20). An underlying assumption of this theory is that the rate of bone loss is

not significantly increased in persons destined to become osteoporotic. This has been supported by the work of Hansson and Roos and Aloia and coworkers (22,23). Bone loss is considered a normal manifestation of the aging process. The second theory of pathogenesis is that those destined to become osteoporotic have significantly increased rates of bone loss by comparison with age- and sex-matched controls (24). The factors responsible for increased rates of bone loss in affected individuals may be the same as those operative during the aging process but are exaggerated. These two theories are not mutually exclusive, and presently it is not possible to state which one of these variables (bone mass at maturity or subsequent rate of loss) is more important.

Bone is composed of a collagen-rich organic matrix impregnated with minerals, largely calcium and phosphate. Two major forms of bone exist, cortical and trabecular. Cortical or compact bone forms the external envelopes of the skeleton. Trabecular or cancellous bone forms plates that traverse the internal cavities of the skeleton (25). The skeleton is 80 percent cortical bone and 20 percent trabecular bone. The proportions of cortical and trabecular bone vary at different sites. Vertebral bodies contain predominantly trabecular bone while the radius and proximal femur contain various contributions of cortical and trabecular components depending on the exact site analyzed (3). The responses of the two forms of bone to metabolic influences and their susceptibility to fracture appear to differ. Bone undergoes continuous remodeling throughout life in a constant, dynamic turnover consisting of bone formation and bone resorption. Peak bone mass is achieved at about 35 years of age for cortical bone and earlier for trabecular bone (18). Mazess reports that in women cortical bone mass shows a slow decline (3 percent per decade) until age 45 to 50 years and then an accelerated bone diminution (9 percent per decade) until age 75 (26). Similar findings have not been consistently obtained by other independent investigators or in men as compared with women. Cortical bone mass loss then decreases to about 3 to 4 percent per decade. In the same report, Mazess surveyed aging changes in trabecular bone and found that the

weight of evidence indicated decreases of trabecular bone beginning during young adulthood (20-40 years old) in both sexes and proceeding at similar rates (6 to 8 percent per decade) thereafter without evidence of age-dependent acceleration. This finding does not coincide with the assumption of an accelerated loss of trabecular bone after menopause.

Risk Factors

Bone mass is approximately 30 percent higher in men than in women, and approximately 10 percent higher in blacks than in whites. Peak adult bone mass in each person is suggested to be determined by a combination of genetic, mechanical, nutritional and hormonal factors (27). Other less well understood factors may also play a role. In each ethnic or gender group bone mass varies among individuals. After reaching its peak, bone mass declines throughout life because of an imbalance in bone turnover in favor of resorption over formation. The factors that appear to be responsible for age-related bone loss and predispose to osteoporotic fracture may include those that determine bone mass (27) and more. When bone mass is steadily lost the bones become fragile and more susceptible to fracture. As bones lose calcium and protein they may remain the same size but the walls of the cortical bone become thinner and the holes in the trabecular bone become larger (28). These changes in composition greatly weaken the structural integrity of the affected bone. While the exact pathogenesis of osteoporosis is not yet completely understood, low bone mass seems to be central to the disease process. Most of the known risk factors are causally related to the development of low bone mass. However, low bone mass is only one of the factors that is important in the pathogenesis of fracture. Trauma may also be important. Not all individuals with low bone mass will fracture. Some individuals will fracture despite relatively normal bone mass (29). Other diseases of the skeleton, e.g., osteomalacia, may occur with or without osteoporosis and may lead to osteopenia and an increased frequency of fractures. As mentioned above, the degree and frequency of trauma is also an important

determinant and some suggest that the frequency of falls increases as a function of age. Since muscle-wasting also occurs with age, the forces generated by a fall may not be widely distributed and may more easily result in fracture. According to Johnston, prevention of bone loss should lessen the frequency of fractures, but may not entirely eliminate the increased risk of fractures associated with aging (29).

Epidemiologic studies of patients who have fractures as well as studies of age-related bone loss, point to some of the factors that may predispose a person to develop osteoporosis. These studies suggest that the development and progression of primary osteoporosis may be enhanced by a variety of factors that upset the normal balance between bone formation and bone resorption. Some factors may be fortuitous associations commonly found among patients with osteoporosis. Risk factors, in addition to small peak adult bone mass, include estrogen deficiency (related either to aging or to premature menopause), other hormonal imbalances, low calcium intake for prolonged periods of time, or loss of calcium and vitamin deficiencies, or metabolic anomalies (most notably, involving vitamin D or hyperthyroidism) (30,31). Calcium deficiency may be an important risk factor because insufficient calcium intake during skeletal development may lead to a lower than expected skeletal mass at maturity. Calcium deficiency in the postmenopausal woman may lead to more rapid bone loss or less aggressive bone formation. While calcium deficiency is deleterious to bone mass, a number of studies found that calcium alone was ineffective against postmenopausal bone loss or less aggressive bone formation. Other risk factors include sedentary lifestyle (decreased mechanical loading) and alcohol or tobacco use or abuse (32,33). Dietary factors that may be involved in osteoporosis include high caffeine intake, high protein intake, and perhaps high phosphate intake (34). Bone mass and susceptibility to fracture may be at least, partly hereditary. No study has determined that family history of osteoporotic fracture is a risk factor for osteoporotic fractures. A small skeletal frame or leanness and northern European racial extraction also increase one's risk of developing

osteoporosis (35). For postmenopausal women, concurrent medical conditions or drug therapy affecting calcium balance (e.g., hyperthyroidism, corticosteroid therapy, or gastrectomy) are also considered clinical risk factors for osteoporosis. For elderly women, risk factors also include a history of previous fractures, a propensity to fall, and reduced mobility (29).

Prevalence and Incidence

Osteoporosis is a major public health problem. The National Institutes of Health Consensus Development Conference on Osteoporosis held on April 2-4, 1984, reported that osteoporosis may affect between 15 and 20 million Americans (36). More than one million fractures attributable to osteoporosis occur annually in individuals over the age of 45. Twenty-five percent of women over 60 years of age have documented vertebral fractures in association with osteoporosis. As many as 50 percent of women will develop vertebral fractures by age 75. These fractures may develop during routine activities such as bending, lifting, or raising from a chair or bed (36). According to the American College of Obstetricians and Gynecologists, after age 45 there is a marked increase in the incidence of distal forearm fractures (28). By age 60, there are ten times more forearm fractures in women than in men of comparable age. These fractures limit the use of the extremity for 4 to 8 weeks, with long-term disability uncommon. While osteoporosis predisposes to fractures of various bones, hip fractures are the most serious in terms of disability, mortality and aggregate cost. In the United States, it is estimated that more than 200,000 hip fractures occur in elderly women each year with 80 percent found to be related to pre-existing osteoporosis (28). The affected population tends to be advanced in age and the sex distribution less skewed toward females than is the case with vertebral fractures. Acute complications such as hospitalization, depression, and mechanical failure of the surgical procedure are common (36). Most patients fail to

recover normal activity. Hip fractures are fatal in 12 to 20 percent of cases, and precipitate long-term nursing home care for half of those who survive (37,38). Hip fractures pose a significant economic as well as a medical burden.

The economic burden of all age-related fractures is truly great because of the large number of people involved and the expensive and protracted care that is often required. About a fourth of all patients with limb fractures require hospitalization and the mean hospital stay increases from 13.6 days among those aged 25 to 44, to 32.6 days among those older than age 65. Fractures of the proximal femur account for more than half of all days of hospitalization for limb fractures. The cost of the acute care alone for fractures of the proximal femur has been estimated to exceed $1 billion annually in the United States (39). The direct and indirect costs of osteoporosis, including hip fractures, are estimated to be between $3.5 billion and $6.1 billion annually in the United States (36,38).

Treatment

The treatment of osteoporosis in postmenopausal women is considered both from the standpoint of preventive measures (prevention of further bone loss in normal women) and therapy of the patient with established disease and fractures (reversal of bone loss). At present, there is no reliable method to treat or reverse osteoporosis after it has been diagnosed (40). Nevertheless, investigators have recommended a variety of therapeutic regimens. The conservative approach in the management of patients with established osteoporosis and fractures has been the use of calcium with vitamin D supplements and an exercise program. According to Heaney there is a growing body of evidence suggesting that nutritional factors play important roles in age-related bone loss, particularly in the postmenopausal period in women (27). He adds that calcium is the most important of these factors and remains an important nutrient throughout adult life. With the aging population at risk of inadequate availability of calcium because of

low dietary intake and poor gastrointestinal absorption, Heaney recommended that postmenopausal women increase calcium intake to at least 1.5g per day if no estrogens were used. Similar recommendations have been made by Nordin and Johnston et al. (41,42). These recommendations are well above the estimated calcium intake of 500 mg per day in postmenopausal women in the United States and still above the recommended dietary allowance (RDA) of 800 mg per day. According to Nordin some 50 percent of women with clinical osteoporosis have malabsorption of calcium. Nordin treats these patients with small doses (0.25 ug per day) of calcitriol to increase calcium absorption (41).

Because postmenopausal osteoporosis is sometimes associated with low levels of plasma 1,25-dihydroxyvitamin D some investigators add therapeutic doses of vitamin D to the drug regimen (43). Avioli suggested that this approach was incorrect and recommended careful dietary and medical histories and measurements of plasma 1,25-dihydroxyvitamin D3 before vitamin D is added to the therapy. While Avioli reserves vitamin D therapy for patients with osteomalacia, he does recommend the use of diets or supplements, that contain at least 400 to 500 IU of vitamin D, to maintain nutritional adequacy (43). Riggs reported that the use of vitamin D was associated with a substantial incidence of hypercalcemia and hypercalciuria, or both. He also recommended that vitamin D not be included as a component of therapy (44). According to Audran recent reports have suggested that impaired formation of 1,25-dihydroxyvitamin D may play a role in senile osteoporosis (45).

According to Avioli, mobilization of the osteoporotic patient is an essential ingredient of any therapeutic protocol. He reported that moderate physical activity such as leg walk, sideward bends, arm crossing and chair pull in subjects aged 69 to 95 effectively retarded the rate of bone loss (43). Heaney believes that mechanical loading is probably the most important determinant of age-related bone loss and needs to be

maintained at as high a level as possible (27). However, not only does physical activity decline with age, but once the disease is present mechanical loading of the skeleton is even further decreased. Currently, it is not known how much mechanical stress is required, or how long it must be sustained to affect skeletal mass.

Although therapeutic intervention with calcium supplementation and moderate exercise programs represent the least risk to the patient, available evidence suggests, estrogen is more effective in preventing bone loss (32,46). Osteoporotic patients who are less than 10 years postmenopausal are usually offered estrogen replacement therapy (34,41,47,48). This therapy is usually combined with an adequate calcium intake of at least 1.0g of elemental calcium per day (41,47). Preliminary data by Ettinger et al. indicate that it may be possible to manage osteoporotic patients with a replacement dose of estrogen that is half as large (0.3 mg) as that presently recommended (0.625 mg) when the estrogen therapy is combined with high-dose calcium supplementation (1.5 g) (49). Nordin and colleagues reported estrogen therapy significantly reduced bone loss in women with crush fractures (50). According to Johnston and associates, calcium and/or estrogen therapy is probably of value in treating patients with crush fracture osteoporosis because of a slowing of the rate of subsequent bone loss and a reduction in the fracture rate (42). Currently, it has become popular to add progestins to the monthly estrogen regimen (48,25).

For symptomatic osteoporosis the therapeutic management of patients has also included fluorides, vitamin D metabolites, parathyroid hormone, diphosphonates, calcitonin, progestins, and anabolic steroids (34,51,52). These agents are used separately or in combination with calcium and/or estrogen. Some investigators question the value of therapies that only serve to prevent further loss of bone in patients already osteoporotic. They believe other measures are required to increase bone formation rate and improve bone density. Nordin suggests the use of anabolic steroids, Aloia, calcitonin whereas Riggs advises sodium fluoride and calcium therapy (41,51,44,). Only sodium

fluoride, in the presence of adequate calcium, has been shown to lead to increased bone mass and a decreased fracture rate (10,53). This regimen may require the addition of estrogen to achieve this goal. Unfortunately a large fraction of treated patients demonstrate serious side effects and many show little or no response to fluoride treatment. There is currently no way of predicting which patients will respond favorably to therapy (37). Additionally, data suggest that long-term use of fluoride leads to cortical bone loss in some patients which in turn may increase the risk of hip fractures. According to Riggs, several studies, including his own, have found that cortical bone decreases significantly during treatment (44). Perhaps the results of the two 5-year prospective double-blind randomized clinical trials supported by the National Institutes of Health will help determine whether problems with fluoride administration can be resolved.

According to Christiansen, there is no efficacious treatment of osteoporosis once symptoms have appeared (52). Lindsay states that treating established osteoporosis is difficult and emphasis should be placed on preventing further fractures rather than on increasing bone mass. He suggests removing environmental influences and treating health problems that may increase the risk of falls (34). After an extensive review of information regarding osteoporosis and osteoporotic fractures, Cummings and associates concluded, that in the already osteoporotic "elderly," prevention of falls seems to offer the greatest potential for reducing the risk of fractures (32). Because of the multifactorial etiology of osteoporosis many views of its causes, prevention, and treatment have been developed by the various specialties to whom these patients present.

Because there is no satisfactory treatment for established osteoporosis, prevention is especially important. To prevent osteoporosis in the immediate postmenopausal period many investigators recommend that patients alter controllable risk factors and increase

calcium intake. Exercise programs are also recommended. According to Heaney, the goal of prophylactic calcium supplementation and exercise is to achieve the highest possible peak bone mass before old age and to maintain that peak for as long as possible (27). Other researchers also believe that the pathologic effects of osteoporosis can be lessened and often eliminated simply by maintaining an "adequate" dietary intake of calcium throughout life and getting regular exercise (54,55). For preventive care in the young adult woman, Heaney recommends a high calcium intake, regular and vigorous exercise, and the avoidance of excess protein, alcohol, smoking and caffeine (27).

Currently, postmenopausal estrogen therapy appears to be the most effective single method for preventing bone loss and fractures in women (32,46). According to Johnston the strongest evidence available from published studies favors the effectiveness of estrogen, or estrogen/progestin combinations in preventing bone loss (42). Generally, investigators are reluctant to prophylactically treat with estrogens postmenopausal women who show no evidence of bone disease. Some recommend estrogen or estrogen/progestin prophylactic treatment for the high-risk group of women potentially liable to develop osteoporosis (31,52). Treatment is usually recommended to begin as soon as possible after the onset of menopause and to be continued for at least five years and perhaps as long as ten years or more (47). The National Institutes of Health Consensus Development Conference Panel concluded that estrogen replacement therapy and increased calcium intake are the mainstays of prevention and management of osteoporosis (36). The panel also indicated that exercise and nutrition may play an important role as well. It was noted, however, that until more data on risks and benefits are available, physicians and patients may prefer to reserve estrogen therapy for conditions that confer a high risk of developing osteoporosis, such as the occurrence of premature menopause.

In deciding whether estrogen should be administered, risks and benefits of estrogen therapy need to be considered. It has been reported that postmenopausal estrogen

therapy increases the risk of endometrial cancer (25,56). Most recently, the findings of Shapiro and associates suggest that long-term use of conjugated estrogen increases the risk of both localized and widespread endometrial cancer (57). The data also suggest that women who have taken conjugated estrogen for 1 or more years remain at increased risk for at least 10 years after they discontinue use. A similar finding of increased risk of endometrial cancer among users of conjugated estrogens has been reported by Buring and associates. This risk increases with longer use and higher dosages (56). According to Johnston and colleagues, the use of a progestin with the estrogen may reduce the risk of development of carcinoma of the uterus (42). In regard to breast cancer, Cummings and coworkers suggest that most evidence indicates the risk for breast cancer is not increased, although a few positive findings have been reported (32). The use of estrogen also entails the increased cost of medical followup and problems with patient compliance (44).

One potential benefit of estrogen, in addition to reducing bone loss, is the increasing evidence that estrogen therapy might protect against coronary heart disease in women (32). Studies assessing the risk of myocardial infarction and stroke in postmenopausal women taking predominantly unopposed estrogens are equivocal. More research is needed in this area. According to Haber, progestins which have been added to the monthly estrogen regimens to reduce the risk of endometrial cancer may also negate the beneficial effect of estrogen on coronary heart disease (48). In addition to a return of the menses a potential risk of progestin therapy is the increased risk of cardiovascular disease. Haber and other investigators recommend additional studies prior to the widespread and routine use of progestins (32,48).

In the past five years, investigators have used DPA to measure the BMD of the lumbar spine and proximal femur in "normal" individuals and in patients with osteoporosis. Studies have been conducted to investigate whether spine and/or hip bone mineral measurements could separate "normal" women from women with vertebral

compression fractures or femoral neck fractures. Recently, some investigators have used DPA measurements ostensibly to identify women at risk for future fractures. This report examines these and other studies as well as other available evidence that pertains to the safety and clinical effectiveness of this technique.

RATIONALE

The rationale for bone mineral measurements is based on the demonstration that the strength or resistance of a bone to fracture is closely related to the amount of bony tissue or the mass of the mineral present in the bone. Proponents argue that since the (breaking) tensile strength of bone is related to its mineral content, measurements of BMC at the actual sites of fracture should be the most accurate method of determining fracture risk. Proponents of DPA believe that the ability to determine accurately the direction and degree of changes in bone mineral density as a function of bone mineral content in the spine and proximal femur (sites of fracture) facilitates the diagnosis and management of metabolic bone diseases, such as osteoporosis. They argue that information on bone mineral loss is clinically important for the monitoring of age-related bone loss, for the diagnosis and monitoring of bone loss resulting from metabolic bone disease, for the assessment of drug effects on bone mineralization, and for the accurate assessment of fracture risk at specific bone sites (spine, femoral neck). Proponents also argue that these measurements could prove useful as clinical guides to therapy in assessing the therapeutic responses of patients with osteopenia.

REVIEW OF AVAILABLE INFORMATION

Accuracy and Precision

To determine the accuracy of DPA diagnostic tests, the measurement is compared with some independent measurement of bone mass, such as ash weight or physical density (58). Accuracy defines the degree to which a measurement, or an estimate based on measurements, represents the true value of the attribute that is being measured. In the determination of osteopenia, accuracy in the measurement of bone mass by DPA is of great importance.

A number of complex technical factors affect dual photon accuracy determinations in vivo. These necessitate corrections for deadtime of the counting system, beam hardening, and scattered radiation (59). When these corrections are made, measurements on bone phantoms (phantoms with known concentrations of dipotassium hydrogen phosphate solutions) have shown excellent accuracy. However, differences in laboratory practices can lead to variable results (7). The accuracy of DPA determined by Wilson and Madsen in bone phantoms was 1.2 percent (standard error of estimate) (11). Krolner and Pors Nielsen reported 1.3 percent (14). According to Mazess the accuracy error for DPA is 3 to 5 percent on actual vertebral or femoral specimens scanned under in vivo conditions (59). Genant reported 4 to 10 percent (60). Genant and associates believe that vertebral compressions, hypertrophy of articular facets, discogenic sclerosis or marginal osteophytosis and extra-osseous calcification, which are widespread in the elderly and are included in the integral measurements of DPA, may result in inaccurate as well as poorly reproducible vertebral measurements (61). Cohn reported that the accuracy of the DPA method (greater than 5 percent) is markedly reduced when the technique is used for measurement of the spinal column bone or any irregularly shaped bone surrounded by a large volume of tissue (62). He found systematic measurement

errors introduced by variation in the distribution of fat in the bone, and by the variable size and shape of the vertebrae, particularly after the vertebrae have been altered by a crush fracture.

Initial work by Wilson and Madsen (1977) and Krolner and Pors Nielsen (1980) showed that accurate results could be obtained regardless of soft tissue thickness or composition (11,14). It was shown that the influence of fat on the measured bone mineral would be negligible if the fat layer over the vertebrae had the same thickness as the fat layer over the site used for baseline measurements (14). However, a nonhomogeneous distribution of adipose tissue in the body areas transversed by the scanning radiation beam may lead to an underestimation or overestimation of BMC. Roos and associates, have found that fat in the adipose capsules of the kidneys may cause an overestimation of the bone mineral content in the third lumbar vertebra by DPA (63). Krolner and Pors Nielsen reported that a nonuniform increase in fat surrounding the lumbar spine may show a decrease of bone mineral density measurements (14). DPA attenuation equations assume that soft tissue is homogeneous, whereas in practice it consists of variable amounts of fat. Variations in fat-lean composition produce differences in the attenuation coefficients for soft tissue that influence measurements which may lead to erroneous results (14,64) According to Tothill, investigators have ignored the errors introduced by this factor (65). Mazess reported, however, that there is little influence of nonuniform tissue composition on bone, as might occur if composition above the spine differs from that surrounding it or if fat composition of the marrow varies (7). He reported that the variation in density measurements due to a 3 percent shift of fat is virtually undetectable. Recently, Wahner and colleagues have also reported on the effect of fat on DPA bone mineral density measurements (66). According to the investigators, bone mineral density measurements may be affected by changes in body

fat, such as a nonuniform increase in fat surrounding the lumbar spine. Conversely, they found that changes in intraosseous and intramedullary fat had little effect on the measured bone mineral density (66).

Mazess found that a calcified aorta lying to the side of the spine can cause substantial problems in the soft tissue baseline determinations causing underestimation of bone mass. If the calcified aorta is above the spine the bone mass is overestimated (59). According to Mazess the use of an improper or average baseline can cause errors of 20 percent or more in bone determination. Because a soft tissue baseline can vary by 5 to 10 percent, Mazess recommends determining the soft tissue baseline along the entire length of the lumbar spine for accurate bone determinations (59). He identified the ribs, calcified aorta, transverse processes, and even the iliac crest as factors that could adversely affect baseline measurements. Mazess reported that incorporation of data from these locations into the soft tissue baseline measurement erroneously elevates the baseline and reduces the apparent BMC (59).

For monitoring changes in bone mass, DPA bone mineral measurements have to be sufficiently precise (reproducible) to provide an accurate estimate of these changes. The coefficient of variation, expressed in percent, describes how precise or repeatable a given measurement is. Several investigators have reported the in vivo precision of DPA to be better than 3 percent (coefficient of variation) (11,12,67). Krolner and Pors Nielsen found the coefficient of variation of repeated measurements ranges from 1.4 percent in normal premenopausal women to 2.6 percent in postmenopausal women with clinical osteoporosis (14). They suggest that the smallest significantly detectable difference in the women measured would be a BMD change of 4 percent in normal premenopausal women and 7.4 percent in postmenopausal women with clinical osteoporosis.

Because the clinical usefulness of bone mineral measurements depends on the long-term reproducibility of the applied method in vivo, Krolner and Pors Nielsen performed

long-term precision measurements of the BMD of the lumbar vertebrae utilizing DPA (68). In this study the BMD measurements were taken at 6- and 31-month intervals rather than the 14-day interval used in their earlier study. The authors concluded that the long-term reproducibility of DPA measurements in vivo must be based on measurements in vitro because of changes in lumbar BMC and fat distribution. From in vitro measurements they calculated a coefficient of variation of 1.4 to 2.5 percent in the BMD range of normal premenopausal women, and 2.0 to 7.9 percent in the BMD range of osteoporotic women with vertebral compression fractures (68). According to Mazess, the major problems for clinical use of DPA involve the precise and reproducible location of the measurement site (59). In the lumbar spine, poor spatial resolution and crush fractures can lead to uncertainties of positioning. To obtain maximum precision, LeBlanc and colleagues found that a previous scan must be compared directly with the current one (69). This was demonstrated by analyzing scans integrating a region intentionally shifted three lines above the originally chosen lines. Failure to compare the same area resulted in an additional error of 2 to 4 percent.

In this recent study, LeBlanc investigated the precision of two dual photon absorptiometers using scans of phantoms, normal subjects, and patients (69). He found phantom measurements for one instrument 2 to 5 percent lower than for the other. Moreover, the auto and manual methods of analysis gave significantly different BMD values for both instruments, with the manual method having better precision. According to LeBlanc, the manual/auto BMD differences result from a difference in edge selection. The automatic method used by the computer determined values for bone edges and baseline while the manual method involved a line-by-line inspection of edges and baseline. The author suggests that changes in analysis software might improve the automatic edge detection and therefore improve precision in this mode (69).

LeBlanc and colleagues determined that the average BMD percent precision error of the two instruments was 4 percent at a 95 percent confidence level (69). These

findings indicate that to be confident (95 percent) that a real change had occurred in BMC, two scans would have to differ by more than 5.6 percent. The authors also found, contrary to popular belief, that for observers with similar training interobserver analysis error was essentially equal to the intraobserver error.

Preliminary results from a study of bone mass in 50 postmenopausal osteoporotic women at the University of Washington was recently reported by Chesnut at the National Institutes of Health Consensus Development Conference on Osteoporosis (36). With DPA measurements of the spine, he reported obtaining a precision of 3 to 5 percent and an accuracy of 2 to 4 percent. Similar values for precision were obtained for DPA measurements of the femur. The accuracy of the femur measurements was not provided. These results were obtained with modifications made by the group at the University of Washington to the DPA scanner that resulted in scanning images that clearly delineated the vertebral bodies. According to Wahner and associates, part of the problem inherent in assessing the accuracy of DPA is associated with the determination of anatomic areas corresponding to the scanned areas (spatial resolution) on the highly variable vertebrae (70). Wahner and coworkers compared the BMD of 26 L2-L4 segments, removed from cadavers, and measured by DPA, with the area density determined from an ashed specimen of L3. They reported an error of about 5 to 6 percent in determining BMD in excised vertebrae with DPA. On the more uniform femoral neck they were able to obtain an accuracy of 3 to 4 percent with DPA (70).

Because relatively few longitudinal clinical studies have been performed to date utilizing DPA, little information is available regarding the effects of the Gd-153 source decay upon soft tissue correction. According to Pors Nielsen and Krolner the precision in vitro of the DPA method depends on the activity of the radioactive source (71). They found the coefficient of variation became two to three time higher when the radioactive source decayed from 1.2 to 0.4 Ci. Other problems regarding the radioactive source have

been reported. According to Wasnich and Vogel (written communication) the current algorithm for DPA does not correct appropriately for soft tissue effect as the Gd-153 source decays. However, this has not been reported by other investigators.

Bone Mass/Bone Strength

In osteoporosis, bone is decreased in amount, i.e., the bone mass is decreased per given volume. The bone cortex is thin. The trabeculae are decreased in number and size, increasing bone "porosity" and decreasing its tensile and compression strength (load-bearing capacity). Bone fracture represents the overriding clinical consequence of osteoporosis. When the skeleton is exposed to physiologic forces or to trauma, regions of it are subject to exceedingly great stresses. Fractures occur when the local stresses exceed the tensile and/or compressive strength of bone in that region (72). The relationship of bone strength and resistance to fracture to the quantity of bone (mass) had been studied in vitro by many investigators. In 1977 Martin and Atkinson reported on a study of 37 normal femoral specimens that determined the age- and sex-related changes in the structure and strength of the human femoral shaft (73). They observed that while the material strength of femoral bone decreases with aging for both sexes, the moment of inertia (second moments of area) of this structure increases for males but decreases for females. According to Martin and Atkinson, in males the increased moment of inertia compensates for the decline in material strength, whereas in females the diminution in both is additive and contributes to skeletal weakness (73). The investigators found that the male and female mean bone diameters did not reflect the differences in the moments of inertia observed between the sexes. Because the moment of inertia depends on the fourth power of the diameter only slight changes in the linear dimensions of the bone are needed to produce large differences in the moments of inertia

and structural strength. The authors observed a tendency for the endosteal or inside diameter in the female femoral sections to increase and the cortical thickness to decrease with age (73).

In a similar in vitro study, Wall and associates reported that both density and intrinsic strength of femoral bone increase up to about the fourth decade of life and then decrease with age (74). They noted that the rate of decrease of strength is greater than that of density. Strength decrease from the fourth to the eighth decade of life was about 20 percent, whereas the corresponding density decrease was only about 2.6 percent (74). According to Wall the data indicated that either strength is extremely sensitive to any change in the denisty of bone or other factors may play an important role in determining strength of bone. Some studies of the relation between compression strength of the vertebrae in relation to age suggest that strength increases with age until 30 years of age and thereafter decreases, with an appreciable drop after 50 (75).

When it became possible to determine in vivo the BMC as a function of BMD of separate vertebrae of the lumbar spine by DPA, studies were initiated to correlate BMD values and ultimate compressive strength of lumbar vertebrae. It was hoped that these measurements would provide a basis for estimations of normal and abnormal amounts of bone mineral in the vertebrae and to predict patient susceptibility to fracture. In 1980 Hansson and coworkers used DPA (Am-241/Cs-137) to measure the BMD of 109 lumbar vertebrae from 36 different autopsy subjects; mean age 59 years (76). After determination of the BMD, the ultimate compressive strength was determined by compression of the vertebral body until fracture occurred. The authors reported a statistically significant positive correlation between the BMD of all 109 lumbar vertebrae and the compressive load needed to cause a fracture ($R=0.86$, P less than 0.01). Similar findings of mineral content that were highly correlated with resistance to compressive forces had been reported by Bell and colleagues for the vertebrae, and Dalen and associates in the femoral neck (77,78). Interestingly, in the study by Hansson the

posterior elements were not included when the vertebral bodies were compressed. According to the authors these parts of the vertebrae carry an almost negligible share of the axial load. However, the posterior elements and the vertebral bodies added almost equal proportions to the total BMD measured by DPA (76).

The findings of Hansson and colleagues suggested that BMD measurements of the lumbar vertebrae by DPA could be used as an indirect measure of ultimate compresssive strength (76). However, their findings of a linear correlation between the BMD (g/cm^2) of lumbar vertebrae and the ultimate compressive strength of their vertebral bodies is in disagreement with the findings of Bell and associates and Carter and Hayes (77,79). The findings of these investigators indicated that the compressive strength of bone is related to the square of the apparent density. Based on this relationship, which is similar to the findings of the earlier in vitro studies, small changes in apparent bone density can generate large changes in strength. Apparent density, expressed in g/cm^3, is the mass of bone tissue divided by the bulk volume of the test specimen, including mineralized bone and bone marrow spaces.

According to Ruff and Hayes, one structural variable that is not often considered in studies of skeletal aging of long bones is the global geometry of cortical bone (80). The investigators believe that the geometric distribution of bone tissue, together with its material properties, is critical in determining the structural strength and rigidity of the whole bone. To demonstrate this concept the investigators studied cortical bone remodeling with aging in femoral and tibial cross-sections obtained from an archeological collection (81). This Pecos Pueblo collection represents a large, late, prehistoric and protohistoric site in New Mexico. Ruff and Hayes observed increases with age in subperiosteal dimensions and second moments of area in both males and females. However, they also found that this remodeling process is modified by localized bone site differences in mechanical loadings, some of which are apparently sex-specific (81). According to Ruff and Hayes, regions, male or female, subjected to relatively high

mechanical stress in vivo would show the greatest increases with age in total subperiosteal area and second moments of area and the smallest decreases in compact cortical bone area. Conversely, regions with relatively less mechanical stimulation would show small increases (or actual decreases) in subperiosteal apposition of bone and second moments of area. Ruff and Hayes concluded that exercise-related apposition of bone on the subperiosteal surface may mechanically compensate for endosteal resorption and cortical thinning with aging, and reduce the risk of fracture among those individuals (male or female).

The authors believe that a difference in activity levels between their sample population and that of the Martin and Atkinson study could explain the difference in their findings (81). They suggest that the lifestyle of Pecos females subjected them to significantly more strenuous exercise than females from modern industrialized populations, the source of subjects for the Martin and Atkinson study. According to Ruff and Hayes these generally higher levels of activity could account for the greater apposition of bone throughout life among Pecos females (81). Chalmers and Ho cited greater physical activity as a contributing factor to the lower rate of hip fractures among the elderly, particularly women, in nonindustrialized as compared to Western industrialized populations (82).

The relative contribution of trabecular bone and the cortial shell to the load-bearing capacity of the vertebra has been the subject of much controversy. Because DPA provides an integrated measure of both cortical (30-40 percent) and trabecular contributions to mineral content, the contribution of the cortical shell to the load-bearing capacity of the vertebra is of extreme importance to the significance of the DPA measurements. This is especially true in light of the recent findings of Hayes and Gerhart that the cortical shell contributes very little to the overall strength of the vertebral body (72). Their work supports the earlier findings of Bell that the compression strength of the vertebrae depends almost entirely on the trabeculae, which form a three-

dimensional grid within the body (77). These findings, however, were not consistent with the observations of Rockoff and colleagues who reported that the cortical shell contributed 45-75 percent of the peak strength (83).

Clinical Applications

Spine. Investigators after initiating clinical studies established the feasibility of the DPA technique to measure bone mass at the spine and proximal femur. At the Mayo Clinic Riggs and associates studied the effectiveness of DPA to differentiate patients with idiopathic spinal osteoporosis (presence of nontraumatic compression fractures) from normal subjects (3). In that cross-sectional study reported in 1981, DPA was tested in a population of 105 normal women and 76 women patients with osteoporosis. Bone diminution with aging was assessed by measuring BMD concurrently at sites in the axial and the appendicular skeleton. BMC of the spine was assessed from scans of the L1 to L4 region. The BMD value included vertebral bodies and disk interspaces.

In normal women the authors found that vertebral bone loss began in young adulthood and continued linearly throughout life. In contrast to the findings in the appendicular skeleton there was no demonstration of an accelerated bone loss due to the menopause. The cumulative diminution of BMD from the vertebrae throughout life was 47 percent. Riggs and coworkers found that patients with osteoporosis had significantly lower mean BMD values at the vertebrae (p less than 0.001) compared with age comparable normal subjects. However, although the spinal measurements gave the best discrimination of osteoporotic patients from normal subjects there was still considerable overlap between the two groups (3).

To define spinal osteoporosis in terms of vertebral BMD rather than the presence of nontraumatic vertebral fractures the authors arbitrarily chose the 90th percentile for vertebral BMD for patients with nontraumatic vertebral fractures. This value, 0.965 g/cm^2 was then defined as the threshold below which the risk for nontraumatic vertebral

fractures increases. However, with this approach, by age 65 years, half of the women, and by age 85 years, virtually all of the women in the normal female population have BMD values below the threshold for fracture. All these women would be considered to have asymptomatic osteoporosis by the authors (3).

According to Riggs, the results of the study indicated that women with and without spinal osteoporosis lose substantial but similar amounts of cortical bone, but those with spinal osteoporosis lose more trabecular bone. The authors suggested that cortical bone and trabecular bone function as separate compartments which differ in respect to onset and rate of bone loss and possibly also in respect to homeostatic regulation. They believe that direct spinal measurements of bone density are greatly superior to appendicular measurements for evaluating the severity of spinal osteoporosis (3). However, because the lack of response of vertebral bone loss to menopause with DPA measurements was not consistent with the results of other studies, Riggs recommended that the effect of the menopause on the rate of bone loss in the vertebrae relative to that in the appendicular skeleton be studied further. Meunier and colleagues in a histological study of trabecular bone mass in iliac biopsy specimens from 236 control subjects found an acceleration of the linear diminution of trabecular bone as age increased in the postmenopausal period (84). Genant and associates reported a similar acceleration in bone loss at menopause in their study of vertebral mineral determination by quantitative computed tomography (85). According to the authors, the rate of integral spinal bone loss assessed by QCT is roughly one-half that of purely cancellous bone and may explain the difference in sensitivity with DPA. However, Krolner and Pors Nielsen assessed vertebral bone loss by DPA in a longitudinal study of 59 normal women and found an accelerated bone loss of nearly 6 percent immediately after the menopause (86).

Mazess proposed that the common assumption about a large ongoing loss of trabecular bone after menopause may be erroneous (26). He does not believe that the bases for assuming a disproportionate effect of estrogen on trabecular bone is well

supported. For example, he suggests that the apparent rapid loss of trabecular bone observed in the spine with quantitative computed tomography may be an overestimate due to the influence of an increasing fat content (26). According to Mazess, fractures of the vertebra and distal radius, which occur earliest in postmenopausal women, may be due to a trabecular bone loss that has a much earlier onset than that of compact bone loss and not to a more rapid rate of loss of trabecular bone. In contradistinction, the results of the recent study by Richelson and associates (1984) indicated that estrogen deficiency was the predominant cause of bone loss occurring during the first two decades after natural menopause (87). In that study DPA was used to determine the BMD at the femoral neck, femoral intertrochanter, and lumbar spine in 14 women who had undergone oophorectomy during young adulthood, in 14 normal perimenopausal women, and in 14 normal postmenopausal women.

Similar results were reported in an earlier study by Lindquist and associates (1981) on the influence of aging and menopause on BMC based on BMD measurements (88). In that cross-sectional study, bone density was determined in the third lumbar vertebra in a random sample of women by the DPA technique. The authors chose the ages of postmenopausal times in such a way as to make it possible to compare women of different ages but of similar menstrual status and women of different menstrual status but of similar age. According to the authors the results of the study support the hypothesis that there is an association between early menopause and accelerated bone loss (88). A 5-year longitudinal followup study by Lindquist and associates has confirmed the results of their previous cross-sectional study (89). When the same women had lumbar spine BMD determinations with DPA 5 years later the authors found larger differences in BMC between women of different menstrual status than between women of different ages. As in the cross-sectional study, the results from the longitudinal

followup indicated that the time of the menopause influences bone density, with significantly (p less than 0.01) lower values in those women who have an early menopause (89).

In a more recent longitudinal densitometric study, Riggs and coworkers found that vertebral loss in 139 normal women began well before menopause (90). Riggs measuring BMD at the lunbar spine for up to 3 years by DPA found continuous bone loss over adult life with a mean rate of loss of 1.2 percent per year. Moreover, rates of loss were similar in premenopausal and postmenopausal women. From this new data, Riggs concluded that the experimental design of the Richelson study, discussed above, was inadequate because the perimenopausal control group had already undergone substantial bone loss before menopause (90). He also suggested that oophorectomy might induce greater bone loss in young women in whom bone turnover is more active than in older women.

According to Riggs and coworkers there is a striking difference in the patterns of appendicular and axial bone loss in women throughout life (90). They confirmed only a small amount of cortical bone loss in the appendicular skeleton before menopause, with large amounts lost thereafter. By contrast, their longitudinal studies show vertebral bone loss begins well before menopause and continues linearly into old age with only a trend toward midlife acceleration.

Aloia and coworkers recently used DPA measurements of the spine in healthy women and women with vertebral crush fracture syndrome in their cross-sectional study of involutional bone loss (23). In contrast to the findings by Riggs and colleagues, Aloia determined that the best fit for the rate of involutional bone loss from the spine based on cross-sectional data was a two component curve. This indicated an accelerated loss of bone from the spine after menopause. Based on the available information, including published prospective data, Aloia concluded that there is an accelerated loss of bone from the spine after menopause (23).

In addition to the DPA measurements of the lumbar spine, the study by Aloia also included measurements of bone mass of the total skeleton and distal radius by in vivo neutron activation analysis, and SPA, respectively (23). The author found that the spinal measurements did not separate patients with osteoporosis from controls any better than the other bone mineral measurements. According to Aloia, although spinal bone mineral measurements could correctly classify about 77 percent of the cases, the number of misclassifications in the older age group of the normal women was substantial. Moreover, the bone mass measurements of the total skeleton, distal radius and spine determined by Aloia do not support the hypothesis of Riggs and colleagues (38) that women with vertebral crush fractures have preferential loss of spinal bone (23). According to Krolner the lumbar BMD of patients with only one vertebral fracture is less than 1.0 standard deviation (SD) below the age-matched normal mean (91). He suggests that women having their first spinal wedge fracture are indistinguishable from their normal peers as to the total bone mass of the lumbar vertebrae. Accelerated osteopenia of women having multiple vertebral fractures might be a consequence (immobilization) rather than a cause of fractures (91).

Other investigators have also used the DPA technique to measure the BMD of the spine and hip in populations of normal women and women with clinical osteoporosis. The technique was used by Schaadt and Bohr when they studied changes in BMD in the lumbar spine, femoral neck and femoral shaft in normal aging women, prednisone treated women, and in women with primary osteoporosis (92). Acccording to the authors the mean lumbar BMC measured by BMD of 19 women with primary osteoporosis was 31 percent lower than that of 36 postmenopausal age-matched controls. Bone mineral diminution in the femoral neck, which consists of a mixture of trabecular and cortical bone, was smaller than that of the lumbar spine but greater than that of the middle of the femoral shaft which consists of predominantly cortical bone. Schaadt and Bohr observed the same patterns of bone mineral loss in normal aging women and prednisone-

treated women. According to Schaadt and Bohr, the study demonstrated that in postmenopausal women and in the development of osteopenia, the loss of trabecular bone mineral is much greater than cortical bone loss. They suggested that direct measurement of BMC in the lumbar spine was necessary for an accurate evaluation of bone mineral status in that clinically important region (92).

In the Danish study by Krolner and Pors Nielsen, referred to earlier, the authors used DPA measurements of the spine in an attempt to differentiate women with spontaneous vertebral compression fractures or femoral neck fractures from normal women (86). The bone mass measurements were also to be used to identify women at risk of future fractures. BMD of the second, third, and fourth lumbar vertebrae was determined in normal women and women with clinical osteoporosis by using DPA in cross-sectional and longitudinal studies. According to Krolner and Pors Nielsen, the mean lumbar BMC of 86 women (aged 58-89 years) with primary osteoporosis was 41 percent lower than that of normal premenopausal women and 18 percent lower than that of age-matched controls. Nevertheless, the data showed, as did the data of Riggs (3), a large overlap between patients with clinical spinal osteoporosis and age-matched normals (86). The overlap is so large that the majority of patients with clinical spinal osteoporosis are indistinguishable from age-matched normals. Mazess reported that a very large overlap in the spinal density of fracture and nonfracture cases can be expected (93). Recently, he reported that about 60 percent of fractured lumbar vertebrae are entirely normal in density (94).

Krolner and Pors Nielson suggested that a difference in the duration (approximately 3 years) of accelerated bone loss in a subgroup of postmenopausal women in the early menopause could explain the 18 percent difference in lumbar BMC between patients and age-matched normals reported in their study. Krolner and Pors Nielsen point out that while the occurrence of vertebral compression fractures is related to bone mass, the significance of this quantitative approach in vivo remains uncertain. For example, a

minor loss of transverse trabeculae within the vertebrae that is barely detectable with the DPA method could contribute considerably to the weakening of the bone. The authors noted that arteriosclerosis of the lumbar aorta may account for nearly 15 percent of the measured BMD in severe osteopenia and give erroneously high values (86). In contrast, as noted by Cummings, the inclusion by Krolner and Pors Nielsen of subjects with nontoxic goiters, who might be on high doses of thyroid hormone, in the control population could result in erroneously low spinal bone density measurements for the control group (95).

In 1982, Krolner and associates reported on an investigation in a consecutive series of 132 women with and without osteopenia in whom radiography and DPA were compared (96). The investigators hoped to determine if a correlation existed between the two methods and if the loss of vertebral bone mass is concealed by the addition of bone mineral in nonrelevant structures such as the vertebral processes, osteophytes, and calcifications of the abdominal aorta. According to Krolner, the radiographic grade of osteopenia and the BMD of the lumbar vertebrae showed a significant inverse correlation. Each grade of radiographic osteopenia was associated with a large scatter in lumbar BMD. The overlap between normals and patients with obvious osteoporosis comprised nearly 60 percent of the cases with compression fractures. The data also suggested a considerable overestimation of the true vertebral bone mass when DPA was used in patients with osteophytes and severe aortic calcification. The authors found that spondylosis (osteophyte formation) accounted for 10 to 35 percent of the lumbar BMD measured in women with radiographically proven osteopenia. In severe osteopenia aortic calcification may account for nearly 10 percent of lumbar BMD (96).

Seeman and associates compared DPA BMD values of the lumbar spine to SPA BMD values for the radius in 100 patients with various types of endocrine dysfunction (97). The authors found that BMD in each endocrine disorder deviated in at least one site from the sex-specific age regression of 187 normal subjects. BMD measurements indicated

bone loss for patients with primary hyperparathyroidism, hypercortisolism, and hyperthyroidism. For patients with secondary hyperparathyroidism due to chronic renal failure, acromegaly, and postsurgical hypoparathyroidism the BMD measurements suggested bone gain. With the use of multivariate analyses of variance the authors found significant differences in the BMD measurements among the scanning sites. Seeman concluded that bone density of the appendicular and axial skeleton changes differentially in response to endocrine dysfunction and these changes are both site and disease specific. According to the authors, BMD measurements in the appendicular skeleton do not reliably predict BMD measurements of the lumbar spine. BMD changes induced by an endocrine or metabolic disorder mandate assessment of both the appendicular and the axial skeleton (97) Ott and coworkers have also suggested that in postmenopausal osteoporosis the bone may display different rates of change at different sites (98). Because the rate of change may be influenced by the relative amount of trabecular bone, the axial skeleton may not change at the same rate as the appendicular skeleton.

Ott studied longitudinal changes in bone mass after 1 year by DPA and other noninvasive measurement techniques in patients with osteoporosis (98). She found that in these women there were no correlations between measurements of 1-year changes in bone mass by the various techniques. In addition to the possibility of different rates of bone changes at different sites of the skeleton, Ott suggests that the lack of correlation between the measurements may be related to the precision of the techniques and the magnitude of the changes in bone in osteoporosis. She concluded that the techniques used (DPA, CT, SPA) were not sufficiently precise to measure the small amount of change in bone after only 1 year (98). Similar findings for DPA have been reported by Cohn, Krolner, and Cummings and Black (62,91,99). According to Riggs and Melton DPA measurements every 6 months over 2 to 3 years are required to estimate individual rates of bone loss (90).

Ott found that the precision of the DPA and CT techniques was lower in her

clinical setting than in some reports from the literature (98). Several factors probably contribute to this discrepancy. According to Cummings and Black scans obtained in carefully controlled research environments might have better reproducibility than scans obtained in other clinical settings (99). Also, claims of greatest precision are often based on repeated measurements of phantoms or bone specimens, or measurements in persons that are repeated within a short time. Persons cannot be repositioned or kept in position as well as phantoms or specimens (99). The study by Ott indicates that when these techniques for measuring bone mineral, including DPA, are applied to persons (more so to osteoporotics) in clinical settings over long periods of followup, the reproducibility is likely to be poorer than has been reported from specialized research centers (99).

Hip. In 1982 Riggs and associates reported the results of another cross-sectional study where DPA was used to assess changes in BMD with aging (20). They studied the effectiveness of DPA to differentiate patients with hip fracture from normal subjects by measuring changes in the BMD of the proximal femur and spine with aging in 123 normal women and 26 women with hip fractures. In normal women, BMD declined linearly during life by 58 percent in the femoral neck and 53 percent in the intertrochanteric region of the femur. By age 75 years, the authors found that virtually the entire population of aging women had BMD values for the proximal femur that were below their arbitrary threshold for hip fracture. This approach put the entire population of elderly women at risk for hip fracture.

According to Riggs, patients with femoral neck and intertrochanteric fractures were indistinguishable from normal women by differences in BMD at either site (20). Although elderly women with hip fractures had lower values for BMD of the contralateral hip than their peers, the decrease was small and the overlap considerable. For the 26 elderly women with hip fractures, the mean Z-score (deviation in standard deviations from age-adjusted predicted mean) for BMD of the femoral neck was only slightly decreased (-0.50 SD, p less than 0.01), and all individual values were within the age-

adjusted normal range. From these data the authors suggested that although lower BMD of the proximal femur may play a partial role, the occurrence of falls may be a major factor predisposing some but not others in the population of aging women to fracture of the hip (20). This may represent a biased group since Riggs and associates studied ambulatory patients who had survived for at least 1 year after the fracture. According to Cummings, the hip fracture patients chosen for the study may represent a subgroup of otherwise healthy patients who may have had greater bone mass than those who died or were unable to walk (95).

Riggs and colleagues found that the values for BMD of the lumbar spine, midradius, and distal radius sites in the patients with hip fractures did not differ significantly from those for age-comparable normal subjects. By contrast, for 27 additional women ages 51 to 65 years, with nontraumatic vertebral fractures, but not hip fractures, the investigators found a low mean Z-score for BMD of the lumbar spine (-1.92 SD, p less than 0.001). According to Riggs, data from previously published studies and the results of their present study suggest the existence of two distinct osteoporotic syndromes. They designated one form, postmenopausal osteoporosis, characterized by an excessive and disproportionate trabecular bone loss that involves a small subset of women (estimated at 5 to 10 percent) in the early postmenopausal period. It is manifested mainly by vertebral fractures. The other form they designated senile osteoporosis. This syndrome was characterized by a proportionate loss of both cortical and trabecular bone that involves essentially the entire population of aging women (usually older than 75 years) and to a lesser extent, aging men. It is associated with hip fractures or vertebral fractures or both (20). More recently, postmenopausal and senile osteoporosis have been referred to as type I and type II osteoporosis, respectively (100).

Bohr and Schaadt used DPA to determine whether a reduction in BMD of the femoral neck and shaft or of the lumbar spine could be demonstrated in women older than 60 years of age with unilateral fractures of the femoral neck (101). DPA bone

mineral density measurements of the lumbar spine, femoral neck, and femoral shaft in 46 women ranging in age from 60 to 89 years with fractures of the femoral neck were compared with that of 38 healthy women in the same age group. The investigators reported that the BMD of the lumbar spine and femoral neck were not significantly reduced in elderly women with fractures of femoral neck as compared with control subjects. They found the BMD of the femoral shaft, a predominantly cortical bone site, significantly reduced in the fracture group (101). Bohr and Schaadt concluded that the high incidence of femoral neck fracture with increasing age might be explained in part by a reduction in BMC, primarily cortical bone mineral. They added, however, that it is likely that other factors that reduce the strength of bone or increase the tendency in older persons to fall such as dizziness, diminished visual acuity, or muscle weakness, are also of importance (101). In his review of hip fracture studies, Cummings reported that Bohr and Schaadt could have missed a true difference in bone mass because of a small sample size (95). According to Cummings, the study by Bohr and Schaadt may have had insufficient power to detect clinically important differences (type II error).

Cummings studied the role of osteoporosis in the occurrence of hip fractures by critically reviewing case-control studies that have compared the bone mass of patients with hip fractures with that of control subjects (95). He found that the case-control studies suggested that the hips of patients with hip fracture are more osteoporotic than those of other persons of similar age who exhibit no fractures. However, the bone mass differences were usually small and overlapping. While some investigators found patients with hip fractures with substantially less bone at various sites, other investigators have found no significant difference in bone mass between patients and controls (95). According to Cummings, the interpretation of these findings is clouded by fundamental problems in the design and reporting of the studies. He found at least one methodologic problem in each of the 15 studies that could have substantially influenced the results. According to Mazess the results of the 15 studies, reviewed by Cummings, may have been

affected by the investigators choosing an inappropriate region to measure (R. Mazess written communication). But if Mazess is correct in suggesting that 15 studies are capable of introducing such variability, then this strongly suggests that objective interpretation of measurements obtained by different investigators might not be possible. He noted that in only one of the 15 studies did they measure the highly trabecular Wards triangle region in the proximal femur. In that study, Vose and Lockwood reported finding patients with hip fractures with substantially less bone mass at the hip than age-matched subjects (95). Investigators were not "blinded" as to the subjects' status.

Aitken has recently claimed that postural instability is the major determinant for femoral neck fracture, and that generalized osteoporosis, rather than being a prerequisite for fracture, merely determines the type of fracture sustained (102). Aitken conducted a prospective study of fractures of the femoral neck over a 12-month period in order to ascertain the relevance of generalized osteoporosis as determined by metacarpal morphometry. A total of 206 women who sustained fractures of the femoral neck after minor trauma were found to have bone mass measurements (not at the fracture site) similar to those of a control population of the same age without fractures (102). Aitken also reported that 16 percent of the women who incurred fractures had bone mass measurements similar to a group of normal premenopausal women. According to Aitken, although osteoporosis may play some part in the etiology of femoral neck fracture, it is important not to overlook the fact that over 98 percent of these fractures result from falls. He cited a study which reported that among patients aged over 50, women fell four times more often than men and that the incidence of falls rose exponentially with age up to 85 years (102). According to Aitken the results of his study and other data suggested that the absence of generalized osteoporosis was no protection against a femoral neck fracture in elderly women who fall.

To determine if osteoporosis was an important underlying cause of hip fractures

Melton and colleagues recently assessed the relationship between bone density and hip fracture incidence among women residing in Rochester, Minnesota (103). In lieu of a prospective study, the investigators obtained hip fracture incidence rates for specific femoral bone density levels by combining hip fracture incidence data covering several decades with a recent survey of BMD in the same population. BMD measurements at the cervical and intertrochanteric regions of the proximal femur were obtained using DPA. Melton found hip fractures were uncommon among women with femoral bone density greater than 1.0 g/cm^2. They also showed that hip fracture incidence rates increase as bone density decreases below the 1.0 g/cm^2 level. The greater than linear rise in hip fracture incidence observed by Melton was consistent with the reports of Bell, Carter, and Hayes that skeletal resistance to fracture varies in a nonlinear fashion with bone density (77,79).

According to Melton and associates, the cervical fracture incidence rate was 4.0 per 1,000 person-years among all women with cervical BMD less than 1.0 g/cm^2. In women with intertrochanteric BMD less than 1.0 g/cm^2 the fracture incidence was a comparable 3.7 per 1,000 person-years (103). Though the authors concluded that bone mass was an important determinant of hip fractures, they suggested that osteoporosis alone may not be sufficient to produce such fractures, since many individuals remain fracture-free even within the subgroups with the lowest bone density levels. The authors believe that osteoporosis is a necessary but not sufficient cause of age-related limb fractures. According to Melton and colleagues, studies that have matched age and sex have, in effect, matched osteoporosis as well. The failure of bone density measurements to clearly distinguish fracture patients from age-matched controls does not necessarily reflect a lack of association between osteoporosis and the risk of fracture. According to Melton, fracture risk depends on the absolute level of bone density (103). Because the

BMD measurements were obtained subsequent to the occurrence of the fractures one might regard this as fracture prevalence data in patients with fractures. It does not necessarily reflect future risk.

In an earlier work, Wicks and associates studied patients in an Australian population with fractures of the femoral neck to identify various risk factors associated with the occurrence of those fractures (104). According to Wicks, 73 percent of the 125 patients had a medical condition which could have caused a fall. The conditions included Parkinson's disease or stroke (25 percent), confusion or dementia (23 percent), cataracts or other eye disease (18 percent), and severe diabetic peripheral neuropathy (7 percent). The investigators also found that patients with fractures did not have less bone in the proximal femur than nonfractured control individuals. Examination of the femoral heads failed to reveal a single case of osteomalacia. Wicks concluded that the single most important factor leading to fracture in this population was injury caused by falls and that such injury was frequently associated with other disease processes (104). They suggested that injury causes the sudden failure of a region of the skeleton, which is fracture-prone, by virtue of mechanical factors associated with loss of bone from that site during the aging process (104).

In a recent report of risk factors for injury after a fall, Melton and Riggs reviewed the relative importance of falls versus bone loss as determinants of fracture risk (105). They pointed out that the majority of falls, even among the elderly, do not result in significant injury. They cited a study of 147 falls in a nursing home where only 1.4 percent resulted in a major injury. In another study cited by the authors of 651 falls in a home for the aged, 18 percent resulted in major injury. There were only eight cases of femoral fractures (105). They and many other investigators agree that bone loss predisposes to fractures (105). Because it has been observed that most hip fractures and other age-related fractures are associated with falls, Melton and Riggs concluded that bone loss is a necessary but not a sufficient cause of most age-related fractures (105).

They also believe that some other factor, possibly falls associated with aging are also a necessary but not sufficient cause of age-related fractures.

Physical Activity. In 1982 Krolner and associates reported using DPA bone mineral density determinations to elucidate whether the axial and the appendicular bone mass of middle-aged women with Colles' fractures differed from that of normal individuals (106). The bone mineral measurements were also used to determine whether bone mass was related to the extent of daily physical activity. BMD of the lumbar vertebrae and distal forearms were determined by DPA in 36 patients, aged 50 to 73 years with previous Colles' fracture. None of the patients had symptoms of vertebral compression fractures, and none had femoral neck fractures. The authors found that seven patients with decreased radiodensity of the vertebral bodies had normal lumbar BMD levels, and four patients with normal x-ray findings had lumbar osteopenia determined by diminished BMD. Based on a mean lumbar BMD difference of only 9 percent, the investigators suggested that skeletons of middle-aged women with Colles' fracture compared to age-matched normals have a disproportionately low trabecular bone mass (106). According to Krolner, the Colles' fracture cases represent an easily definable population who may benefit from prophylactic measures against bone loss. In 1974, after a 10-year followup of 109 women who suffered a radial fracture, Gay reported that a subsequent osteoporotic-related fracture occurred in 33 (30 percent) of the women. He came to a similar conclusion that fractures of the distal radius may be considered as a "marker" for women at risk of subsequent fractures (107). Nordin has recently reported that wrist, spine, and hip fractures are inter-related. The occurrence of one type of fracture usually indicates an increased risk of subsequent fracture at other sites. Nordin found that patients who have had a wrist fracture incur a significantly increased risk of vertebral and/or femoral neck fractures than age-matched controls (19).

According to Krolner, the DPA bone mineral density values of the lumbar vertebrae had a positive correlation to the working capacity (bicycle ergometer) of the patients

(106). Based on that relationship, the investigators suggested that the bone mass of the axial skeleton reflects the extent of the daily physical activity of the patients and that physical activity modulates the rate of bone loss from the vertebrae in middle-aged women. The findings of Krolner and associates suggested that physical exercise be considered as a prophylactic measure against vertebral bone loss in middle-aged women with Colles' fracture. An earlier epidemiological study by Chalmers and Ho also emphasized physcial activity as a possible prophylactic measure against senile osteoporosis (82). Using the incidence of hip fractures as an indication of senile osteoporosis, the investigators found the occurrence of the disease to vary greatly in different racial groups. They also found that the sex incidence also varied. According to Chalmers and Ho these differences could not be attributed to hormonal state or to the amount of dietary intake of calcium. They suggested that the differences in the incidence of hip fractures were due to the living standards of the different countries and the degree of physical activity undertaken by the different populations and sexes (82).

In 1983 Krolner and associates reported on a subsequent study that used DPA measurements of the lumbar spine in women, with a mean age of 61 years, to determine whether physical exercise could prevent involutional bone loss (108). The skeletal effects of physical training were studied in a program involving 27 of the 31 women with previous Colles' fracture of the forearm. The patients were maintained on their usual diets. Calcium supplements were not given and all medical treatment was continued. The investigators found the lumbar spine BMC of the group (N=13) exercising for 1 hour twice weekly for 8 months increased by 3.5 percent, whereas that of the control group (N=14) decreased by 2.7 percent. The authors found the difference between these changes was significant (p less than .005). However, the difference in the measurements between the beginning and the end of the study for both groups was smaller than the precision value of the DPA technique. According to the authors the results suggested that physical exercise can inhibit the involutional bone loss from the axial skeleton in

middle-aged women and lead to a net gain in axial bone mass (108). Krolner concluded, that the data support the hypothesis that involutional bone loss reflects an adaptive response to decreased physical activity, making decreased mechanical stimulation with increased age an important pathogenetic factor in osteoporosis (108).

Similarly, Rogers after reviewing studies on exercise and other factors affecting BMC concluded that the high frequency of osteoporosis in more advanced age may result largely from diminished activity during later life (75). According to Rogers, even in chickens, lack of exercise produces osteoporosis. He suggested that osteoporosis, rather than being caused physiologically by the aging process, is probably brought on by the lifestyles of older people. Also, he would include hormonal imbalance and inadequate diet as other factors which may be involved (75). In a recent cross-sectional study, Kanders and associates examined the relationship between calcium and exercise in 60 normal young women (109). They performed nutritional studies and examined the women's exercise patterns with historical data and prospectively by pedometer. The investigators found that women who had high activity patterns did not have an increased bone mass unless there was evidence that their calcium intake was above the current recommended dietary allowance (RDA). Kanders suggested that it was possible that calcium is an important cofactor for the exercise effect, and in treatment, but that by itself it is not effective.

Cummings and colleagues have reviewed the limited literature regarding the effects of exercise on the bone mass of postmenopausal women (32). They concluded that although some of the studies found a beneficial effect, the role of physical activity is inconclusive and not well studied. The inconclusive results of studies of the effect of exercise on postmenopausal women do not, however, imply that exercise is not important in preventing osteoporosis. Lifelong physical activity has been shown conclusively to increase BMC (110). Recent research in exercise and BMC has focused, however, on the decreased BMC found in young active amenorrheic women (111). In 1984, Drinkwater and

associates reported using DPA bone mass measurements of the vertebrae to determine whether the hypoestrogenic status of 14 amenorrheic athletes was associated with a decrease in regional bone mass (112). They found amenorrheic runners had 14 percent less vertebral mineral based on BMD measurements than a matched group of regularly menstruating runners. According to the investigators the BMD of the amenorrheic women, who were in their mid-20's, corresponded to that of 50-year-old women, as did their endogenous estradiol levels. Drinkwater and colleagues concluded that the results of the study did not negate the value of exercise in maintaining skeletal integrity but rather pointed out the interaction between estrogen and exercise in their effect on specific skeletal areas (112).

In a recent Australian study, Pocock and coworkers demonstrated that BMD of the femoral neck and lumbar spine in women is significantly related to variations in the level of physical fitness (113). In their study of 84 normal Caucasian women, femoral neck and lumbar spine BMD measurements by DPA were significantly correlated with fitness (predicted maximal oxygen uptake) as well as age and weight. In the 46 postmenopausal subjects, fitness was the only significant predictor of femoral neck BMD. Both weight and fitness predicted the lumbar BMD (113). According to the authors, physical fitness in this normal group accounted for 23 percent of the variation in femoral neck BMD. Pocock suggests that increased physical fitness may increase bone mass at the sites of clinically important fractures in osteoporosis and may be a useful modality in prevention of fractures at these sites (113).

Safety of DPA

Radiation exposure is always a concern with any procedure utilizing radiation sources. And while DPA is a noninvasive technique, it does involve patient exposure to radiation. Dosimetry measurements performed in the laboratory of Wahner and

colleagues at the Mayo clinic showed that a dual photon scan of the lumbar spine with a 1.5 Ci Gd-153 source gave a peak skin dose of 18 mrad with a scatter dose to the eyes of 5 mrad and to the gonads of 8 mrad (1).

Other investigators have reported similar findings. According to Mazess, the radiation dose from dual photon measurements is under 15 to 20 mrem (13). Krolner and Pors Neilsen calculated a skin dose over L3 as 10 mrad for DPA (14). They found the total dose to the ovaries to be less than 2 mrad, and the bone marrow dose less than 0.2 mrad. The radiation exposures are as low as those received from any diagnostic x-ray or nuclear medicine procedure in use today. For comparison, a typical chest x-ray exposes a patient to 20 to 40 mrad. Some investigators, such as Krolner and Pors Nielsen ensure correct positioning of the patient over the source by radiological examination and palpation (14). Besides vertebral levels, the radiograph identifies fractures and osteophytes. These routine spinal roentgenograms raise the total radiation exposure of this technique. A lumbar spine series involves an exposure of 600 mrad, with a large percentage of gonadal radiation (2).

Recently, the Department of Radiology at The Johns Hopkins University School of Medicine assessed the patient dose delivered by a dual photon absorptiometer. The system consisted of an encapsulated 1.0 Ci source of Gd-153 located 9 cm below the patient examination tabletop. Patient dose which is highest at the skin entrance surface is dependent on scan speed and line spacing. The values measured by the Department of Radiology were 5.3 mrad for the standard scan (intermediate dose) and 1.6 mrad for the survey scan (least dose). According to the investigators, these are exceptionally low-dose values that are consistent with the manufacturer's specified skin dose of less than 30 mrem. The Department of Radiology at the Johns Hopkins University School of Medicine concluded that the radiation risk associated with doses of this magnitude can be considered to be negligible (T. Beck, written communication).

DPA operators/owners need to check the current status of Nuclear Regulatory

Commission (NRC) or State licenses, which usually have to be amended before the manufacturer or other supplier will ship the Gd-153 source. Under new NRC regulations, DPA may be used by Group VI licensees whose physicians complete 8 additional hours of training (15).

DISCUSSION

The measurement of bone mass is obviously an important tool in the study of metabolic bone diseases, particularly osteoporosis. Much current interest is centered on the recent technique of DPA. This interest is a result of the applicability of the DPA technique to the spine and hip, sites of important osteoporotic fractures. Presently, DPA has utility in clinical research in studying the natural history of primary osteoporosis in large populations and in evaluating preventive and therapeutic regimens (as in the dose-response effect of estrogen). While DPA is capable of measuring bone mineral density and has advanced our knowledge of bone disease in general, its role in the management of the individual patient is uncertain.

It would be advantageous to be able to prospectively identify those women who are at risk of developing osteoporotic fractures in order to direct treatment to those at greatest risk. As a screening test for osteoporosis in perimenopausal women, this application of BMC measurements is suggested to have potential utility. Once established as a screening tool it could provide a rational basis for treating afflicted individuals or preventing osteoporosis. Although the technology to noninvasively measure bone mineral density with DPA is currently available, the ability of such measurements to identify those individuals who will subsequently have fractures has not yet been shown. There has been no prospective study demonstrating that the noninvasive measurement of bone mass can identify which patients will suffer hip, Colles', or vertebral fractures. In their 1984 review of the various noninvasive methods for bone

mineral measurements, Wahner and colleagues concluded that there was no optimal technique available for mass screening for early osteoporosis (1). The American College of Physicians' Health and Public Policy Committee recently reviewed various radiologic methods for measuring BMD, including DPA, but made no recommendation about the use of these tests in routine screening for osteoporosis (2). To predict an individual's fracture risk it would be necessary to study large population cohorts of women from various age groups and relate their specific bone measurements to prospective fracture incidence data collected over a sufficient period of time. From fracture incidence data the risk ratio could provide an estimate of risk. This type of study would enable investigators to determine whether or not it is possible to predict the risk of fracture from the initial bone density measurements. It is important to remember that a patient's bone mass measured before or at menopause may indicate whether she has low or high bone mass for her age. It will not necessarily indicate whether she will fall into the high-risk group 10 to 15 years later, when fractures begin. The contribution of bone mass at maturity versus subsequent rates of loss is still largely unknown (29). Moreover, there exists a controversy regarding the selection of a screening site. While many investigators consider BMD measurements of the actual fracture site (spine and hip) paramount, others argue that fracture risk prediction and screening can be accomplished by appendicular (trabecular) BMD measurements.

According to Grubb and coworkers, measurements of distal radius (5 mm site) bone density establish an appendicular site at which bone density losses are closely correlated with vertebral bone loss in both patient and normal populations (114). Grubb suggests that measurements at the distal radius are as good as the measurements at the spine itself for predicting vertebral fractures. This is in contrast to the reported low correlation in patient studies of bone density of radial sites to lumbar vertebral density (3,26). According to Mazess, 30 to 40 percent of patients at risk will be missed with measurements on the distal radius or the os calcis (13). In disagreement with Mazess

regarding the poor predictive values from SPA measurements, Wasnich and colleagues believe that fracture risk prediction and screening can be accomplished by appendicular (trabecular) BMD measurements (115). Recently, they found the os calcis as a suitable site for screening and the single, most clinically useful site for routine risk evaluation of perimenopausal women. However, their risk prediction data does not include any vertebral fractures incidence. Only vertebral fractures prevalence and only one hip fracture are included.

Initially, researchers used DPA bone mineral measurements in attempts to find a specific level of bone density that clearly distinguished patients with vertebral osteoporosis from those without. Those studies, including the work of Riggs and associates and Krolner and Pors Nielsen, have been largely unsuccessful (3,86). Riggs et al. found that in a comparison of spinal BMD of patients with osteoporosis with that of an age- and sex-adjusted normal range, only about 60 to 70 percent of patients with osteoporosis have values below the fifth percentile of normal (3). Krolner and Pors Nielsen found the overlap so large between patients with clinical spinal osteoporosis and age-matched normals, that the majority of patients were indistinguishable from the age-matched normals (86). Cohn and associates used a multiple logistic regression model to discriminate osteoporotic women on the basis of spinal BMD determined by DPA (116). They reported a correct classification in only 55.6 percent of the total osteoporotic subjects in the 50-59 year age group. According to Wahner, no clear bimodality exists in the distribution of bone mineral in normal persons and in patients with osteoporosis when the latter group is defined as those persons in whom spinal compression fractures are present (117). Because of the considerable overlap between the groups, and the fact that many individuals with low bone mass do not sustain fractures, Kanis concluded that bone mass may not be the major determinant of fracture and other factors such as trauma need to be considered (118).

Data from a recently published abstract suggest that bone mass is an important

determinant of vertebral fractures (119). From a population-based study of the relationship between osteoporosis and vertebral fractures Melton and colleagues at the Mayo Clinic, calculated the prevalence rate of vertebral fractures at various levels of spinal bone mineral. They found that below a bone mineral threshold of 1.40 g/cm^2 the prevalence rate increased as spinal bone mineral decreased. The possibility of a dose-response relationship would strengthen the argument for a causal relationship between bone mineral and vertebral fractures (119). While there is ample evidence to suggest that people with fractures have low bone mass,a fracture incidence data are still needed to determine the risk ratio as an estimate of future risk.

According to Cummings and colleagues, the assumption that people with the lowest bone mass are the most likely to suffer fractures appears to hold true for vertebral fractures (32). Investigators such as Riggs and colleagues who were unable to clearly distinguish patients with vertebral osteoporosis from those without, consistently found less trabecular bone, on average, in women with vertebral fractures (3). From their study of risk factors for injury after a fall, Melton and Riggs concluded that a reduction in spinal bone mass is the primary determinant of who will suffer vertebral fractures (105). According to Cummings, these findings suggest that DPA measurements of vertebral bone mineral density may be a useful way of identifying women with the greatest risk of vertebral fractures (32). The authors recommend that the use of DPA for predicting vertebral fractures should be tested in prospective studies before they are advocated for widespread use or before they are employed as a basis for recommending specific types of preventive therapy (29). While other investigators agree that, ideally, the accuracy of prediction should be demonstrated prospectively, they have attempted to find better ways of determining the magnitude of risk from cross-sectional studies in the absence of prospective studies.

It is important to consider that the ultimate benefit (fracture risk identification and guide to treatment) of early diagnosis of spinal osteoporosis by DPA measurements

will depend on the clear establishment of safe and effective treatments. While it has been shown that postmenopausal estrogen therapy currently appears to be the most effective single method for preventing bone loss and fractures in women, its use is not without risk (32). In determining whether estrogen treatment should be initiated, the physician and the menopausal patient must make a judgment based on a reasonable assessment of the relative benefits and risks to the individual patient. Varied symptoms are associated with and have been attributed to the menopause. Moreover, proposed uses for estrogen therapy in the postmenopausal period have included the prevention of coronary heart disease but this use remains controversial (48). According to Cummings and associates, et al. there is mounting evidence that estrogen therapy protects against coronary heart disease, but Haber believes the issue must currently be regarded as unsettled (32,48). They both agree that if additional evidence confirms that estrogen substantially protects against coronary heart disease, then preventing coronary heart disease would become the major indication for long-term estrogen therapy (32,48). However, it is known that postmenopausal estrogen therapy increases the risk of endometrial cancer (56). In addition to the problems of carcinoma of the uterus and possibly the breast, estrogen replacement has been associated with an increased incidence of gallbladder disease and hypertension (46). According to Johnston, problems with patient compliance and acceptance, particularly with estrogen and progesterone combinations which induce repeated episodes of bleeding related to drug withdrawal, should be noted. Cummings indicates that many of the patients on estrogen therapy discontinue the therapy within a year. There is also a high percentage of hysterectomies in this group as well, he adds (personal communication). In deciding whether to use estrogens after menopause, women and physicians may consider other factors to be at least as important as prevention of osteoporotic fractures.

The epidemiology and natural history of vertebral fractures have not been well described. Vertebral fracture may be classified either as partial vertebral deformity,

which is the partial loss of height of the anterior edge or middle section of a vertebral body, or a complete compression fracture, which is the collapse of the entire vertebral body (32). Kleerekoper and associates reviewed the various reports of vertebral fracture incidence and found that in white women over age 45 who have normal spine films, the annual incidence of complete vertebral fractures has been estimated to be about 2.3 per 1,000 women and about twice as high in women with apparently reduced spinal density (120). From a spine x-ray survey of elderly women, Marshall and associates reported that 62 percent of the 50 women between ages 65-75 showed some degree of vetebral deformity (121). However, they found that only 6 percent had collapsed vertebrae. Jensen and associates found that 5 percent of 70-year-old Danish women had complete compression fractures and an additional 18 percent had partial deformities of at least one vertebra (122). Though vertebral body deformities are prevalent in the elderly, more research is needed to determine how much pain or disability is attributable to this manifestation of osteoporosis.

Vertebral fractures occur more or less spontaneously or as the result of very minimal trauma in the course of daily living. Patients with spinal osteoporosis display considerable individual variation both in the severity of their symptoms and in subsequent fracture history. It is well recognized that many vertebral fractures are asymptomatic and are often detected only incidentally on chest or spine films long after they have occurred (120). When pain occurs, it usually subsides after several days to weeks, and by 4 to 6 weeks patients may be fully ambulatory and able to resume their normal activities. Patients with vertebral fractures are usually managed with rest and nonnarcotic analgesics. Most patients have disappearance or marked diminution of pain between episodes of vertebral body collapse. There may be intervals of several years between fractures (123). Recurrent episodes of vertebral fracture lead to progressive loss of height and increasing deformity that can cause a kyphotic "dowager's hump" posture and may lead to chronic back pain (32). A relatively small proportion of patients

develop the full crush fracture syndrome with wedging of the vertebral body and disruption of the cortex (124). While compression fractures (collapse fractures) of the vertebrae can produce severe pain, Cummings and coworkers believe that the amount of back pain and disability attributable to most vertebral fractures is unknown (32). According to Cummings there is insufficient information of the morbidity and functional consequences of vertebral fractures to justify routine screening of all postmenopausal women for that condition (99).

Recently, investigators have also applied the DPA technique of bone mineral density measurements in studies to distinguish those with a high risk of hip fracture from those with a low risk (20,101,103). Two related issues have emerged in this area of study. The first pertains to the role of osteoporosis in the occurrence of hip fractures. Investigators such as Melton and colleagues believe that age-related bone loss (osteoporosis) is a major determinant of hip fracture incidence (103). This assumption is based on the decline of BMD with age, its correlation with bone strength, and the occurrence of fractures as a function of bone strength as well as the degree of trauma. The failure of DPA bone density measurements to clearly distinguish fracture patients from age-matched controls has prompted other investigators to conclude that in addition to low bone mass, which is nearly universal among the very elderly, other factors are important in determining who will experience a hip, or Colles' fracture. (95,101,102,104). According to Bohr and Schaadt, the high incidence of hip fractures with increasing age might be explained in part by a reduction in BMC, but they concluded that other factors that reduce the strength of bone or increase the tendency to fall are also of importance (101). Wicks concluded that the single most important factor leading to fracture in the Australian population studied was injury caused by falls and that such injury was frequently associated with other disease processes. Wick and colleagues suggested that injury causes the sudden failure of a region of the skeleton which is fracture-prone by virtue of mechanical factors as well as the loss of bone from that site during the aging

process (104). Since most hip and Colles' fractures occur as the result of falls, Cummings and colleagues suggested that the tendency to fall or the inability to protect oneself from injury during a fall may be important in determining who will fracture a hip or wrist. They included microfractures and bone geometry as other characteristics of bone that may be important in determining the susceptibility of a bone to fracture (32).

Although the recent findings by Melton and associates show that it is reasonable to consider bone mass as an important determinant of the age-related hip fracture incidence, the findings did not establish the ability of DPA bone mass measurements of the hip to distinguish those with a high risk of hip fracture from those with a low risk (103). This second issue remains controversial and unproven. According to Melton, the failure of bone density measurements to clearly distinguish fracture patients from age matched controls does not necessarily reflect a lack of association between osteoporosis and the risk of fracture. If bone mass does not differ in patients with hip fractures and other elderly persons, then measurements of bone mass would be of little or no value in predicting which elderly patients are likely to incur a hip fracture. Measurements of bone mass might not be a reliable way to identify those patients at greatest risk of hip fracture. According to Melton and associates, more than 85 percent of the women 65 years and older in the general population are at risk because their BMD levels are less than 1.0 g/cm^2 (103). That being the case, treatment methods could be undertaken without the use of individual DPA bone mass measurements. It is not certain what value DPA measurements of bone will have in identifying women at greatest risk of hip or Colles' fractures. This application of the DPA method needs further clinical investigation before it is advocated for widespread use or before it is employed as a basis for recommending specific types of preventive therapy (29).

The use of DPA bone mineral measurements as an index of fracture risk is based on the assumption of an inverse correlation between the occurrence of fractures and the amount of bone mass. Although a high correlation exists between compression strength

and mineral content, other factors provide resistance to compressive stress. Physical activity may exert an effect on the trabecular structure of bone apart from its mineral composition (75). According to Bell and others, vertebral strength depends not only on BMC, but also on the trabecular structure of the vertebral body, something that cannot be measured separately by DPA (77,80).

According to Ruff and Hayes, the geometric distribution of bone tissue, together with its material properties, is critical in determining the structural strength and rigidity of the whole bone. They conclude that the most critical skeletal age changes may not be those that occur in BMC or BMD, but rather geometrical properties and material characteristics other than density. The investigators suggest that this may explain the failure of DPA measurements to clearly distinguish between high- and low-risk fracture risk individuals (80).

Although the DPA method makes it possible to obtain bone density measurements from the axial skeleton, it cannot measure purely trabecular bone. The DPA technique measures integral vertebral bone consisting of a mixture of low-turnover compact bone in the cortex, pedicles, transverse processes, and vertebral end plates. It also measures high-turnover cancellous bone in the vertebral body (55). The dense outer shell of the vertebrae (cortex) has been found to make a substantial contribution of 30 to 40 percent to the DPA measurement (7). The sensitivity of a technique that measures an integral of compact and cancellous bone may be low due to inclusion of low-turnover compact bone and extra-osseous material such as osteophytes or aortic calcification. This may place DPA measurements at a theoretical disadvantage if the measurement of purely trabecular bone provides a better method of quantifying change in a metabolic bone disease than does an integrated measure of both cortical and trabecular bone (2).

The recent findings of Hayes and Gerhart that the cortical shell contributes very little to the overall strength of the vertebral body would support the need to distinguish between cortical and trabecular components in the spine (72). Using quantitative

computed tomography, Hayes and Gerhart were able to predict the apparent density (g/cm^3) of trabecular bone in the vertebral centrum. They found that the vertebral density and cross-sectional area could be used to predict vertebral load failure (fracture) under test conditions. Hayes and Gerhart recommended clinical studies to determine whether these measurements will provide a useful tool for identifying individual patients at increased risk for spontaneous vertebral fracture (72).

A second clinical application proposed for the DPA technique has been the use of DPA measurements to monitor the effectiveness of treatment. This could apply to the treatment of individuals with established osteoporosis and also to those receiving preventive regimens. According to Lindsay, there is no current evidence that serial bone mass measurements need to be performed in patients receiving adequate estrogen, since studies indicate that more than 90 percent of these patients will be protected against bone loss (34).

Before the DPA technique is considered for general clinical practice it must be determined whether the precision of the technique is adequate to measure bone mass changes in time in one individual. The factors which determine the ability to detect changes in individual patients depend on the confidence in the measurement (confidence being inversely proportional to the coefficient of variation), the rate of change to be measured, and the duration of the study (125). The reproducibility of DPA measurements has been documented by a number of researchers, who found that the coefficient of variation was less than 5 percent (11,12,14,36,63). While some investigators have reported a 2 and 3 percent coefficient of variation for DPA, these calculations of reproducibility will tend to underestimate the reproducibility of the technique applied to individuals in nonresearch settings over prolonged periods of followup. Nevertheless, according to Kanis, a patient would have to be studied for 4 to 8 years to detect significant bone loss if the rate of bone loss was 1 percent per year and the coefficient of variation was between 2 and 5 percent (125). Age-related bone loss in the spine is about

1 percent per year in normal postmenopausal women. If the rate of bone loss was greater (2-3 percent), significant bone loss could be determined in less time, but probably not less than in 3 years which would still make the DPA technique unsuitable for serial measurements. According to Johnston, a high degree of precision in the bone mass measurement is necessary for repeated measurements of small degrees of change, and such precision is difficult to attain, even in the best controlled laboratory environment (29). According to Ott and others, until more sophisticated methods of improving the reproducibility are developed, these tests will be valuable in studying large groups of patients, but will not be as helpful in individual cases (62,91,98).

Advice and comments concerning the safety and clinical effectiveness of DPA have been sought from groups and organizations within and outside of the Federal Government. An announcement of this assessment appeared in the Federal Register notice of October 26, 1984 (126). On June 20, 1985, before the Subcommittee on Aging of the Committee on Labor and Human Resources, United States Senate, the National Institutes of Health (NIH) through the National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases (NIADDK) stated that it was a research imperative to develop methods for measuring bone density. Besides diagnosis these methods should enable early identification of bones most vulnerable to fractures and provide a measure by which to evaluate the effectiveness of new therapies (40). According to NIADDK while several noninvasive methods for measuring bone density have been developed, and DPA is among the promising techniques, presently, no existing techniques can adequately discriminate early in the disease process between normal and osteoporotic individuals (40). The NIADDK recommended long-term clinical trials of various specific patient populations in statistically significant numbers 1) to provide estimates of risk, and 2) to determine the optimal regimen to prevent bone loss and fracture.

At that same hearing on osteoporosis, the National Institute on Aging (NIA) stated that there is a need for better ways of identifying persons at high risk of fracture, since

those individuals could be expected to benefit most from treatment (37). Because it is still unclear which persons would benefit from which treatments and at what dosages and schedules, additional research and clinical trials are needed to develop the current state of knowledge regarding prevention and treatment of osteoporosis for specific individuals or groups. The American College of Obstetricians and Gynecologists (ACOG), in their statement before the Subcommittee on Aging indicated that presently, there are no tests to identfy which women are at risk for developing osteoporosis (28). The College recommended that the physician determine bone loss by aborptiometry in their diagnosis of osteoporosis. The College also recommended estrogen replacement therapy as the most effective way of slowing bone loss for those women who are at risk of developing osteoporosis (28).

Prior to the June 20, 1985 Senate Hearing on osteoporosis, the NIH Consensus Development Conference on Osteoporosis was held on April 2-4, 1984 (33). At that conference data were presented which showed that none of the noninvasive techniques for measuring bone mass were able to discriminate significantly between normal and osteoporotic individuals. None of the techniques for currently quantitating bone mass, including DPA, can definitively predict the individual at significant risk for osteopososis prior to the occurrence of fracture. The Consensus Panel concluded that osteoporosis was a major public health problem requiring additional research on the biology of human bone, defining individuals at risk, and developing safe, effective, low-cost strategies for fracture prevention. The panel recommended studies to develop accurate, safe, inexpensive methods for determining the level of risk for osteoporosis in an individual, to establish early diagnosis, and to assess the clinical course of the disease (36).

According to the Food and Drug Administration (FDA), DPAs are being marketed under Section 510(k) of the Medical Device Amendments to the Food Drug and Cosmetic Act. FDA has found DPA sufficiently similar in terms of safety and effectiveness to be considered "substantially equivalent" to single photon absorptiometers that were being

marketed prior to enactment of the Medical Device Amendments of May 28, 1976 to the Food, Drug and Cosmetics Act. Bone densitometers have been proposed for classification as Class II (Standards) devices.

Through its Clinical Efficacy Assessment Project, The American College of Physicians published a policy statement on radiologic methods to evaluate BMC in June 1984 (2). The College concluded that all methods of BMC measurement result in significant overlap between diseased and normal populations. They stated that the ultimate benefit of early diagnosis of metabolic bone disease will depend on the clear establishment of safe and effective treatments. The College believes that measurements of bone mineral content have greater utility in following the course of a disease process or assessing the effect of therapy than in establishing a diagnosis. According to the College neither CT nor DPA accurately predicts tendency to fracture and the relative value of these two techniques has not been completely established.

The Orthopaedic Research Society strongly supports continued research in the development of noninvasive techniques for understanding metabolic bone disease. The Society suggested that the research examine the precision, accuracy, sensitivity, cost, availability, and relevance to underlying metabolic bone disease of each of the techniques currently under study. The Society also suggested a workshop directed at the understanding of the surveillance of bone disease.

It is the opinion of the Society of Nuclear Medicine that bone mineral density studies should become part of the workup of patients with osteoporosis and that DPA is the technique of choice at this time. According to the Society, information on BMD provided by DPA is needed to identify patients in need of treatment for osteoporosis. They suggest it also be used to monitor patients for treatment effectiveness, to exclude patients resistant to a specific treatment regimen, and to identify the end of the effectiveness of the treatment.

A response from the American College of Nuclear Physicians concluded that

osteoporosis can be detected at its earliest stages by DPA measurements of the vertebral spine. According to the College, to postpone or prevent the problems of insidious progressive osteoporosis, early detection and screening by bone mineral analysis of the lumbar spine by DPA is critical. The College also recommends the use of repeated measurements by DPA to give information on the rate of bone loss, allow assessment of the activity of the disease, and determine the effect of the therapy.

SUMMARY

DPA is a noninvasive radiologic technique used to measure BMD in the lumbar spine and hip. The DPA technique for measuring BMD is based on measurements of radiation transmission of two separate photon energies through a medium consisting of two different materials, bone and soft tissue. The difference in photon absorption between bone and soft tissue allows for the calculation of the total bone mineral found in the scan path. With DPA the amount of bone mineral measured represents the total integrated mineral (cortical and trabecular) in the path of the beam.

The measurement of bone mass is obviously an important tool in the study of metabolic bone diseases, particularly osteoporosis. While DPA is capable of measuring bone mineral density and has advanced our knowledge of bone disease in general, its impact on the management of the individual patient is equivocal. Although the technology to noninvasively measure bone mass with DPA is currently available, the ability of such measurements to predict who is at risk of subsequently developing fractures (screening) has not yet been shown. Moreover, there exists a controversy regarding the most appropriate bone site to use for screening patients.

Studies with DPA that attempted to find a specific level of bone density that distinguished patients with vertebral osteoporosis from those without have been largely unsuccessful. Recent studies to distinguish those with a high risk of hip fracture from those with a low risk have also been unsuccessful. While recent studies indicate that a reduction in spinal bone mass is the primary determinant of who will suffer vertebral fractures, other studies have prompted investigators to conclude that in addition to low bone mass, other factors such as trauma or falls are important in determining who will experience a hip or Colles' fracture.

DPA measurements of vertebral bone mass may be a useful way of identifying women with the greatest risk of vertebral fractures, but it is not certain what value DPA

measurements of bone will have in identifying women at greatest risk of hip or Colles' fractures. These methods for predicting fractures should be tested in prospective studies before they are advocated for widespread use or before they are employed as a basis for recommending specific types of therapy.

A second clinical application proposed for the DPA technique has been the use of DPA measurements to monitor the effectiveness of treatment. A high degree of precision in the bone mass measurement is necessary for repeated measurements of small degrees of change, and such precision is difficult to attain. Presently, the suitability of the DPA technique for monitoring the effectiveness of treatment is controversial.

The ultimate benefit of early diagnosis of osteoporosis also depends on the clear establishment of safe and effective treatments. While treatment with estrogens has been found to be effective, its risks and benefits need to be assessed. Most other therapies are considered investigational.

Investigators have not distinguished between the use of DPA in clinical research and its role in day-to-day practice. DPA needs to undergo further clinical investigation before it can be recommended for general clinical use.

According to the FDA, DPAs are allowed to be marketed pursuant to Section 510(k) of the Medical Device Amendments. FDA has found DPA sufficiently similar in terms of safety and effectiveness to be considered "substantially equivalent" to single photon absorptiometers that were being marketed prior to enactment of the Medical Device Amendments of May 28, 1976 to the Food, Drug and Cosmetics Act.

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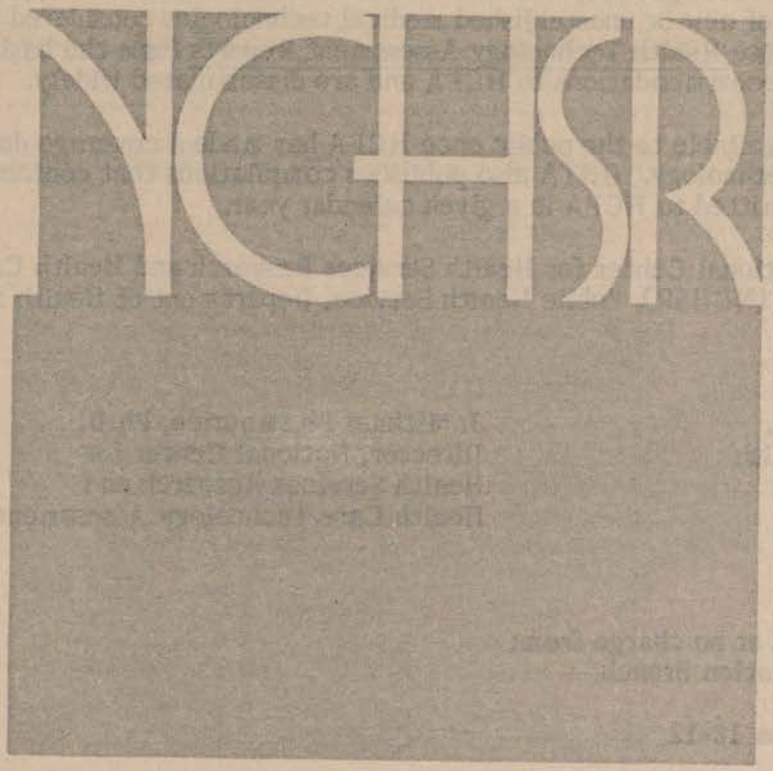
126. Federal Register 1984; 49(209):43115.

APPENDIX III - Public Health Service Assessment of Radiographic Absorptiometry for Measuring Bone Mineral Density - 1987

Health Technology Assessment Reports, 1987

Radiographic Absorptiometry for Measuring Bone Mineral Density

Number 2



NATIONAL CENTER FOR HEALTH SERVICES RESEARCH AND HEALTH CARE TECHNOLOGY ASSESSMENT

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service

FOREWORD

The Office of Health Technology Assessment (OHTA) evaluates the safety and effectiveness of new or unestablished medical technologies that are being considered for coverage under Medicare. These assessments are performed at the request of the Health Care Financing Administration (HCFA). They are the basis for recommendations to HCFA regarding coverage policy decisions under Medicare.

Questions about Medicare coverage for certain health care technologies are directed to HCFA by such interested parties as insurers, manufacturers, Medicare contractors, and practitioners. Those questions of a medical, scientific, or technical nature are formally referred to OHTA for assessment.

OHTA's assessment process includes a comprehensive review of the medical literature and emphasizes broad and open participation from within and outside the Federal Government. A range of expert advice is obtained by widely publicizing the plans for conducting the assessment through publication of an announcement in the Federal Register and solicitation of input from Federal agencies, medical specialty societies, insurers, and manufacturers. The involvement of these experts helps assure inclusion of the experienced and varying viewpoints needed to round out the data derived from individual scientific studies in the medical literature. After OHTA receives information from experts and the scientific literature, the results are analyzed and synthesized into an assessment report. Each report represents a detailed analysis of the safety, clinical effectiveness, and uses of new or unestablished medical technologies considered for Medicare coverage. These Health Technology Assessment Reports form the basis for the Public Health Service recommendations to HCFA and are disseminated widely.

Individual reports are available to the public once HCFA has made a coverage decision regarding the subject technology. OHTA also publishes compilations that contain all assessment reports submitted to HCFA in a given calendar year.

OHTA is part of the National Center for Health Services Research and Health Care Technology Assessment (NCHSR), Public Health Service, Department of Health and Human Services.

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ABSTRACT

Radiographic absorptiometry (RA) is a noninvasive radiologic technique involving a computer-assisted densitometric measurement of the x-ray image of bone. Mineral density analyses are based on phalangeal scans of pairs of exposed radiographs with an aluminum alloy reference wedge included in the image field. The technique can achieve a precision of 2-4 percent with a radiation dose of 10-100 mrad. While RA is capable of measuring bone mineral density and has advanced our knowledge of bone disease in general, its impact on the management of the individual patient is equivocal. Studies with RA that attempted to find a specific level of BMD that distinguished patients with osteoporosis have been largely unsuccessful. Also, the ability to predict who is at risk for subsequently developing fractures of the spine and hip has not yet been shown. Studies with RA measurements show a large scatter in the data that precludes a reliable prediction of bone mineral at one site based on measurements at another site in a particular individual. Radiographic absorptiometry needs to undergo further clinical investigation before it can be recommended for general clinical use.

PUBLIC HEALTH SERVICE REASSESSMENT OF RADIOGRAPHIC ABSORPTIOMETRY FOR MEASURING BONE MINERAL DENSITY

1987

INTRODUCTION

Radiographic absorptiometry (RA) is a noninvasive radiologic technique involving a computer-assisted densitometric measurement of the x-ray image of bone (1). Mineral density analyses are based on phalangeal scans of pairs of lightly exposed radiographs taken at different kilovoltage and exposure settings. An aluminum alloy reference wedge, which allows the computer to compensate automatically for any between-film differences in exposure, kilovoltage (kVp), filtration, film type, and film processing conditions, is included in the image field. A computer-controlled optical densitometer scans the x-ray image with a light beam. A photocell converts the light, modulated by the images, to an electrical signal that is digitized and sent to the computer for analysis and determination of bone mineral density (BMD). The system is designed to compare the findings from the patient's hand-wrist radiographs with normal values of phalangeal bone size and BMD determined from age-and sex-matched controls (2). In RA, bone mineral mass is determined and expressed as BMD (mineral concentration) by accounting for bone size (bone image area). Measurements of bone mineral by RA have been used to provide an index of skeletal status, predominantly in the assessment of renal osteodystrophy and osteoporosis.

Described in detail in 1979, RA is considered a simple, widely available, and relatively inexpensive bone mineral measurement technique (1). Similar techniques, where the optical density of bone on x-ray films is obtained under standardized conditions and used as a quantitative indicator of bone mineral content (BMC), have been used for many years (3). RA was developed in an attempt to circumvent some of the inherent limitations in the use of an x-ray image to measure BMD. Methods that measure BMD from an x-ray image have been referred to as photodensitometry, aluminum equivalency, radiographic densitometry, and radiographic absorptiometry.

According to some investigators, these methods have technical problems relating to radiographic technique and methods of film processing that limit their use (4,5). However, according to the position paper on radiologic methods to evaluate BMC from the Health and Public Policy Committee of the American College of Physicians, recent advances such as radiographic absorptiometric techniques may have reduced these problems (6).

The technique of RA utilizes image scans of the second, third, and fourth phalanges from two lightly exposed left-hand radiographs, one taken at 40-50 kVp, and the other at 50-60 kVp. An aluminum alloy reference wedge is radiographed alongside the index finger. Radiographs can be taken on any type of film without intensifying screens and with any x-ray machine. Charges for a pair of hand radiographs commonly range from $96-$160 and take from 5-10 minutes.

Using a computer-controlled scanning microdensitometer the aluminum alloy reference wedge image (on the x-ray film) is scanned. From the optical density readings (grey level) of the wedge image, the linear absorption coefficient of the wedge, and the background optical density due to film base emulsion, chemical fog and scatter are determined (2). Using the computer, these quantities are used to determine correction terms for differences between films due to different x-ray machines, kilovoltage, prefiltrations and exposure settings, film types, and film processing.

Subsequently, the scanning process is repeated for each phalangeal bone image. The scanning microdensitometer transmits a narrow beam of light through the film, traversing each bone image slice by slice. Successive parallel paths across the image of the whole phalangeal bone are scanned. Typically, 25-30 parallel scans, 1 mm apart, cover an adult middle phalangeal bone with about 200 data points per scan line (2). At the end of each scan line, the edge detection algorithm of the computer recognizes the bone edges, measures the local bone width, and generates a soft-tissue baseline. According to Colbert and Bachtell, this method computes mostly phalangeal bone mineral mass because the effects of soft tissue and matrix are substantially removed by the computation. The computer calculates the bone mineral (area density) by taking the ratio of mass to area from the densitometer's optical density readings and the bone width values (2). The mineral mass is expressed in computer units rather than in grams. The entire process is repeated for the second radiograph in order to check the results from the first analysis. The two films are taken at deliberately different kilovoltages and usually at a different milliamperage (ma) exposure in order to determine if the wedge scan and computer calculations compensate adequately for differences in radiologic technique and film processing procedures (7). The analyses are rejected if between-film disagreements greater than $\pm$ 3 percent (from their mean) can not be explained by a known system or operator error on one of the films. Otherwise, the average mineral density and bone area obtained from both radiographs are used for evaluating the patient.

The phalanges are a mixture of compact and cancellous bone, and RA does not reveal the distribution of mineral within the bone. Using RA, the bone mineral measured reflects the total integrated mineral (cortical and trabecular) in the path of the photons. Similar to the process of single photon absorptiometry (SPA), RA is limited to

measurements of appendicular bone because tissue composition surrounding the bone has to be minimal. Corrections cannot be made by this instrument for bones embedded in thick soft tissue (3).

Although the radius and other appendicular bones may be studied, the use of RA has been confined to the phalanges. Currently, the cost of analysis of a pair of films is approximately $65. A comparison of RA costs with those of other techniques for measuring bone mineral can be found in the costs section of the Office of Health Technology Assessment (OHTA) assessment for dual photon absorptiometry (DPA) (8).

Radiation exposure is always a concern with any procedure utilizing radiation sources. While RA is a noninvasive technique, it does involve patient exposure to radiation. According to the position paper on radiologic methods to evaluate BMC from the Health and Public Policy Committee of the American College of Physicians, RA involves minimal radiation exposure (up to 100 mrad), with negligible bone marrow or gonadal radiation (6). According to Chesnut, less than 10 mrem of radiation exposure are associated with the RA technique (9).

The physiologic information provided by measurements of BMC have been under extensive investigation during the past 20 years. Bone mass measurements have been a valuable research tool for clinical investigations attempting to elucidate the pathogenesis of metabolic bone diseases. Investigators have sought to determine the clinical significance of bone loss with aging and bone disease and its relationship to an increasing risk of fractures among the elderly. This growing interest in a better understanding of the nature and degree of changes in BMC with age, osteoporosis, and with metabolic bone disease in general, has prompted the development of nonivasive measurement techniques for assessing BMC (3). A variety of such techniques in addition to RA are presently available. They include: radiogrammetry, SPA, computed tomography (CT), and DPA.

Bone mineral measurements using RA have been utilized mostly in the management of patients with chronic renal failure and for osteoporosis detection in women (7). This report will reassess the effectiveness of RA bone mineral measurements on the clinical outcome of patients being evaluated and treated for osteopenic bone diseases. This reassessment seeks to ascertain the place of bone mineral evaluation by RA in the overall scheme of prevention, diagnosis and treatment. Similar reports have been published on SPA and DPA. The other noninvasive measurement techniques for BMD will be assessed in separate reports.

BACKGROUND

Osteoporosis is a major public health problem and renal osteodystrophy is a major clinical complication experienced by patients on chronic dialysis. The National Institutes of Health Consensus Development Conference on Osteoporosis held on April 2-4, 1984, reported that osteoporosis may affect between 15 and 20 million Americans (10). More than one million fractures attributable to osteoporosis occur annually in individuals over the age of 45. In women over 60, 25 percent have documented vertebral fractures by age 75. These fractures may develop during routine activities, such as bending, lifting, or raising from a chair or bed (10). While compression fractures (collapsed fractures) of the vertebrae can produce severe pain, most cases are painless. The amount of pain and disability attributable to vertebral fractures is unknown. According to the American College of Obstetricians and Gynecologists, after age 45 there is a marked increase in the incidence of distal forearm fractures (11). By age 60, there are 10 times more forearm fractures in women than in men of comparable age. These fractures limit the use of the extremity for 4-8 weeks, with long-term disability uncommon. While osteoporosis predisposes to fractures of various bones, hip fractures are the most serious in terms of disability, mortality, and aggregate cost. In the United

States, it is estimated that more than 200,000 hip fractures occur in elderly women each year with 80 percent found to be related to pre-existing osteoporosis (11). The affected population tends to be advanced in age, with the sex distribution less skewed toward females than is the case for vertebral fractures. Acute complications such as depression and mechanical failure of the surgical procedure are common (10). Most patients fail to recover normal activity. Hip fractures lead to fatalities in 12 to 20 percent of cases and precipitate long-term nursing home care for half of those who survive (12, 13). Thus hip fractures pose a significant economic as well as a medical burden.

The economic burden of all age-related fractures is great because of the large number of people involved and the expensive and protracted care that is often required. About one-fourth of all patients with limb fractures require hospitalization and the mean hospital stay increases from 13.6 days among those age 25-44, to 32.6 days among those older than age 65. Fractures of the proximal femur account for more than half of all days of hospitalization for limb fractures. In the United States, the annual cost of the acute care alone for fractures of the proximal femur has been estimated to exceed one billion dollars (14); the annual direct and indirect costs of osteoporosis, including hip fractures, are estimated to be between $3.5 billion and $6.1 billion (10,13). As a result of the considerable morbidity, mortality, and expenditures associated with this disease, there is growing interest in research regarding its prevention, diagnosis, and treatment. The pathogenesis of osteoporosis, its prevention, and its management has had extensive review. A summary of that information can be found in the osteoporosis section of the OHTA assessment on DPA (8). Additional information can also be obtained from the numerous references cited in that report.

Renal osteodystrophy is a generic term that describes a number of distinct skeletal abnormalities that are present in the majority of patients with advanced renal failure (15). Hyperparathyroidism, disorders of vitamin D metabolism, chronic metabolic acidosis, and excessive fecal losses of calcium all contribute to the occurrence of bone

diseases in uremia (16). The longer life is preserved, particularly by treatment with hemodialysis, the greater probability of developing osteodystrophy. Although clinical symptoms of bone disease are uncommon, occurring in less than 10 percent of patients with advanced renal failure, radiological and histological abnormalities are observed in about 35 and 90 percent, respectively (16).

Renal osteodystrophy is a complex disturbance of bone comprising varying degrees of osteitis fibrosa cystica, osteomalacia, osteosclerosis, and generalized osteopenia. The main components of renal osteodystrophy are osteitis fibrosa and osteomalacia. A lesser role is played by osteosclerosis and osteoporosis. The etiology is not completely understood, but impaired vitamin D metabolism, secondary hyperparathyroidism, diminished gastrointestinal absorption of calcium, and occasional aluminum toxicity all may play a role (17).

Most of the symptoms related to renal osteodystrophy appear only when renal failure is advanced (15). Manifestations of osteodystrophy include bone pain and fractures. Accompanying abnormalities include muscle weakness, soft tissue and vascular calcification and pruritus (17). Certain biochemical alterations may appear early in the course of renal insufficiency. Knowledge of the presence of these alterations may help the physician introduce treatment early in the course of renal failure and aid in the prevention of severe complications in bone and mineral metabolism (15). One of the early changes in patients with renal insufficiency is the presence of elevated levels of circulating immunoreactive parathyroid hormone (i-PTH). Parathyroid hormone increases the net release of calcium from bone into extracellular fluid. In this defense of calcium homeostasis, the hormone influences the differentiation and activities of bone cells (18).

A rise in the serum phosphate concentration is also observed when the glomerular filtration rate (GFR) below approximately 25 percent of normal. Because calcium deposition in bone is critically dependent upon the availability of phosphate, retention of

phosphate in plasma will facilitate calcium entry into the bone. This contributes to hypocalcemia and to the elevations in plasma PTH levels seen in chronic renal failure (16). Management of patients with renal osteodystrophy includes measuring and/or controlling serum levels of calcium, phosphate, and bicarbonate (15,19). These tests are presently included in the protocol of laboratory tests for the management of end-stage renal disease dialysis patients. Radioimmunoassays for monitoring the level of circulating i-PTH has also been recommended (15,18). Moreover, it has been recommended that measures for the control of the abnormal mineral metabolism of renal disease begin early in the course of the disease, when the GFR is 30-40 mL/ min (15). According to Slatopolsky and Kokko, when such treatment is instituted early in chronic renal failure, signs and symptoms of renal osteodystrophy and parathyroid gland hypertrophy may be prevented (15,19).

Conversely, Muirhead and associates have found the management of dialysis osteopenia difficult (20). They reported that measures aimed at treatment of associated metabolic bone disease, such as administration of calcium supplements, vitamin D, 1 hydroxyvitamin D_3, or parathyroidectomy, have no consistent effect on skeletal mineral content over the long term. At best, long-term treatment can be expected to slow the rate at which skeletal demineralization progresses rather than producing a sustained increase in BMC (20).

For the past 12 years, investigators have used RA to assess the BMC of the appendicular skeleton in "normal" individuals and in patients with renal osteodystrophy and osteoporosis. Few studies, however, have been conducted to investigate whether appendicular (phalangeal) bone mineral measurements could predictably separate normal women from women with vertebral compression fractures or femoral neck fractures. Investigators have also used RA measurements to identify patients ostensibly at risk for future fractures. This report examines these and other studies as well as other evidence that pertains to the safety and clinical effectiveness of this technique.

RATIONALE

The rationale for bone mineral measurements is based on the demonstration that the strength or resistance of a bone to fracture is closely related to the amount of bony tissue or the mass of the mineral present in the bone. Proponents argue that since the tensile (breaking) strength of bone is related to its mineral content, measurements of bone mineral should be a more accurate method of determining fracture risk. Proponents of RA believe that the ability to assess the direction and degree of changes in BMC in the phalanges facilitates the diagnosis and management of metabolic bone diseases, such as renal osteodystrophy and osteoporosis. Proponents also argue that these measurements could prove useful as clinical guides to therapy in assessing the therapeutic responses of patients with osteopenia. They argue that RA is low in cost and radiation exposure, uses only the x-ray equipment readily available at every hospital, and requires no special training of hospital personnel.

REVIEW OF AVAILABLE INFORMATION

Accuracy and Precision

Accuracy defines the degree to which a measurement, or an estimate based on measurements, represents the true value of the attribute that is being measured. In this case it refers to how well the measurement reflects actual mineral content. It is expressed as a coefficient of variation (or error of estimate) of the difference between actual and measured. In the determination of osteopenia, accuracy in the measurement of bone mass by RA is of great importance.

Whereas accuracy refers to the correctness with which a certain reading represents the true value, precision refers to the width of the range of indicated values. In monitoring changes in bone mass, RA bone mineral measurements have to be sufficiently precise (reproducible) to provide a correct estimate of these changes. Precision is important if the goal is to detect small changes in bone mass. The coefficient of variation (cv), expressed in percent, describes the precision or reproducibility of a given measurement.

Technical problems affecting precision and accuracy generally associated with photodensitometric methods include scattered radiation from the broad x-ray beam, a variable energy spectrum leading to uncertainties in the effective absorption coefficients of bone and soft tissue, and beam hardening of the energy spectrum in passing through soft tissue (21). Colbert and Bachtell have indicated that for small bones with thin flesh cover, such as the phalanges, the background optical density value is assumed to adequately correct for scatter if it is uniformly distributed over the bone image. In addition, the x-ray beam can be considered to have a single "effective" photon energy and there is no beam hardening (2). To minimize or prevent measurement errors that would result from different x-ray machines, kilovoltage and exposure settings, film types and film processing, Colbert and Bachtell derive correction terms from pixel data taken from a scan of the reference wedge image. According to the investigators, the wedge image is scanned to provide data for the absorption coefficient of the aluminum alloy which accounts for differences in x-ray spectrum due to tube characteristics, kilovoltage, waveform, and prefiltration. The scanning also provides the background optical density due to film base, fog, and scatter, which are a function of exposure, measured in milliampere-seconds (mA-s), and film processing procedures. Once these two values are obtained, a computer calculates the terms that automatically correct for the differences described above (2).

To minimize measurement errors due to spectrum shifts, uneven scatter distribution, incorrect film background density determinations, overexposure, underexposure, uneven film development, densitometer errors and nonlinearity, soft-tissue covering, and variations in reference wedge composition, Colbert and Bachtell recommend repeat readings averaging the results (2). They believe that system errors such as edge detection errors, computational errors, and scanner malfunction will be reduced because the mineral density data are read from three complete phalangeal bones from two separate radiographs and compared before they are averaged (2).

The instrumental accuracy of RA was studied by Colbert and co-workers in 1970 (21). Eighty-five excised bones and an aluminum reference wedge were measured under water to simulate a constant thickness of soft tissue surrounding the limb, and the mass of the ashed bone sections were compared with RA measurements. Ash weights of the bone sections ranged from approximately 0.4-2.0 g. According to the authors, the error in predicting ash weight using RA was 6 percent under these test conditions that included exposing all bones on a single radiograph under standard conditions.

To evaluate RA reliability with varying exposures, radiographs of the bone sections were made at 50 and 70 mA-s Although the measurements of the same 85 bone sections from films at 50 and 70 mA-s exposure gave a high correlation (r=0.990), the standard error of estimating indicated a prediction error of 4.4 percent (21). By averaging repeated measurements the prediction error from the different films was reduced to less than 4 percent. Colbert suggested that the use of the uniform bolus of tissue-equivalent material (water) surrounding the bone and the correction for background density of the radiograph were responsible for the increased accuracy of this technique over other photodensitometric techniques (21).

In a similar study of RA accuracy, Colbert and Barzel compared excised rat bone mineral measurements by RA with mineral content (as weight) determined gravimetrically (22). Forty-two excised rat bones and an aluminum reference wedge

were measured under several centimeters of water and the mass of the ashed bone sections were compared with RA measurements. Regression analyses showed that RA measurements again predicted ash weights within ± 6 percent.

Because the measurement error introduced by soft tissue in photodensitometric techniques has been recognized by many investigators, the procedure has usually required water immersion of the body part and wedge for correction of the effect of soft tissues (21,23). The addition of water compensates for variations in tissue thickness and provides a uniform tissue equivalent thickness (24). It also provides exposure conditions of the calibration wedge similar to those for the bone. In the 1970 and 1972 studies by Colbert and co-workers the procedure included the immersion of the body part and wedge in water.

However, in 1979, Colbert and Bachtell reported that x-rays of small bones with minimal soft-tissue cover (phalanges) do not require immersion in water (1). They found that the linear absorption coefficient of the wedge (in air) varies with photon energy in nearly the same manner as the wedge x-rayed in water and could be used in its place by applying a constant adjustment factor (1). According to Wahner and colleagues, the only photodensitometry method currently acceptable immerses the hand in water for constant soft-tissue thickness, and uses a microdensitometer and computer (3). Mazess and Cameron in agreement with Wahner and colleagues, believes that the extent of air measurement deviations (from water) depends on the effective energy of the x-ray beam (spectrum) and therefore can not be corrected by a constant multiplier (25). This issue remains controversial.

In 1983, Bachtell compared RA measured mineral weight with the ash weight of 14 phalangeal cadaver bones (26). Fourteen phalangeal cadaver bones were defleshed and radiographed in groups of two or three bones at 50 and 60 kVp. Bachtell found that the

ash weights regressed linearily against the radiological weights to give a prediction error of 3.7 percent and a correlation coefficient of 0.997. The cadaver bones and aluminum alloy reference wedge were radiographed under a thin water cover.

Results from a study of bone mass in 50 postmenopausal osteoporotic women at the University of Washington were reported by Chesnut at the National Institutes of Health (NIH) Consensus Development Conference on Osteoporosis (9). Using RA measurements of the phalanges, he found a precision of 2-3 percent. Similar levels of precision (1-4 percent) have been reported in the position paper on radiologic methods to evaluate bone mineral content from the Health and Public Policy Committee of the American College of Physicians (6). The position paper also reported 6 percent reliability (accuracy) for the RA technique.

Recent information from Bachtell and Colbert indicates that the precision of the RA technique is between 2 and 4 percent (27,28). In one cited study, BMD was determined from radiographs of a phantom hand taken over a 3-year period at eight different hospitals using nine different x-ray machines. The precision was 3.7 percent when the selection criteria of radiographs included those taken outside recommended specifications for kilovoltages and optical density (27). Allowing for changes in the system and deletion of defective radiographs and radiographs recorded outside of the specifications, the precision was improved to 2.5-3.0 percent (27,28). However, radiographs taken in violation of the recommended specifications are frequently included in BMD determinations.

In a similar study to determine the precision of the RA technique, BMD was determined from radiographs of the same left hand taken over a 10-year period at 10 different hospitals using nine different film types. The precision, depending upon the selection criteria of the radiographs, was between 2.9 and 4.1 percent (29).

Clinical Applications

In 1971, Goldsmith and co-workers used several techniques, including RA, to estimate BMC in normal and osteoporotic women (30). Using BMD values based on RA measurements of the middle phalanx of the ring and index fingers the investigators were unable to clearly separate normal women from women with moderate or severe osteoporosis.

In 1977, Colbert and colleagues reported using RA for BMD determinations in patients with chronic renal failure (31). In preliminary findings, 160 patients with chronic renal failure had average BMD values lower than reference means derived from age- and sex-matched control subjects. They believed this indicated a tendency toward osteopenia or osteodystrophy. Although the authors were reporting patient progress for less than 1 year, they recommended that patients should be followed for 3 years or more to ascertain reliable trends (31).

At the Fourth International Conference on Bone Measurement, Zanzi and co-workers presented data from a study that determined the relationship of total body calcium (TBCa), measured by total body neutron activation analysis, with BMC of the phalanges, measured by RA, and BMC of the radius measured by SPA (32). These techniques were applied to two groups of subjects: In the first group there were 16 patients (14 female, 2 male) with primary osteoporosis; and in the second group, 14 healthy male marathon runners. The investigators found a correlation between measurements of TBCa and BMC at the phalanges in the osteoporotic female population ($r=0.66$). The correlation between TBCa and BMC of the phalanges in the marathon runners was less ($r=0.57$). However, the investigators also reported that the scatter of the data could result in an error in measurement prediction of $\pm$ 7-14 percent (32).

According to Zanzi and associates, the level of correlation and standard errors of estimate attained precludes a reliable prediction of bone mineral from the phalanges to the total body in a particular individual. Used alone, TBCa data do not give a complete

separation of individual osteoporotic patients and normal subjects. Zanzi's group did suggest that RA measurements of the phalanges are adequate for use in epidemiological surveys of the bone mass of populations, or in serial evaluations of bone mass, particularly cortical bone (32).

In a continuation of the work by Colbert (31), Chester and associates studied the effectiveness of RA to assess the extent and the therapy of renal osteodystrophy (33). They compared visual review of hand radiographs with RA determinations in 179 patients with chronic renal failure. Although the investigators demonstrated some agreement between RA determinations and visual review of hand radiographs when changes were noted by the radiologist, the agreement with RA was at best moderate; they concluded that RA may be a more sensitive method of appraising renal osteodystrophy than visual reviews of hand radiographs. Chester and associates also suggested that RA determinations may indicate changes in the clinical features of renal osteodystrophy not suggested by serum calcium, phosporus, or alkaline phosphatase. This conclusion was based on a study of only eight patients with bone gain whose serum calcium, phosphorus, and alkaline phosphatase were no different (statistically) when compared to eight patients who had lost bone at an accelerated rate (33).

At the 1981 Jerusalem International Symposium on Osteoporosis, Bachtell and Colbert (34) presented data on the RA technique that updated the 1971 study by Goldsmith and associates (30). Because the mineral estimates made by the earlier RA technique did not agree with the visual osteoporosis classifications, the investigators improved the system and rescanned 49 usable radiographs from the original experiment. With the improved RA determinations, the authors found good agreement with the visual classifications. Also, the mean BMD of the normal group was significantly greater than that of the moderate plus severe osteoporotic group. However, because of the sizable overlap in BMD among the groups, bone mineral measurements of the phalanges may be unsatisfactory for evaluation of the extent of osteoporosis in an individual (34).

In a recent study, Colbert and associates used RA to determine the effect of continuous ambulatory peritoneal dialysis (CAPD) on phalangeal BMD (35). Over a 2-year period they measured and compared the BMD average rate of change of patients from one group on CAPD (N=32) and five groups on hemodialysis (N=323) with the BMD normal rate of change due to aging. Colbert and associates found that as a group, the 32 CAPD patients who had normal BMD means and distributions at baseline lost BMD, on the average, at the same rate as the controls. He also found that for four of the five patient groups on hemodialysis, BMD declined at rates significantly greater than normal. The groups were not matched for age, sex, or for any other parameters (35). After an additional year of followup, Colbert and associates confirmed their earlier findings that, on the average, the CAPD patients lose BMD at a rate not significantly different from the normal rate related to aging (36).

At the 1984 Copenhagen International Symposium on Osteoporosis, Ott and colleagues reported preliminary results of a study that compared several techniques, including RA, for the measurement of bone mass at different sites in the same group of patients (37). They sought to determine whether a measurement of bone mass at one site could predict bone mass at a second site in a population of women with postmenopausal osteoporosis. The study group consisted of 66 Caucasian women, ranging in age from 51 to 80 years, who had evidence of vertebral compression fractures. Significant but modest correlations between the various bone measurements were reported. Although measurements of TBCa and BMD at the phalanges had a significant correlation of 0.73 ($p < .001$), the investigators found that the standard error in estimating the TBCa from the other measurements was 10-15 percent. The correlation between RA measurements of the phalanges and DPA measurements of the spine was 0.56 ($p < .001$). However, the standard error in estimating the BMD at the spine from the RA phalangeal measurements was not given.

According to Ott and associates, discrepancies in measurements may be caused, in part, by the different ratios between cortical and trabecular bone at the different sites measured (37). Ott suggested that if a patient had a disproportionate loss of cortical or trabecular bone, then measurements at the spine would not correlate with those of the total body or peripheral sites.

At the same symposium, Bachtell and Colbert presented preliminary findings of a longitudinal study that used RA phalangeal mineral measurements to identify patients with a rapid loss of bone mineral (38). The investigators recorded bone mineral at 6-month intervals in 146 female subjects, mostly in their 60s, for 1 1/2-3 years. Comparing the decline of phalangeal mineral density in the 146 subjects with the average annual decline of phalangeal mineral density (1.2 percent) in a normal population of similar age, the investigators determined that 37 subjects (25 percent) of the test population had rapid loss of bone mineral (38). However, these measurements have uncertain value for predicting future rates of bone loss or assessing risk for fractures. They also ignore the fact that an accelerated bone loss has been reported in normal women following menopause.

In 1984, Bachtell noted that other investigators had observed statistically significant correlations between RA measurements of the phalanges and SPA measurements of the radius in 61 ambulatory postmenopausal osteoporotic females (39). Bachtell also compared the RA phalangeal bone mineral measurements of osteoporotic women in this group and a second similar group (N=63) with the the RA phalangeal bone mineral measurements of 377 normal females (40). An osteoporosis risk threshold was arbitrarily chosen to be one standard deviation (16 percent) below the mean mineral volume density of young normal adult women (20-50 years of age). This resulted in 80 - 90 percent of the osteoporotic females having BMD levels that fell below this value. However, values for the women in both osteoporotic groups clustered about peer norms with no significant difference between the normal mean and the subject mean. Bachtell

concluded that the osteoporosis risk threshold was an excellent discriminator of postmenopausal women who have a high risk of vertebral compression fractures. This conclusion was reached without the benefit of clinical information regarding the extent of vertebral compression fractures in the normal control group. Moreover, after age 60 almost all the women in the normal control population had values below the osteoporosis risk threshold (40).

According to Bachtell, in lieu of a prospective study to determine how well postmenopausal women who will eventually experience bone fracture can be separated from those who will not exeperience fracture, one determines how well osteoporotic women can be screened from nonosteoporotic women. In order to evaluate the screening efficacy of RA measurements, Bachtell plotted the number of true-positive results (osteoporotic women who fall below the screening threshold) from groups of confirmed osteoporotics women versus the number of false-positive results (nonosteoporotic women who fall below the threshold) from the reference females between the ages of 20 and 50. Plots of true-positive versus false-positive results are called receiver operating characteristic (ROC) curves. The higher the percentage of true-positive and the lower the percentage of false-positive results, the better the screening system (41).

Choosing a phalangeal mineral density threshold of 100 units, Bachtell was able to obtain percentages of women with true-positive results that ranged from 82-96. Using the mineral density values of the reference females between age 20 and 50, he was able to obtain a false-positive percentage of 11.5. This study demonstrated high sensitivity and high specificity of RA measurements in screening females with vertebral fracture from midlife (20-50 years) normal women. However, Bachtell showed in an earlier report that after age 60 almost all women in the normal reference population were below the osteoporosis risk threshold. This indicated that if data from a nonosteoporotic group similar in age to the osteoporotic groups were plotted, the specificity of the screening test would be low (40).

Monroe used RA measurements to screen 355 postmenopausal women for estrogen replacement therapy for prevention of postmenopausal osteoporosis (42). In 1986, he reported to the Ohio Academy of Family Physicians that a threshold of one standard deviation below the mean bone density value of normal women, 20-50 years old identified 145 (41 percent) of the women "at risk" and in need of estrogen management. Although this risk threshold is arbitrarily designated and not based on a prospective study of fracture incidence, most of the 145 women were recommended for estrogen therapy, which was accepted by 95 of them (42).

In 1986, Rosenthal and co-workers reported on a retrospective study that compared the ability of several bone measurement techniques, including quantitative computed tomography (QCT) and RA, to discriminate between patients with and without fractures (43). Selected for the study were 102 consecutive patients (74 females and 28 males) clinically suspected of having abnormally low skeletal mass; 74 of the 102 patients were age 51 or older. When patients were divided into groups with and without lumbar vertebral compression fractures, QCT provided the best separation between the two groups, ($p < .001$), with relatively little overlap. Although Rosenthal found the mean values for RA to be significantly different between the two groups, there was considerable overlap. The RA measurements of phalangeal trabecular bone were only weakly correlated with QCT measurements of spinal trabecular bone. The RA measurements of the composite mass (cortical and trabecular) of the phalanges were approximately equally correlated with the QCT measurements of spinal trabecular bone (43).

Rosenthal found that RA measurements provided the best correlation with long bone fractures (such as hip and radius); however, prediction of peripheral fractures was considered unsatisfactory by all methods. He suggested that these results may indicate that trauma is more important in the causation of extremity fractures than of vertebral compressions, a feature that cannot be predicted by any measurement (43). According to

Rosenthal, any widely useful technique for measuring bone mineral must help predict the risk of fractures in the general public. Therefore, while this retrospective study showed that QCT measurements of the spine could reasonably discriminate fracture and non-fracture patients, a prospective study is necessary to determine if those same measurements can accurately predict fracture incidence (43).

Most recently, Colbert and associates reported completing a brief study of RA-BMD measurements in 14 end-stage renal disease (ESRD) patients who subsequently underwent parathyroidectomies (44). The study was performed to determine the efficacy of RA-BMD measurements of the phalanges as an indication for surgical intervention and surgical success. This was to be determined by comparing changes in RA-BMD measurements with corresponding serum chemistries. In most instances of surgical success, as judged by serum chemistries, there was a corresponding improvement in BMD. However, Colbert acknowledged the small sample size and the need for more complete serum chemistry data and for longer observation periods in more patients. The study failed to support the conclusion of the authors that RA monitoring of phalangeal BMD is of help in deciding when to perform a parathyroidectomy on an ESRD patient. It has not been made clear by the investigators how RA bone mineral measurements would change the management based on the serum chemistries of these ESRD patients (44).

Occasionally there is a patient with severe secondary hyperparathyroidism and evidence of hypercalcemia in whom parathyroid surgery may be required to reduce excessive amounts of circulating parathyroid hormone (PTH). Close monitoring of PTH, calcium, and phosphate is essential in the management of these patients. Monitoring BMD by RA may also be of help in judging the success of the surgery and should be studied further.

DISCUSSION

The measurement of bone mass is an important tool in the study of metabolic bone diseases, particularly osteoporosis. Current interest is centered on the recent advances in bone mineral measurement techniques including RA. This interest in RA is based on the belief that bone mineral measurements of the phalanges facilitates the diagnosis and management of metabolic bone diseases, such as renal osteodystrophy and osteoporosis. Presently, RA has utility in clinical research in studying the natural history of primary osteoporosis and renal osteodystrophy in large populations and in studies evaluating preventive and therapeutic regimens. However, while RA is capable of measuring bone mineral and has advanced our knowledge of bone disease in general, its role in the management of the individual patient is uncertain.

It would be advantageous to be able to prospectively identify those women who are at risk for developing osteoporotic fractures, in order to direct treatment to those at greatest risk. As a screening test for osteoporosis in perimenopausal women, this application of RA bone mineral measurements is suggested to have potential utility. Once established as a screening tool it could be used in the strategy for treating afflicted individuals or preventing osteoporosis. Although the technology to noninvasively measure bone mineral with RA is currently available, the ability of such measurements to identify those individuals who will subsequently experience bone fracture has not yet been shown.

Presently, there has been no prospective study demonstrating that the noninvasive measurement of bone mass by RA can identify patients who will suffer fractures. In their 1984 review of the various noninvasive methods for bone mineral measurements, Wahner and colleagues concluded that there was no optimal technique available for mass screening for early osteoporosis (45). The American College of Physicians' Health and Public Policy Committee recently reviewed various radiologic methods for measuring BMD, including RA, but made no recommendation about the use of these tests in routine

screening for osteoporosis (6). In order to predict a female individuals' fracture risk, it would be necessary to study large population cohorts of women from various age groups and relate their specific bone measurements to prospective fracture incidence data collected over a sufficient period of time. Using fracture incidence data, the risk ratio would provide an estimate of risk. This type of study would enable investigators to determine whether it was possible to predict the risk of fracture from the initial bone density measurements. A patient's bone mass measured before or at menopause may indicate whether she has low or high bone mass for her age. It will not necessarily indicate whether she will fall into the high-risk group 10-15 years later, when most fractures occur. The contribution of bone mass at maturity versus subsequent rates of loss is still largely unknown. Moreover, there exists a controversy regarding the selection of a screening site. While many investigators consider BMD measurements of the actual fracture site (spine and hip) paramount, others argue that fracture risk prediction and screening can be accomplished by appendicular BMD measurements. According to Riggs and Melton, appendicular measurements would be of little value for predicting the risk of fracture in the spine or hip (13).

Initially, investigators used RA bone mineral measurements in attempts to find a specific level of bone density that clearly distinguished patients with vertebral osteoporosis. Those studies, including the work of Bachtell and Colbert and more recently Rosenthal and co-workers, have been largely unsuccessful in determining such a level (34,43). When patients were divided into groups with and without lumbar vertebral compression fractures, Rosenthal found that the mean values for RA differed significantly between the two groups, but there was considerable overlap (43). Other investigtors, such as Riggs and colleagues, who also were unable to clearly distinguish patients with vertebral osteoporosis, consistently found less trabecular bone, on average, in women with vertebral fractures (46). From their study of risk factors for injury after a fall, Melton and Riggs concluded that a reduction in spinal bone mass is the primary

determinant of who will suffer vertebral fractures (47). According to Cummings and associates, measurement of vertebral BMD may be a useful way of identifying women at greatest risk for vertebral fractures (48).

With regard to peripheral fractures (hip and radius), Rosenthal considered separation of patients with peripheral fractures unsatisfactory by all methods of measuring bone mineral, including RA. He suggested that trauma may be more important in causation of extremity fractures than of vertebral compressions, a feature that can not be predicted by any measurement (43). The failure of other bone density measurement techniques to clearly distinguish fracture patients from age-matched controls has prompted other investigators to concur that in addition to low bone mass, which is nearly universal among the very elderly, other factors are important in predicting who will experience a hip, or Colles' fracture.

Other studies of RA investigated the correlation between bone density measurements of the phalanges and TBCa measured by total body neutron activation analysis (32,37). The studies by Zanzi and co-workers and Ott and colleagues indicated that a correlation between measurements at two sites (phalanges and total body) does not necessarily mean that one measurement may accurately predict the other (32,37). Even significantly correlated measurements with a large standard error (scatter) precludes a reliable prediction of bone mineral at one site based on measurements at another site in a particular individual.

In two studies, RA measurements of phanageal BMD were, at best, only moderately correlated with spinal BMD measurements (37,43). According to Ott and associates, if a patient has a disproportionate loss of cortical or trabecular bone, measurements at the spine would not correlate with those of the total body or peripheral sites.

In 1984, when Bachtell compared the RA phalangeal bone mineral measurements of two groups of osteoporotic women with a large group of normal females, he found that the measurements in both osteoporotic groups clustered about peer norms with no

significant difference between the normal mean and the subject mean (40). However, by arbitrarily choosing a phalangeal mineral density of 100 units and comparing the BMD values of these osteoporotic postmenopausal women with the BMD values of normal females 20-50 years of age, he was able to distinguish patients with osteoporosis. After age 60 almost all the women in the normal control population were below the osteoporosis risk threshold (40).

If phalangeal bone mass in the elderly does not differ in patients with and without fractures, these measurements would be of little or no value in predicting which elderly patients are likely to incur a fracture. Measurements of phalangeal bone mass may not be a reliable way to identify those at greatest risk for fracture. According to Bachtell, almost all the women 60 years and older in the normal reference population are at risk because their BMD values are below the phalangeal mineral density threshold of 100 units (40). That being the case, treatment methods could be undertaken without the use of individual RA bone mineral measurements. It is not certain what value RA measurements of phalangeal bone will have in identifying women at greatest risk for fracture. This application of the RA method needs further clinical investigation before it is advocated for widespread use or before it is employed as a basis for recommending specific types of preventive therapy.

Another clinical application proposed for the RA technique has been the use of RA measurements to monitor the rates of bone loss and the effectiveness of treatment. This could apply to the treatment of individuals with established osteoporosis and also to those receiving preventive regimens. Because rates of bone loss are relatively small compared with the reproducibility of the measurement, current methods for measuring bone mass, including RA, may not be sufficiently precise for clinical decisions in an individual (49,50). As stated earlier RA is reported to have a precision of 2-4 percent, and the average rate of appendicular bone loss in women is 1 percent per year in the decade after, and less before, natural menopause. According to Cummings and Black, for

women, a measurement of the rate of bone loss based on two measurements of bone mass over a period of time leaves considerable uncertainty about the rate of loss. A bone loss of 3 percent measured by a technique with a 2-percent reproducibility (RA) leaves a considerable uncertainty about the actual rate of loss (the 90 percent confidence interval for that change in bone mass varies from a 1.7 percent gain to a 7.7 percent loss) (49). Unless multiple measurements are made, a woman must lose a substantial amount of bone during the time between measurements before a physician can conclude that she is losing bone more rapidly than normal (49). However, even these additional measurements have uncertain value for predicting future rates of bone loss or assessing risk for fractures and would substantially increase the expense of management. Riggs and Melton believe that measurements every 6 months over 2-3 years may be required to estimate individual rates of bone loss (13). According to Ott, until such time as more sophisticated methods of improving the reproducibility are developed, techniques for measuring bone mineral, such as RA will be valuable in studying large groups of patients, but will not be helpful in individuals (50).

Still uncertain, however, is the suitability of the phalangeal bone site as the appropriate location to determine rates of bone loss or the effectiveness of treatment. Even if the RA technique is shown to be adequate for determining rates of bone loss or gain by sequential measurements, there would be uncertainty as to whether the results would reliably reflect bone loss or gain in the spine or hip. Moreover, according to Lindsay and mentioned at the recent NIH Workshop on Osteoporosis, there is no current evidence that serial bone mass measurments need to be performed in patients receiving adequate estrogen therapy, since studies indicate that more than 90 percent of these patients will be protected against bone loss (51).

Some investigators have reported using RA measurements of phalangeal BMD to assess the extent and the therapy of renal osteodystrophy (31,33). Colbert and associates have investigated the efficacy of RA-BMD measurements of the phalanges as an

indication for parathyroid surgical intervention and success (44). Because biochemical alterations may appear early in the course of renal insufficiency, the prevention and management of renal osteodystrophy includes the control and monitoring of serum calcium and phosphate concentrations (15).

Secondary hyperparathyroidism with renal osteodystrophy is a frequent if not universal complication of chronic hemodialysis (52). Phosphate retention, developing early in renal compromise, contributes to most of the components of renal osteodystrophy (17). The initial stimulus of secondary hyperparathyroidism is believed to be a chronic reduction of ionized calcium in the extracellular fluid due to renal retention of phosphate (53). Because calcium deposition in bone is critically dependent upon the availability of phosphate, retention of phosphate in plasma facilitates calcium entry into bone and contributes to the hypocalcemia observed in chronic renal failure.

Secondary hyperparathyroidism is a state of compensatory hypersecretion of PTH and may occur where there is a tendency toward hypocalcemia. Excessive levels of PTH accounts for many of the bone changes of renal osteodystrophy, including osteitis fibrosa and osteosclerosis (54). Importantly, one of the early changes in patients with renal insufficiency is the presence of elevated levels of circulating i-PTH. Knowledge of the presence of these and other biochemical alterations should help the clinician to introduce treatment early in cases of renal failure and aid in the prevention of severe complications in bone and mineral metabolism (15). According to Clark, maintaining relatively normal serum concentrations of calcium and phosphorus during hemodialysis has dramatically decreased incidence of bone disease (52). Drach recommends obtaining a fasting serum calcium level with a simultaneous measurement of serum PTH (55).

A review of the literature indicates that the information regarding the levels of calcium, phosphate, i-PTH, and other chemical entities obtained from clinical chemistry testing, is sufficient for the management of renal osteodystrophy. The need or

appropriateness for RA-BMD measurements of the phalanges in the management of renal osteodystrophy has not been established in the studies presented.

Advice and comments concerning the safety and clinical effectiveness of RA has been sought from groups and organizations within and outside of the Federal government. An announcement of this assessment appeared in the Federal Register notice of October 26, 1984 (56). On June 20, 1985, in testimony before the Subcommittee on Aging of the Committee on Labor and Human Resources, United States Senate, representatives of NIH, through the National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases (NIADDK), stated that it was a research imperative to develop better methods for measuring bone density (57). In addition to diagnosis, these methods should enable early identification of bones most vulnerable to fracture and provide a measure by which to evaluate the effectiveness of new therapies. According to NIADDK, while several noninvasive methods for measuring bone density have been developed, at present no existing techniques can adequately discriminate, early in the disease process, between normal and osteoporotic individuals (57). The NIADDK recommended long-term clinical trials of various specific patient populations, in numbers large enough to provide valid and reliable estimates of risk, and to determine the optimal regimens to prevent bone loss and fracture.

At that same hearing on osteoporosis, the National Institute on Aging (NIA) stated that there is a need for better ways of identifying persons at high risk for fracture, since those individuals could be expected to benefit most from treatment (12). Because it is still unclear which persons would benefit from which treatment, and at what dosages and schedules, additional research and clinical trials are needed to develop the current state of knowledge regarding prevention and treatment of osteoporosis for specific individuals or groups. The American College of Obstetricians and Gynecologists, in their statement before the Subcommittee on Aging, indicated that presently there are no tests to identify

which women are at risk for developing osteoporosis (11). The College recommended, however, that the physician determine bone loss by absorptiometry in their diagnosis of osteoporosis.

The NIH Consensus Development Conference on Osteoporosis was held on April 2-4, 1984 (10), approximately 14 months prior to the Senate Hearing on Osteoporosis. At that conference, data were presented that showed that none of the noninvasive techniques for measuring bone mass were able to significantly discriminate between normal and osteoporotic individuals. None of the techniques for currently quantitating bone mass can definitely predict the individual at significant risk for fracture. The Consensus Panel concluded that osteoporosis was a major public health problem requiring additional research on the biology of human bone, defining individuals at risk, and developing safe, effective, low-cost strategies for fracture prevention (10). The panel recommended studies to develop accurate, safe, inexpensive methods for determining the level of risk for osteoporosis in an individual, to establish early diagnosis, and to assess the clinical causes of the disease (10).

In February of 1987, as a followup to the Consensus Development Conference, NIH sponsored a scientific workshop on research directions in osteoporosis (58). Quantitative computed tomography, SPA, and DPA were discussed and listed as methods that offered a dramatic improvement over previously available methods of determining BMD. The group reported that measurements of bone mass or change in bone mass in peripheral sites do not accurately reflect bone mass or change at axial sites (spine or hip), which are areas of greater interest. Consequently, measurements at any one site do not allow prediction of mass or change in mass at another site in an individual (58).

According to the Food and Drug Administration (FDA), the laboratory presently using the RA technique to read radiographs is providing a service, and, as such, is <u>not</u> actively regulated by the FDA.

In June 1984, through its Clinical Efficacy Assessment Project, The American College of Physicians published a policy statement on radiologic methods to evaluate BMC (6). The College concluded that all methods of BMC measurements result in significant overlap between diseased and normal populations. They stated that the ultimate benefit of early diagnosis of metabolic bone disease will depend on the clear establishment of safe and effective treatment. The College believes that measurements of BMC have greater utility in following the course of disease process or assessing the effect of therapy than in establishing a diagnosis. According to the College, none of the available techniques, including RA, accurately predict the tendency to fracture (6).

The Orthopedic Research Society strongly supports continued research in the development of noninvasive techniques for understanding metabolic bone disease. The Society suggested that research examine the precision, accuracy, sensitivitiy, cost, availability, and relevance to underlying metabolic disease of each of the techniques currently under study. The society also suggested holding a workshop directed at the understanding of the surveillance of bone disease.

It is the opinion of the Society of Nuclear Medicine that bone mineral density studies should become part of the workup of patients with osteoporosis and that DPA is the technique of choice at this time. According to the Society, other methods performed on appendicular bone are of little value in patients with osteoporosis. However, they may have some application in patients with renal bone disease.

A response from the American College of Nuclear Physicians stated that osteoporosis can be detected at its earliest stages by DPA measurements of the vertebral spine. According to the College, in order postpone or prevent the problems of insidious progressive osteoporosis, early detection and screening by bone mineral analysis of the

lumbar spine by DPA is critical. The College finds DPA of the spine far superior to appendicular measurements in detecting most cases of early osteoporosis. They suggest, however, that in older patients with significant degenerative spine disease, appendicular measurements may be helpful in management on an individual basis.

SUMMARY

Radiographic absortiometry is a noninvasive radiologic technique involving a computer-assisted densitometric measurement of the x-ray image of bone. Mineral density analyses are based on phalangeal scans of pairs of lightly exposed radiographs with an aluminum alloy reference wedge included in the image field. After a computer-controlled optical densitometer scans the x-ray image with a light beam, the system is designed to compare the findings with normal values of phalangeal bone size and BMD determined from age- and sex-matched controls. In RA, bone mineral mass is determined and expressed as BMD (mineral concentration) by accounting for bone size (bone image area). Using currently available equipment, the technique can achieve a precision of 2-4 percent with a radiation dose of 10-100 mrad.

The measurement of bone mass is an important tool in the study of metabolic bone diseases, such as osteoporosis and renal osteodystrophy. While RA is capable of measuring BMD and has advanced our knowledge of bone disease in general, its impact on the management of the individual patient is equivocal. Although the technology to measure bone mass noninvasively with RA is currently available, the ability of such measurements at the phalanges to predict individuals at risk for subsequently developing fractures of the spine and hip (screening) has not yet been shown.

Studies with RA that attempted to find a specific level of bone density that distinguished patients with vertebral osteoporosis have been largely unsuccessful. Other studies with RA measurements have reported statistically significant correlations

between bone density of the phalanges and that of total body calcium. However, a large scatter in the data precludes a reliable prediction of bone mineral from one site based on measurements at another site in an individual.

Other clinical applications proposed for the RA technique are to monitor rates of bone loss and to determine the effectiveness of treatment. A high degree of precision in the bone mass measurement is necessary for repeated measurements of small degrees of change, and such precision is difficult to attain. Presently, the suitability of the phalangeal site for monitoring changes in bone loss is questionable.

Investigators have not established the need or appropriateness of RA measurements in the management of renal osteodystrophy for ESRD patients. Radiographic absorptiometry needs to undergo further clinical investigation before it can be recommended for general clinical use.

With regard to its regulatory status, the Food and Drug Administration stated that the laboratory presently using the RA technique to read radiographs is providing a service, and as such is not actively regulated by the FDA.

Prepared by: Martin Erlichman, M.S.

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Part V

Environmental Protection Agency

40 CFR Part 167

Registration of Pesticide and Active Ingredient-Producing Establishments, Submission of Pesticide Reports; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 167

[OPP-70000A; FRL-3363-9]

Registration of Pesticide and Active Ingredient-Producting Establishments, Submission of Pesticide Reports

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule requires that producers of pesticide active ingredients register their establishments and submit reports to EPA. The Agency is taking this action in response to a Congressional amendment to section 7 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which already imposes registration and reporting requirements upon producers of pesticide products. The Agency is providing a period of 6 months for compliance by producers of active ingredients after the effective date of this rule.

EFFECTIVE DATE: This rule will become effective upon publication in the **Federal Register** of a notice after 60 days of concurrent session of Congress.

FOR FURTHER INFORMATION CONTACT: Phyllis Flaherty, Office of Compliance Monitoring (EN-342), Environmental Protection Agency, Room E710, 401 M Street SW., Washington, DC 20460 (202-382-7825).

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to average 1.08 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Background

FIFRA section 7 requires producers of pesticides and devices to register their producing establishments and file annual reports of pesticide production. In 1978, FIFRA section 7 was amended to add a requirement that producers of the active ingredients, incorporated into pesticides, also register their establishments and file annual production reports. This final rule expands the establishment registration and reporting requirement found in the current regulation to include active ingredient producers. Requirements for establishment registration and production reports are codified in 40 CFR Part 167.

II. Proposed Regulation

EPA issued a proposed rule which was published in the **Federal Register** of March 25, 1987 (52 FR 9504), to implement the 1978 amendment to section 7 of FIFRA. The final rule responds to comments on that proposal.

The treatment of multiple-use active ingredient chemicals (i.e., chemicals which have both pesticidal and non-pesticidal uses) was the primary issue facing EPA in implementing the congressional change of requiring registration of establishments producing active ingredients.

In some instances, the primary uses of such multiple-use chemicals are non-pesticidal (such as with xylene, arsenic, and copper sulfate). This situation raises a number of problems in implementing the congressional change. First, a producer might not be aware that his multiple-use chemical is being used as a pesticide. If he does know, he may not know exactly what volume of his chemical production is used as a pesticide active ingredient, as opposed to a non-pesticidal use.

In 1980, the Agency intended to address these problems by proposing the following requirements:

1. Each active ingredient producer must register his establishment and report the entire production of any chemical which has pesticidal use.

2. Each pesticide producer must notify the suppliers of any active ingredient used in his product if the ingredient is not already registered as a pesticide by the supplier.

3. Both pesticide producers and active ingredient producers must keep records of the notices described in item 2 above.

However, because of extensive comments from producers of large quantities of multiple-use chemicals, the Agency published a reproposal. This reproposal clarified the establishment registration requirement by requiring a producer to report only that production of an active ingredient for which the producer had actual or constructive knowledge that these active ingredients were used in the production of pesticide products. The reproposal also deleted the establishment registration requirement for custom blenders as well as several minor changes clarifying the requirements for pesticide-producing establishments.

III. Discussion

In response to comments received during the comment period for EPA's proposal of March 25, 1987 (52 FR 9504), EPA is promulgating the rule with only minor modifications.

1. Minor Changes to the Rule

(a) The phrase "market produced for (domestic, foreign, etc.)" had been inadvertently deleted from the definition of "type of pesticide" at § 167.3(j). This error was corrected.

(b) One comment suggested that companies which own establishments in EPA Regions that are different from the EPA Region containing the company headquarters only have the company headquarters submit establishment registration applications to its respective EPA Regional office. This comment was incorporated.

(c) Another comment requested that companies which change ownership or address be allowed to report such change on letterhead stationery as well as the form required by § 167.20(e). This comment was incorporated.

(d) A suggestion was made to include a statement clarifying the fact that while the Agency will have reporting forms available and the Agency does supply them to companies each year as a courtesy, the ultimate responsibility to obtain, complete, and submit the forms provided by the Agency is the company's. This comment was incorporated.

(e) Finally, it was suggested that the date of submission of the Annual Report required by § 167.85(c) be changed from February 28, as was suggested in comments responding to the first proposal, to March 1. The date was changed.

2. Who Must Register

Any producer who has actual or constructive knowledge that a substance he produces is used or intended for use as an active ingredient in the manufacture of a pesticide, will be required to register his establishment(s). Also, all establishments which produce any pesticide, device, or active ingredient subject to this provision must be registered. This includes biotechnology pesticide products.

3. What Quantities of Active Ingredient Must Be Reported

A producer is subject to FIFRA requirements if he intends that the substance produced be used as a pesticide or in the formulation of a

pesticide product. However, at the level of active ingredient production, a producer may not intend his substance to be used in a pesticide, but he may produce it with knowledge that it has pesticidal uses. The Agency, therefore, considers substances affected by this rule to be those produced, sold or distributed with the knowledge, actual or constructive, that they are used or intended for use as an active ingredient in the production of a pesticide.

The rule requires active ingredient producers to report only the amount of substance as to which the producer has actual or constructive knowledge of its use or intended use as an active ingredient in the manufacture of a pesticide.

The Agency will use an objective standard in determining whether a producer knows his substance is being used as an active ingredient for pesticides, and which amount of the substance is being used for those purposes. A producer will be considered to know that his substance is used for pesticidal purposes if a reasonable person in the position of an active ingredient producer would be considered to know of that use. Benchmarks of knowledge will include promotional claims and advertising, common knowledge of the general business of the formulator, and the length of the chain of production and distribution, that is, the commercial distance from the substance producer to the ultimate pesticide producer.

4. How to Report

The reports required by § 167.85(c) must be made by submitting to the Agency a form entitled "Pesticides Report," EPA Form 3540–16. The term "pesticide," as used in the form and in the instructions to the form, shall be read also to include pesticide products, devices, and active ingredients.

5. How to Register

Any person who wishes to register an establishment must complete and submit to the Agency a form entitled "Application for Registration of Pesticide-Producing Establishments," EPA Form 3540–8. Any establishment which has not previously been required to register and is not currently registered as a producing establishment must apply for establishment registration by submitting an application within 180 days after the effective date of this regulation.

6. Other Changes to the Rule

The language of Part 167 was rewritten in the proposed amendment to clarify the regulations. Proposed changes in the language of the rule were made to reflect more accurately the existing practices of the Agency. However, except for those changes explained above which were made to include the active ingredient producers in the regulatory scheme, these changes do not reflect an substantive change in the requirements to register estabishments and/or report production with the exception of deleting the registration and reporting requirement for custom blenders.

This rule no longer requires custom blenders to register their establishments and report production. Custom blenders provide the service of mixing pesticides to a customer's specifications. The custom blend can be a pesticide(s)/fertilizer(s) mixture, a mixture of end-use formulations derived from registered pesticides, or a mixture of animal feed and feed-through pesticide(s). Under the Agency's May 10, 1982 FIFRA Compliance Program Policy No. 3.4 entitled "Custom Blenders," the Agency determined that the registration of custom blend pesticides would not be necessary to fulfill the intent of FIFRA. Moreover, the May 10, 1982 FIFRA Compliance Policy No. 7.1, entitled "Custom Blenders," states that custom blenders are not required to report establishment production. Registration of custom blending establishments was required to allow the Agency to schedule inspections and trace pesticides which are contaminated or adulterated. The Agency no longer uses the registration of custom blending establishments as the targetting method for conducting inspections for contamination or adulteration of a pesticide. As a result of deleting the registration requirement for custom blenders the paperwork burden for such establishments will be reduced. Furthermore, since registrants keep or are required to keep records regarding sales, the Agency believes it can effectively locate such products without custom blending establishments being registered.

The Agency believes that the authority under section 8 of FIFRA will allow the Agency to detect and track the sale and distribution of products that are contaminated or adulterated. Custom blenders remains subject to the provisions of FIFRA section 8 as well as all the requirements relating to the proper use of pesticides including transport, storage and disposal. The Agency believes the public will be adequately protected without the registration and reporting requirements by custom blenders. Therefore, the Agency exempts producers of custom-blended pesticides from the requirement of establishment registration and reporting of production under the authority of FIFRA section 25(b).

This exemption also applies to custom blenders of animal feed-through pesticides, especially those who blend feed-through larvicide products. Establishments which custom blend feed-through pesticides, and no other pesticides, are not currently registered as pesticide-producing establishments. This is due to an interim decision made by the Agency, that the final determination as to whether or not these establishments would be required to register would be made when the Agency issued amended section 7 regulations. The interim decision was based on the issue of dual jurisdiction between the Agency under FIFRA section 7 and the Food and Drug Administration under the Current Good Manufacturing Practice regulation (21 CFR Part 225).

Elimination of the establishment registration and reporting requirements for custom blenders of animal feed-through pesticides affects approximately 10,000 establishments, most of which are not currently registered with the Agency.

The change in date effecting the submittal of annual reports will provide adequate time for the forms to be sent to and received by the Agency. Section 167.85(d) reflects this revision.

This rule also permits producers to report changes in ownership or address of an establishment on the same form as the registration of establishments form (EPA Form 3540–8) or on company letterhead stationary. This is consistent with current Agency practice.

The elimination of establishment registrations for custom blenders caused some concern for States as expressed by some State Pesticide Lead Agency Officials and some Regions. The States expressed concern that the removal of this information from the data base supplied by the Regions could impair their inspection targetting. The Regions were concerned that some "custom blenders" are actually producing pesticides and as such should be reporting production under section 7. The Agency understands this concern and has agreed to:

(1) Maintain a listing of all the currently registered custom blending establishments as of the effective date of the regulations.

(2) Draft a letter to be included with the 1988 annual solicitation for pesticide production reports stating that custom blenders must evaluate their production status, and if they produce pesticides as outlined in section 2(w) of FIFRA, they

must notify the Regional Office. Otherwise they are removed from the Agency's producing establishment list. However, establishments producing registered pesticides and providing custom blending services are still required to maintain their establishment registration and report production of registered pesticide products.

The last change to Part 167 was to eliminate the labeling requirement at § 167.4 which discussed establishment number, placement and designation of the EPA establishment number. These labeling requirements are now found at § 162.10(f).

IV. Related Regulation

This rule should be read in conjunction with 40 CFR Part 169—Books and Records of Pesticide Production and Distribution, the latest amendment to which was published in the **Federal Register** of August 15, 1980 (45 FR 54338).

V. Conversion Table

For the convenience of the user, the following table shows the relationship between the old and new CFR section numbers.

Old Section	New Section
167.1	167.3
167.2	167.20
167.3	167.20
167.5	167.85
	167.90

Section 167.4 has been deleted since it is covered by § 162.10(f) of the *Labeling requirements.*

VI. Statutory Requirements

The Secretary of Agriculture has reviewed this rule as required by FIFRA section 25(a)(2)(A) and the Scientific Advisory Panel has waived review of this rule as required by FIFRA section 25(d).

VII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, the Agency must judge whether a rule is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. The Agency has determined that this rule is not major. Although it amends an existing rule by adding as well as deleting some respondents to registration and reporting requirements, it will not;

1. Have an annual effect on the economy of $100 million or more.

2. Increase costs to consumers, industry, or Government.

3. Have a significant adverse effect on competition, employment, investment, productivity, or innovation.

This rule was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator may certify that a final rule will not, if promulgated, have a significant impact on a substantial number of small entities and, therefore, does not require a regulatory flexibility analysis.

This rule will require those establishments involved in producing multiple-use chemicals, where the manufacturers intend or have constructive knowledge that such chemicals are used as active ingredients in the production of pesticides, to register their establishments and report production on an annual basis under section 7 of FIFRA. The Agency believes that most establishments which produce multiple-use substances are larger businesses, which may already be registered. Additionally, it removes the requirement to register custom blender establishments.

Therefore, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB control numbers 2070–0045 and 2070–0078.

Public reporting burden for this collection of information is estimated to average 1.08 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 40 CFR Part 167

Pesticides, Reporting and recordkeeping requirements, Establishment registration.

Dated: August 26, 1988.

John A. Moore,

Acting Administrator.

Therefore, 40 CFR Chapter I is amended by revising Part 167 to read as follows:

PART 167—REGISTRATION OF PESTICIDE AND ACTIVE INGREDIENT PRODUCING ESTABLISHMENTS, SUBMISSION OF PESTICIDE REPORTS

Subpart A—General Provisions

Sec.

167.3 Definitions.

Subpart B—Registration Requirements

167.20 Establishments requiring registration.

Subparts C and D—[Reserved]

Subpart E—Recordkeeping and Reporting Requirements

167.85 Reporting requirements.

167.90 Where to obtain and submit forms.

Authority: 7 U.S.C. 136 (e) and (w).

Subpart A—General Provisions

§ 167.3 Definitions.

Terms used in this part shall have the meanings set forth for such terms in the Federal Insecticide, Fungicide, and Rodenticide Act. In addition, when used in this part, the following terms shall have the meanings stated below:

"Act" means the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. 136 *et seq.*

"Amount of pesticidal product" means quantity, expressed in weight or volume of the product, and is to be reported in pounds for solid or semi-solid pesticides and active ingredients or gallons for liquid pesticides and active ingredients, or number of individual retail units for devices.

"Current production" [sales or distribution] means amount of planned production in the calendar year in which the pesticides report is submitted, including new pesticidal products not previously sold or distributed.

"Custom blender" means any establishment which provides the service of mixing pesticides to a customer's specifications, usually a pesticide(s)-fertilizer(s), pesticide-pesticide, or a pesticide-animal feed mixture, when: (1) The blend is prepared to the order of the customer and is not held in inventory by the blender; (2) the blend is to be used on the customer's property (including leased or rented

property); (3) the pesticide(s) used in the blend bears end-use labeling directions which do not prohibit use of the product in such a blend; (4) the blend is prepared from registered pesticides; (b) the blend is delivered to the end-user along with a copy of the end-use labeling of each pesticide used in the blend and a statement specifying the composition of mixture; and (6) no other pesticide production activity is performed at the establishment.

"Device" means any device or class of devices as defined by the Act and determined by the Administrator pursuant to section 25(c) to be subject to the provisions of section 7 of the Act.

"Establishment" means any site where a pesticidal product, active ingredient, or device is produced, regardless of whether such site is independently owned or operated, and regardless of whether such site is domestic and producing a pesticidal product for export only, or whether the site is foreign and producing any pesticidal product for import into the United States.

"Past year" means the calendar year immediately prior to that in which the report is submitted.

"Pesticidal product" means a pesticide, active ingredient, or device.

"Pesticidal product report" means information showing the types and amounts of pesticidal products which were: (1) Produced in the past calendar year; (2) produced in the current calendar year; and, (3) sold or distributed in the past calendar year. For active ingredients, the pesticidal product report must include information on the types and amounts of an active ingredient for which there is actual or constructive knowledge of its use or intended use as a pesticide. This pesticidal product report also pertains to those products produced for export only which must also be reported. A positive or a negative annual report is required in order to maintain registration for the establishment.

"Produce" means to manufacture, prepare, propagate, compound, or process any pesticide, including any pesticide produced pursuant to section 5 of the Act, any active ingredient or device, or to package, repackage, label, relabel, or otherwise change the container of any pesticide or device.

"Producer" means any person, as defined by the Act, who produces any pesticide, active ingredient, or device (including packaging, repackaging, labeling and relabeling).

"Sold or distributed" means the aggregate amount of a pesticidal product released for shipment by the establishment in which the pesticidal product was produced.

"Type of pesticidal product" refers to each individual product as identified by: the product name; EPA Registration Number (or EPA File Symbol, if any, for planned products, or Experimental Permit Number, if the pesticide is produced under an Experimental Use Permit); active ingredients; production type (technical, formulation, repackaging, etc.); and, market for which the product was produced (domestic, foreign, etc.). In cases where a pesticide is not registered, registration is not applied for, or the pesticide is not produced under an Experimental Use Permit, the term shall also include the chemical formulation.

Subpart B—Registration Requirements

§ 167.20 Establishments requiring registration.

(a) *Who must register.* (1) Any establishment where a pesticidal product is produced must be registered with the Agency. This requirement does not apply to custom blenders as defined in this part.

(2) Any establishment where a substance is produced must be registered with the Agency if the producer intends the substance to be used as an active ingredient of a pesticide, or has actual or constructive knowledge that the substance will be used by any person as an active ingredient of a pesticide.

(3) Any domestic establishment producing a pesticidal product for export, or any unregistered pesticide, or any foreign establishment producing a pesticidal product for import into the United States must be registered. Also, any establishment, either foreign or domestic, which produces a pesticidal product for use under an Experimental Use Permit, FIFRA section 18 Emergency Exemption or section 24(c) Special Local Needs registration, must be registered.

(b) *Information required.* An applicant for establishment registration must submit the following information:

(1) Name and address of the company.

(2) The type of ownership (individual, partnership, cooperative association, corporation, or any organized group of persons whether incorporated or not).

(3) The name and address of each producing establishment for which registration is sought.

(c) *When to apply.* An application for establishment registration must be submitted, and an establishment registration number must be assigned by the Agency, before any production may occur at an establishment. In the case of an establishment which has not previously been required to be registered and is not currently registered, the producer must apply for establishment registration by submitting an application within 180 days after the effective date of this regulation.

(d) *Assignment of establishment registration number.* The Agency will return incomplete or inaccurately completed applications to the applicant. If the application is complete and accurate, the Agency will register the establishment and assign a registration number to the establishment. The establishment registration number will be entered on the application, and a copy of the application will be returned to the applicant.

(e) *Amendment.* If at any time after the first report there is a change in the information required to be submitted under paragraph (b) of this section, that new information must be reported to EPA, in writing on letterhead stationery or on forms supplied by the Agency, within 30 days after such change occurs.

(f) *Duration of registration.* Establishment registration will remain effective provided pesticide reports are submitted annually pursuant to the requirements of this part. Failure to submit a report may result in termination of establishment registration, civil and/or criminal penalty assessments.

(Approved by the Office of Management and Budget under control number 2070–0045)

Subparts C and D—[Reserved]

Subpart E—Recordkeeping and Reporting Requirements

§ 167.85 Reporting requirements.

(a) *Who must report.* Each producer operating an establishment must submit the reports required by this section concerning any pesticide, active ingredient, or device produced at each establishment. Custom blenders are not required to report production to the Agency.

(b) *Information required.* The pesticide report shall include the following: (1) Name and address of the establishment; (2) amount of each pesticidal product: (i) Produced during the past year; (ii) sold or distributed during the past year; (iii) estimated to be produced during the current year. The report shall only include those pesticidal products actually produced at the reporting establishment. Reports submitted by foreign-producing establishments shall cover only those pesticidal products exported to the United States.

(c) *How to report.* The reports required by this section must be made on forms supplied by the Agency. It is the ultimate responsibility of companies to obtain, complete, and submit the form each year.

(d) *When to report.* A producer operating an establishment must submit an initial report no later than 30 days after the first registration of each establishment the producer operates. Thereafter, the producer must submit an annual report on or before March 1 of each year, even if the producer has produced no pesticidal product for that reporting year.

(Approved by the Office of Management and Budget under control number 2070-0078)

§ 167.90 Where to obtain and submit forms.

(a) *Where to obtain forms.* Any person may obtain blank forms for the applications and reports required by this part from any EPA Regional Office, or from the address listed in paragraph (b) of this section.

(b) *Where to submit applications and reports.* Each producer operating an establishment, with the exception of those establishments not found at the same location as their company headquarters, must submit applications and reports required by this Part to the EPA Regional Office which serves the area where the establishment is located. The list of Regional Office addresses is found in 40 CFR 1.7. Applications and reports for those establishments not found at the same location as their company headquarters to be submitted by the company headquarters to the Regional Office having jurisdiction over the State in which the company headquarters is located. A foreign producer who exports any pesticide product, device, or active ingredient to the United States must submit all applications and reports to:

U.S. Environmental Protection Agency, Office of Compliance Monitoring (EN-342), 401 M Street SW., Washington, DC 20460.

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